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Wednesday
March 7, 1990

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

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

DURHAM, NC

WHEN: March 20, at 9:30 a.m.
WHERE: Duke University,
Von Cannon Hall, Bryan Center,
Durham, NC.
RESERVATIONS: 919-684-3030.

SALT LAKE CITY, UT

WHEN: March 29, at 9:00 a.m.
WHERE: State Office Building Auditorium,
Capitol Hill,
Salt Lake City, UT.
RESERVATIONS: Call the Utah Department of Administrative Services, 801-538-3010.

WASHINGTON, DC

WHEN: March 29, 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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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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89-NM-221-AD; Amdt. 39-6536]

Airworthiness Directives; Airbus Industrie Model A300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Industrie Model A300 series airplanes, which requires repetitive high frequency eddy current (HFEC) inspections to detect cracks in the bottom skin stringers adjacent to Rib 14, and repair, if necessary. This amendment is prompted by full-scale fatigue testing by the manufacturer, which revealed cracks in the bottom skin stringers adjacent to Rib 14. This condition, if not corrected, could result in rupture of the bottom skin stringers and subsequent reduced structural capability of the wings.

EFFECTIVE DATE: April 13, 1990.

ADDRESSES: The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Standardization Branch, ANM-113; telephone (206) 431-1918. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to certain Airbus Industrie Model A300 series airplanes, which requires repetitive high frequency eddy current inspections to detect cracks in the bottom skin stringers adjacent to Rib 14, and repair, if necessary, was published in the **Federal Register** on December 15, 1989 (54 FR 51413).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supported the rule.

After careful review of available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 66 airplanes of U.S. registry will be affected by this AD, that it will take approximately 25 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $66,000.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

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

Airbus Industrie: Applies to Model A300 series airplanes, as listed in Airbus Industrie Service Bulletin A300-57-148, dated November 30, 1988, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent rupture of the bottom skin stringers and subsequent reduced structural capability of the wings, accomplish the following:

A. Perform a high frequency eddy current (HFEC) inspection of the bottom skin stringers adjacent to Rib 14, in accordance with Airbus Industrie Service Bulletin A300-57-148, dated November 30, 1988, as follows:

1. Model A300 B2 Series Airplanes:

a. For airplanes that have accumulated less than 23,000 landings, the initial inspection must be performed prior to the accumulation of 25,000 landings.

b. For airplanes that have accumulated at least 23,000 landings but not more than 28,000 landings, the initial inspection must be performed within 2,000 landings after the effective date of this AD.

c. For airplanes that have accumulated 28,000 or more landings, the initial inspection must be performed within 1,000 landings after the effective date of this AD.

2. Model A300 B4-100 and B4-2C series airplanes:

a. For airplanes that have accumulated less than 19,000 landings, the initial inspection must be performed prior to the accumulation of 21,000 landings.

b. For airplanes that have accumulated at least 19,000 landings but not more than 23,000 landings, the initial inspection must be performed within 1,500 landings after the effective date of this AD.

c. For airplanes that have accumulated 23,000 or more landings, the initial inspection must be performed within 750 landings after the effective date of this AD.

3. Model A300 B4-200 series airplanes:

a. For airplanes that have accumulated less than 15,000 landings, the initial inspection must be performed prior to the accumulation of 17,000 landings.

b. For airplanes that have accumulated at least 15,000 landings but not more than 19,000 landings, the initial inspection must be performed within 1,500 landings after the effective date of this AD.

c. For airplanes that have accumulated 19,000 or more landings, the initial inspection must be performed within 750 landings after the effective date of this AD.

B. If no cracks are found, repeat the inspections required by paragraph A., above, at the following intervals:

1. For Model A300 B2 series airplanes, repeat the inspection at intervals not to exceed 9,400 landings.

2. For Model A300 B4-100 and B4-2C series airplanes, repeat the inspection at intervals not to exceed 8,000 landings.

3. For Model A300 B4-200 series airplanes, repeat the inspection at intervals not to exceed 6,100 landings.

C. If cracks are found, repair prior to further flight, in a manner approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region. Repeat inspections thereafter at intervals specified in paragraph B., above.

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

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective April 13, 1990.

Issued in Seattle, Washington, on February 27, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-5137 Filed 3-6-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 90-CE-10-AD; Amdt. 39-6528]

Airworthiness Directives; Cessna Model 172 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, request for comments.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to certain Cessna Model 172 airplanes, which supersedes AD 58-08-02. The manufacturer has developed a modification of the exhaust heater/muffler area which, upon installation, eliminates the need for the repetitive inspections now required. This amendment will prevent cracking of the exhaust heater/muffler, and resultant dangerous carbon monoxide levels.

EFFECTIVE DATE: March 20, 1990. Comments for inclusion in the Rules Docket must be received on or before April 24, 1990.

Compliance: As prescribed in the body of the AD.

ADDRESSES: Cessna Single Engine Service Letters S.L.-170/172-11, dated February 3, 1958, and S.L.-170/172-13, dated April 7, 1958, applicable to this AD may be obtained from the Cessna Aircraft Company, P.O. Box 7704, Wichita, Kansas 67277. This information may be examined at the Rules Docket at the address below. Send comments on the AD in triplicate to the FAA, Central Region, Attention: Rules Docket No. 90-CE-10-AD, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays expected.

FOR FURTHER INFORMATION CONTACT: Victor Powell, Aerospace Engineer, Wichita Aircraft Certification Office, Mid-Continent Airport, 1801 Airport Road, Room 100, Wichita, Kansas 67209; Telephone (316) 946-4440.

SUPPLEMENTARY INFORMATION: Cracks occurring in the exhaust heater/muffler on certain Cessna Model 172 airplanes that if not detected could release hazardous quantities of carbon monoxide into the cabin prompted the FAA to issue AD 58-08-02. Additionally, an accident occurred where the pilot and passengers became unconscious due to carbon monoxide poisoning when the exhaust gas was released into the cabin area through the exhaust heater/muffler. Subsequently, a new exhaust stack brace was introduced on Cessna Model 172, Serial Number 36770 and on. This new brace supported the outlet tubes at a lower point which changed the vibrational characteristics of the exhaust stack, reducing the possibility of cracking. When the new exhaust stack brace was installed, the inspections required by AD 58-08-02, were no longer necessary. However, a confusing situation exists if the maintenance logs of a Cessna Model 172 in the serial number range 36770 through 36965 do not indicate that Cessna Service Kit SK-172-10 was installed during production. Since owners of the modified airplanes may have continued to comply with the 25-hour inspection interval of AD 58-08-02 when it was unnecessary, this inequity needs to be corrected. In addition, a dangerous condition may also arise when a new owner finds that the maintenance log of his Cessna Model 172 in the serial number range 36216 through 36769 indicates that the AD inspection of 58-08-02 has been complied with, even though the exhaust stack brace is not installed, the owner could believe that no further inspections are required. The new amendment will end the serial number effectively at 36769 and change the requirement to a one-time only inspection followed by installation of the exhaust stack brace per Cessna Service Kit SK-172-10A.

This amendment provides a procedure by which the safety of the subject airplanes would be enhanced by an improvement in structural integrity and a consequent relief from repetitive inspections. Accordingly, the FAA has determined that notice thereof would be contrary to the public interest under section 553(b)(3)(B) of the Administrative Procedure Act (APA), in that it would delay the availability of this relief. Further, because this amendment relieves a restriction, this amendment may be made effective in less than 30 days, pursuant to section 553(d)(1) of the APA.

Although this action is in the form of a final rule and, thus, was not preceded by notice and public procedure, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered and this rule may be amended in light of the comments received. Comments that provide a factual basis supporting the views and suggestions presented are particularly helpful in evaluating the

effectiveness of the AD and determining whether additional rulemaking is needed. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket at the address given above. A report summarizing each FAA-public contact, concerned with the substance of this AD, will be filed in the Rules Docket.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Therefore, I certify that this action (1) is not a "major rule" under the provisions of Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding AD 58-08-02 with the following new AD:

Cessna: Applies to Model 172 (Serial Numbers 36216 through 36769) airplanes, certificated in any category that have not been modified with Cessna Service Kit SK-172-10 or SK-172-10A.

Compliance: Required within the next 25 hours time-in-service of the effective date of this AD, unless previously accomplished.

To prevent cracking of the exhaust heater/muffler, which can lead to high cabin carbon monoxide levels, accomplish the following:

(a) Inspect the exhaust heater/muffler assembly for cracks in accordance with the procedures outlined in the applicable Cessna Service Manuals, or the following:

(1) Remove and disassemble the exhaust heater/muffler assembly by removing the shroud assembly.

(2) Visually inspect the exhaust heater/muffler, Cessna Part Number 0550157-32, for cracks, or submerge the muffler in water and pressure test at 50 p.s.i.

Note 1.—Particular attention should be given the cylindrical surface containing the heat transfer pins.

(3) If cracks or breaks or any leakage is found in the exhaust heater/muffler area, prior to further flight, replace the exhaust heater/muffler with an airworthy part.

(b) Modify the airplane by installation of Cessna Service Kit SK-172-10A.

Note 2.—Cessna Service Letters 170/172-11, dated February 3, 1958, and 170/172-13, dated April 7, 1958, pertain to the subject of this AD.

(c) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished provided the cabin air control remains in the "OFF" position.

(d) An alternate method of compliance or adjustment of the compliance time which provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209.

Note 3.—The request should be forwarded through an FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita Aircraft Certification Office.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to the Cessna Aircraft Company, P.O. Box 7704, Wichita, Kansas 67277; or may examine these documents at the FAA, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment supersedes AD 58-08-02.

This amendment becomes effective on March 20, 1990.

Issued in Kansas City, Missouri, on February 23, 1990.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-5139 Filed 3-6-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 90-NM-18-AD; Amdt. 39-6522]

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 737 series airplanes, which requires placarding of the APU as inoperative until an inspection of the APU fire detection system is conducted to determine system compatibility. This amendment is prompted by reports of Model 737-400 series airplanes equipped with Systron Donner fire detectors installed on the APU, and with the Walter Kidde fire detection system installed in the remainder of the airplane. This combination of systems results in a failure to alert the flightcrew of a fire in the APU compartment. This condition, if not corrected, could result in an undetected APU fire.

EFFECTIVE DATE: March 19, 1990.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Stephen Bray, Propulsion Branch, ANM-140S; telephone (206) 431-1969. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: An operator has reported that four of its Model 737-400 series airplanes were delivered equipped with Systron Donner fire detectors installed on the APU, and with the Walter Kidde fire detection system installed in the remainder of the airplane. This combination of systems results in a failure to alert the flightcrew of a fire in the APU compartment. Using the normal checklist procedure, the system appears operative when the fire detection system is actually inoperative. The FAA has determined that the airplanes were incorrectly configured during production; however, this system incompatibility may also result from APU replacement in service. This condition, if not corrected, could result in an undetected APU fire.

The FAA has reviewed and approved Boeing Telex M-7272-90-0735, dated January 31, 1990, which describes acceptable inspection procedures which may be used to satisfy the inspection requirement of this AD for the Model 737-300 and -400 series airplanes. Model 737-100 and -200 series airplanes must be inspected and modified, if necessary, in accordance with the procedures set forth in this AD.

Since this condition is likely to exist on other airplanes of the same type design, this AD requires placarding of the APU as inoperative until an inspection of the APU fire detection system is conducted to determine system compatibility. If system discrepancies are found, the APU fire warning system must be modified and a report submitted to the FAA.

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

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 95-511) and have been assigned OMB Control Number 2120-0056.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

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

Boeing: Applies to all Model 737 series airplanes, equipped with Walter Kidde APU fire detection systems that either have not yet had an initial "C" check performed or that have had an APU replaced since performing the last "C" check, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent an undetected APU fire, accomplish the following:

A. Within 3 days after the effective date of this AD, placard the APU as inoperative until the inspection required by paragraph B., below, has been accomplished.

B. Within 5 days after installation of the placard required by paragraph A., above, inspect to determine whether a Walter Kidde APU fire detector is installed in the APU compartment. This inspection can be performed by viewing through the APU cooling air exhaust outlet (ref: Model 737 Maintenance Manual 49-11-00). The Walter Kidde element is protected by a perforated shield surrounding the length of the element. If the perforated shield is not seen, open the lower APU shroud and verify that the fire detector element installed is Boeing part Number 10-61096-316/Walter Kidde part number 894481.

Note.—Boeing Model 737-300 and 737-400 series airplanes inspected in accordance with Boeing Telex M-7272-90-0735, dated January 31, 1990, comply with the inspection requirements of this AD.

C. If configuration discrepancies are discovered while accomplishing the inspection required by paragraph B., above, within 5 days, remove and replace the detector with the appropriate Walter Kidde detector that has been approved for installation on the airplane. Upon completion of the inspection required by paragraph B. and this modification, if required, the placard required by paragraph A., above, may be removed.

D. Within 10 days after the inspection required by paragraph B., above, if configuration discrepancies are discovered, submit a report of findings to the Manager, Seattle Manufacturing Inspection District Office, ANM-108S, FAA, Transport Airplane Directorate, 7300 Perimeter Road South, Seattle, Washington 98108. The report must include the airplane serial number.

E. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Seattle Aircraft Certification Office.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective March 19, 1990.

Issued in Seattle, Washington, on February 22, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-5136 Filed 3-6-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-NM-156-AD; Amdt. 39-6532]

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, which currently requires detailed visual inspection of the aft pressure bulkhead for damage and cracking, and repair, if necessary. This amendment requires additional eddy current inspections prior to the airplane accumulating 25,000 flight cycles. This amendment is prompted by reports of cracking detected during fatigue testing of the aft pressure bulkhead. This

condition, if not corrected, could lead to failure of the aft pressure bulkhead and depressurization of the airplane.

EFFECTIVE DATE: April 13, 1990.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Satish K. Pahuja, Airframe Branch, ANM-120S; telephone (206) 431-1997. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulation by revising AD 88-19-03, Amendment 39-6001 (53 FR 30981; August 17, 1988), applicable to Boeing Model 767 series airplanes, to require additional eddy current inspection prior to the airplane accumulating 25,000 flight cycles, was published in the **Federal Register** on September 26, 1989 (54 FR 39401).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The Air Transport Association (ATA) of America, responding on behalf of its members, had no objection to the proposed rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 175 Model 767 series airplanes of the affected design in the worldwide fleet. It is estimated that 82 airplanes of U.S. registry will be affected by this AD, that it will take approximately 12 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $39,360.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by amending AD 88-19-03, Amendment 39-6001 (53 FR 30981; August 17, 1988), as follows:

Boeing: Applies to Model 767 series airplanes, line numbers 001 through 175, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent a condition that could lead to depressurization of the airplane, accomplish the following:

A. Prior to the accumulation of 6,000 flight cycles or within the next 1,000 flight cycles after September 26, 1988, (effective date if Amendment 39-6001), whichever occurs later, unless accomplished within the last 5,000 flight cycles, and thereafter at intervals not to exceed 6,000 flight cycles, perform a detailed visual inspection of the aft side of the entire body station 1582 pressure bulkhead for damage (as defined in the Structural Repair Manual) and cracking, in accordance with Boeing Service Bulletin 767-53-0026, dated November 19, 1987 or Revision 1, dated March 16, 1989.

B. Prior to the accumulation of 25,000 flight cycles, and thereafter at intervals not to exceed 6,000 flight cycles, perform an eddy current inspection of the body station 1582 pressure bulkhead, in accordance with paragraph C. of the Accomplishment Instructions of Boeing Service Bulletin 767-53-0026, Revision 1, dated March 16, 1989.

C. Repair all damage and cracking prior to further flight in accordance with NOTE 4 in the Accomplishment Instructions of Boeing Service Bulletin 767-53-0026, Revision 1, dated March 16, 1989.

D. For the purposes of complying with this AD, the number of flight cycles may be determined to equal the number of pressurization cycles where the cabin pressure differential was equal to or greater than 2.0 PSI.

E. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment, and then send it to the Manager, Seattle Aircraft Certification Office.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

This amendment amends Amendment 39-6001, AD 88-19-03.

This amendment becomes effective April 13, 1990.

Issued in Seattle, Washington, on February 27, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-5141 Filed 3-6-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-NM-203-AD; Amdt. 39-6535]

Airworthiness Directives; Airbus Industrie Model A300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Industrie Model A300 series airplanes, which requires repetitive visual or high

frequency eddy current inspections to detect cracks in the foot run-outs between Frame 41 and Frame 54, and between Stringer 26 and Stringer 27, and repair, if necessary. This amendment is prompted by fatigue testing by the manufacturer, which revealed cracks in the foot runouts of several frames. This condition, if not corrected, could lead to reduced structural capability of the fuselage.

EFFECTIVE DATE: April 13, 1990.

ADDRESSES: The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Standardization Branch, ANM-113; telephone (206) 431-1918. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to certain Airbus Industrie Model A300 series airplanes, which would require repetitive visual or high frequency eddy current inspections to detect cracks in the foot run-outs between Frame 41 and Frame 54, and between Stringer 26 and Stringer 27, and repair, if necessary, was published in the **Federal Register** on October 25, 1989 (54 FR 43432).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given the single comment received.

The commenter questioned the need for the rule since the referenced service bulletin is a part of the Significant Structural Inspection program (SSIP). The FAA acknowledges that the service bulletin is a part of the SSIP; however, when the NPRM was issued, the SSIP document was under preparation and its date of issuance was not known. Now that the SSIP has been issued, the FAA may consider further, separate rulemaking to address it. Since some operators may currently have airplanes which are approaching the specified number of cycles where the actions described in the service bulletin are necessary, the FAA has determined that it is appropriate to proceed with this rulemaking to require those actions.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 66 airplanes of U.S. registry will be affected by this AD, that it will take approximately 20 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $52,800.

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

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

List of Subjects in 14 CFR part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

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

Airbus Industrie: Applies to Model A300 series airplanes, as listed in Airbus Industrie Service Bulletin A300-53-238, dated April 10, 1989, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent reduced structural capability of the fuselage, accomplish the following:

A. Prior to the accumulation of 18,800 landings or within 1,000 landings after the effective date of this AD, whichever occurs later, and thereafter at intervals indicated below, perform either a visual or high-frequency eddy current inspection of the frame foot run-outs between Frame 41 and Frame 54, and between Stringer 26 and Stringer 27, in accordance with Airbus Industrie Service Bulletin A300-53-238, dated April 10, 1989.

1. If the immediately preceding inspection was performed visually, the next inspection must be performed within 5,800 landings.

2. If the immediately preceding inspection was performed using a high frequency eddy current technique, the next inspection must be performed within 9,400 landings.

B. If cracks are found, repair prior to further flight, in accordance with Airbus Industrie Service Bulletin A300-53-238, dated April 10, 1989. Repeat inspections at intervals indicated in paragraph A., above.

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

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective April 13, 1990.

Issued in Seattle, Washington, on February 27, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-5144 Filed 3-6-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-NM-184-AD; Amdt. 39-6534]

Airworthiness Directives; Airbus Industrie Model A300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Industrie Model A300 series airplanes, which requires repetitive inspections to detect cracks in certain areas of the center spar sealing angles and bottom skin, the rear spar bottom boom, the front spar bottom boom, the outer wing front and rear spar, and top boom; and repair, if necessary. This amendment is prompted by full-scale fatigue testing by the manufacturer, which identified certain structural components associated with the wing that are prone to fatigue cracking. This condition, if not corrected, could result in reduced structural capability of the wings.

EFFECTIVE DATE: April 13, 1990.

ADDRESSES: The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Standardization Branch, ANM-113; telephone (206) 431-1918. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to certain Airbus Industrie Model A300 series airplanes, which requires repetitive inspections to detect cracks in certain areas of the center spar sealing angles and bottom skin, the rear spar bottom boom, the front spar bottom boom, the outer wing front and rear spar, and the top boom, was published in the **Federal Register** on October 20, 1989 (54 FR 43070).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supported the rule.

Another commenter questioned the need for the rule since the referenced service bulletins are a part of the Significant Structural Inspection Program (SSIP). The FAA acknowledges that the service bulletins are a part of the SSIP; however, when the Notice was issued, the SSIP document was under preparation and its date of issuance was not known. Now that the SSIP has been issued, the FAA may consider further, separate rulemaking to address it. Since some operators may currently have airplanes which are approaching the specified number of cycles where the actions described in the service bulletins are necessary, the FAA has determined that it is appropriate to proceed with this rulemaking to require those actions.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 66 airplanes of U.S. registry will be affected by this AD, that it will take approximately 80 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $211,200.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

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

Airbus Industrie: Applies to certain Model A300 series airplanes, as identified in Airbus Industrie Service Bulletins A300-57-146, A300-57-147, A300-57-155, dated December 30, 1988; and A300-57-149, dated January 30, 1989, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent reduced structural capability of the wings, accomplish the following:

A. Performed X-ray inspections of the center spar sealing angles, and perform high frequency eddy current (HFEC) inspections of the wing bottom skins adjacent to the pylon rear attachment fitting, in accordance with Airbus Industrie Service Bulletin A300-57-146, dated December 30, 1988, as follows:

1. Perform the initial inspection as follows:

a. Model B2 series airplanes:

(1) For airplanes that have accumulated less than 18,000 landings, perform the initial inspection prior to the accumulation of 20,000 landings.

(2) For airplanes that have accumulated 18,000 or more landings but less than 23,000 landings, perform the initial inspection within 2,000 landings after the effective date of this AD.

(3) For airplanes that have accumulated 23,000 or more landings, perform the initial inspection within 1,000 landings after the effective date of this AD.

b. Model B4-2C and B4-100 series airplanes:

(1) For airplanes that have accumulated less than 15,000 landings, perform the initial inspection prior to the accumulation of 17,000 landings.

(2) For airplanes that have accumulated 15,000 or more landings but less than 19,000 landings, perform the initial inspection within 1,500 landings after the effective date of this AD.

(3) For airplanes that have accumulated 19,000 or more landings, perform the initial inspection within 750 landings after the effective date of this AD.

c. Model B4-200 series airplanes:

(1) For airplanes that have accumulated less than 10,000 landings, perform the initial inspection prior to the accumulation of 12,000 landings.

(2) For airplanes that have accumulated 10,000 or more landings but less than 14,000 landings, perform the initial inspection within 1,500 landings after the effective date of this AD.

(3) For airplanes that have accumulated 14,000 or more landings, perform the initial inspection within 750 landings after the effective date of this AD.

2. If no cracks are found as a result of the inspections required by paragraph A.1., above, repeat the inspections as follows:

a. Repeat the X-ray and HFEC inspections at intervals not to exceed 12,000 landings.

b. In lieu of repetitive HFEC inspections of the wing bottom skin, close visual inspections may be performed at intervals as follows:

(1) For Model B2 series airplanes: at intervals not to exceed 7,900 landings.

(2) For Model B4-2C and B4-100 series airplanes: at intervals not to exceed 6,700 landings.

(3) For Model B4-200 series airplanes: at intervals not to exceed 6,200 landings.

3. If cracks are found during any inspection required by paragraph A.1. or A.2., above, repair prior to further flight in accordance with the service bulletin. Repetitive inspections must be conducted thereafter in accordance with paragraph A.2., above.

B. Perform ultrasonic inspections of the rear spar bottom boom between Ribs 1 and 9 in the inboard and outboard areas of the main landing gear (MLG) reinforcing plate on all aircraft where Modifications 1868 and 1869 have *not* been accomplished. On all aircraft where Modification 1868 has been accomplished, but where Modification 1869 has *not* been accomplished, perform an ultrasonic inspection of the rear spar bottom boom between Ribs 1 and 9 in the areas inboard of the main landing gear reinforcing plate. Inspections are to be performed after paint removal in accordance with Airbus Industrie Service Bulletin A300-57-147, dated December 30, 1988, as follows:

1. Perform the initial inspection as follows:

a. Model B2 series airplanes:

(1) For airplanes that have accumulated less than 21,000 landings, perform the initial inspection prior to the accumulation of 23,000 landings.

(2) For airplanes that have accumulated 21,000 or more landings but less than 26,000 landings, perform the initial inspection within 2,000 landings after the effective date of this AD.

(3) For airplanes that have accumulated 26,000 or more landings, perform the initial inspection within 1,000 landings after the effective date of this AD.

b. Model B4-2C and B4-100 series airplanes:

(1) For airplanes that have accumulated less than 17,000 landings, perform the initial inspection prior to the accumulation of 19,000 landings.

(2) For airplanes that have accumulated 17,000 or more landings but less than 21,000 landings, perform the initial inspection within 1,500 landings after the effective date of this AD.

(3) For airplanes that have accumulated 21,000 or more landings, perform the initial inspection within 750 landings after the effective date of this AD.

c. Model B4-200 series airplanes:

(1) For airplanes that have accumulated less than 14,000 landings, perform the initial inspection prior to the accumulation of 16,000 landings.

(2) For airplanes that have accumulated 14,000 or more landings but less than 18,000 landings, perform the initial inspection within 1,500 landings after the effective date of this AD.

(3) For airplanes that have accumulated 18,000 or more landings, perform the initial inspection within 750 landings after the effective date of this AD.

2. If no cracks are found as a result of the inspections required by paragraph B.1., above, repeat the ultrasonic inspections as follows:

a. For Model B2 series airplanes: at intervals not to exceed 5,300 landings.

b. For Model B4-2C and B4-100 series airplanes: at intervals not to exceed 4,500 landings.

c. For Model B4-200 series airplanes: at intervals not to exceed 3,900 landings.

3. If cracks are found during any inspection required by paragraph B.1. or B.2., above, repair prior to further flight, in accordance with the service bulletin. Repetitive inspections must be conducted thereafter in accordance with paragraph B.2., above.

C. Perform ultrasonic inspections of the front spar bottom boom between Ribs 6 and 7, and Ribs 8 and 9, in accordance with Airbus Industrie Service Bulletin A300-57-149, dated January 30, 1989, as follows.

1. Perform the initial inspection as follows:

a. Model B2 series airplanes:

(1) For airplanes that have accumulated less than 21,000 landings, perform the initial inspection prior to the accumulation of 23,000 landings.

(2) For airplanes that have accumulated 21,000 or more landings but less than 26,000 landings, perform the initial inspection within 2,000 landings after the effective date of this AD.

(3) For airplanes that have accumulated 26,000 or more landings, perform the initial inspection within 1,000 landings after the effective date of this AD.

b. Model B4-2C and B4-100 series airplanes:

(1) For airplanes that have accumulated less than 18,000 landings, perform the initial inspection prior to the accumulation of 20,000 landings.

(2) For airplanes that have accumulated 18,000 or more landings but less than 22,000 landings, perform the initial inspection within 1,500 landings after the effective date of this AD.

(3) For airplanes that have accumulated 22,000 or more landings, perform the initial inspection within 750 landings after the effective date of this AD.

c. Model B4-200 series airplanes:

(1) For airplanes that have accumulated less than 14,000 landings, perform the initial inspection prior to the accumulation of 16,000 landings.

(2) For airplanes that have accumulated 14,000 or more landings but less than 18,000 landings, perform the initial inspection within 1,500 landings after the effective date of this AD.

(3) For airplanes that have accumulated 18,000 or more landings, perform the initial inspection within 750 landings after the effective date of this AD.

2. If no cracks are found as a result of the inspections required by paragraph C.1., above, repeat the ultrasonic inspections as follows:

a. For Model B2 series airplanes at intervals not to exceed 7,100 landings.

b. For Model B4-2C and B4-100 series airplanes at intervals not to exceed 6,100 landings.

c. For Model B4-200 series airplanes at intervals not to exceed 4,700 landings.

3. If cracks are found during any inspection required by paragraph C.1. or C.2., above, repair prior to further flight, in accordance with the service bulletin. Repetitive inspections must be conducted thereafter in accordance with paragraph C.2., above.

D. For Model B2 and B4 series airplanes only: Perform high frequency eddy current (HFEC) inspections of the front and rear spar top boom inboard and outboard of Rib 9, in accordance with Airbus Industrie Service Bulletin A300-57-155, dated December 30, 1988, as follows, at the following intervals:

1. Perform the initial inspection as follows:

a. For airplanes that have accumulated less than 18,000 landings, perform the initial inspection prior to the accumulation of 20,000 landings.

b. For airplanes that have accumulated 18,000 or more landings but less than 23,000 landings, perform the initial inspection within 2,000 landings after the effective date of this AD.

c. For airplanes that have accumulated 23,000 or more landings, perform the initial inspections within 1,000 landings after the effective date of this AD.

2. If no cracks are found as a result of the inspections required by paragraph D.1., above, repeat the HFEC inspections at intervals not to exceed 9,300 landings.

3. If cracks are found during any inspection required by paragraph D., above, repair prior to further flight in accordance with the service bulletin. Repetitive inspections must be conducted thereafter in accordance with paragraph D.2., above.

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

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East

Marginal Way South, Seattle, Washington.

This amendment becomes effective April 13, 1990.

Issued in Seattle, Washington, on February 27, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-5145 Filed 3-6-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-ASW-37; Amdt. 39-6529]

Airworthiness Directives; Schweizer Aircraft Corporation Model 269A, 269A-1, 269B, and 269C Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires inspection of throttle cable assemblies for type of construction, removal of throttle cables with aluminum end fittings, and replacement of such cable assemblies with swaged steel end fittings on certain Schweizer helicopters. In addition, a daily check is required on all remaining cable assemblies with threaded steel end fittings until they are replaced. This AD is needed to prevent throttle cable end fittings from separating in flight which could result in loss of throttle control and subsequent loss of the rotorcraft.

EFFECTIVE DATE: April 6, 1990.

COMPLIANCE: As indicated in the body of the AD, unless already accomplished.

ADDRESSES: The applicable service bulletin, Schweizer Service Information Notice (SIN) N-210, dated April 15, 1988, may be obtained from Schweizer Aircraft Corporation, P.O. Box 147, Elmira, New York 14902, or may be examined in the Regional Rules Docket, Office of the Assistant Chief Counsel, FAA, 4400 Blue Mound Road, Room 158, Bldg. 3B, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond J. O'Neill, ANE-174, New York Aircraft Certification Office, FAA, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581, telephone (516) 791-7421.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD requiring the inspection of all throttle cable assemblies for type of construction, removal of throttle cables that incorporate aluminum end fittings, and replacement within 25 hours' time in service of such cable assemblies with swaged steel end fittings until replaced with cable assemblies with swaged steel end fittings on Schweizer Model 269A, 269A-1, 269B, and 269C helicopters was published in the **Federal Register** on March 1, 1989 (54 FR 8546). In addition, the notice proposed a daily check on all remaining cable assemblies with threaded steel end fittings until replaced with cable assemblies with swaged steel end fittings within 400 hours' time in service or 12 months from the effective date of this AD, whichever occurs first.

The proposal was prompted by a report of an end fitting separating from a throttle cable assembly. This resulted in loss of throttle control and prevented an increase of power during the final flare prior to landing. A hard landing ensued, causing damage to the helicopter.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received. Accordingly, the proposal is adopted with only minor editorial changes. The applicability statement has been revised to include Serial Numbers 0004 through 0819 and only those subsequent to 0819 that have had cables replaced, instead of Serial Numbers 0004 through 1347, as proposed in the notice. All helicopters produced since serial number 0819 are equipped with swaged fittings as standard equipment and, therefore, only those aircraft with serial numbers greater than 0819 that have cables thus replaced should be affected. Further, an editorial change has been made to paragraphs (c) (1), (2), and (3) to include a reference to the Basic Helicopter Maintenance Instructions, rather than a requirement to comply with these instructions, as proposed in the notice. Finally, some notes in the proposal have been omitted and other paragraph changes have been made, which are minor in nature, to clarify the rule, as adopted.

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

The FAA has determined that this regulation involves a total of 1,000 helicopters and requires a one-time, 1-hour inspection at a cost of $40 per helicopter. It is estimated that 500 of the helicopters will require daily inspections and throttle cable replacement at a cost of $2,300 per helicopter. The total fleet cost to comply with the AD is, therefore, estimated to be $1,190,000. Therefore, I certify that this action: (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is minimal; and (4) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Regional Rules docket. A copy of it may be obtained from the Regional Rules Docket.

List of Subjects in 14 CFR Part 39

Air transporation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR § 39.13) as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

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

Schweizer Aircraft Corporation: Applies to all Schweizer Model 269A, 269A-1, 269B, and 269C helicopters, certificated in any category, with Serial Numbers 0004 through 0819 and those subsequent to 0819, which have had throttle cables replaced. (Docket No. 88-ASW-37)

Compliance is required as indicated, unless already accomplished.

To prevent loss of throttle control, accomplish the following:

(a) Within the next 25 hours' time in service or within 30 days, whichever occurs first after the effective date of this AD, identify, inspect, and replace as indicated, the throttle cable assembly as follows:

(1) Determine if aluminum fittings are installed as follows:

(i) Check both end fittings of the cable assembly with a magnet to determine whether they are magnetic. Cables which incorporate magnetic fittings (magnet adheres to fitting) do not require the hardness test specified by paragraph (a)(1)(ii) below. For these cable assemblies, omit step (a)(i)(ii), and continue inspection with step (a)(2) below.

(ii) If the magnet does not adhere to the fitting, perform a hardness test on the fitting. If Rockwell hardness is less than B-85,

remove and replace the cable assembly with a swaged steel cable assembly in accordance with paragraph (c) of this AD before further flight. Performance of the hardness test will require removal of the throttle cable assembly from the helicopter in accordance with standard maintenance instructions.

(2) Visually check both ends of the cable to determine whether the cable incorporates swaged or threaded steel end fittings.

Note: Throttle cables which incorporate swaged end fittings may be identified by six evenly spaced flat spots around the barrel of the fitting just behind the lug. Threaded end fittings incorporate a cylindrical barrel (no flat spots).

(3) If the cable incorporates swaged steel end fittings (as determined from steps (a) (1) and (2) above), further compliance is not required except to record compliance in the helicopter log book as "Throttle Cable With Swaged Steel End Fittings Installed."

(4) If cable incorporates a threaded steel end fitting (as determined from steps (a)(1) and (2) above), perform an inspection before further flight and perform repetitive daily inspections in accordance with paragraph (b) of this AD until the cable is replaced in accordance with paragraph (c) of this AD.

(5) Record compliance with paragraph (a) of this AD in the compliance record of the helicopter log book.

(b) Prior to the first flight of each day, conduct a visual check of throttle cable assemblies with threaded steel end fittings as follows:

(1) Inspect cable end fittings for general condition and security of attachment. If any abnormality or damage is noted, replace cable assembly in accordance with paragraph (c) of this AD.

(2) Using a flashlight, visually inspect cable push rod for exposed threads adjacent to end fitting (both ends of cable assembly).

Note: The cable push rod is the movable rod that is attached directly to the cable end fitting (lug).

(3) If threads are visible, replace cable assembly before further flight in accordance with paragraph (c) of this AD.

(4) Record compliance with paragraph (b) of this AD in the compliance record of the helicopter log book.

(c) Within the next 400 hours' time in service from the effective date of this AD, or within 12 months, whichever occurs first, replace with swaged steel end fittings all threaded steel end fittings which were not replaced during the inspections and rework required by paragraphs (a) and (b) of this AD. Replacement parts applicability is as follows:

Model	Swaged steel cable assembly part No. (P/N)
269A	269A4683-9
269A-1	269A4683-9
269B	269A4683-7
269C	269A4683-7

(1) Remove throttle control cable (reference Basic Helicopter Maintenance Instructions (HMI), paragraph 4-11). Do not bend throttle cable support tubes more than 8 degrees from centerline or cable; doing so could cause deformation of the support tubes, premature failure of the cable, and loss of throttle control.

Note: The cable support tube is the stationary cylinder on the end of the cable through which the cable push rod slides.

(2) Install P/N 269A4683-7 or -9 throttle control cable assembly (reference Basic HMI, paragraph 4-11).

(3) Rig throttle control (reference Basic HMI).

(4) Check idle speed and idle mixture in accordance with appropriate maintenance instructions, and adjust as required. Installation of the upgraded cable assembly, P/N 269A4683-7 or -9, cancels the repetitive inspection required by paragraph (b) of this AD.

(5) Record compliance with paragraph (c) of this AD in the compliance record and in the maintenance record of the helicopter log book.

Note: The instructions in this AD are similar to those contained in Schweizer SIN N-210, dated April 15, 1988.

(d) An alternate method of compliance which provides an equivalent level of safety with this AD may be used upon the submission of substantiating data by an owner or operator through an FAA maintenance inspector, when approved by the Manager, New York Aircraft Certification Office, 181 South Franklin Avenue, Valley Stream, New York 11581.

(e) In accordance with FAR §§ 21.197 and 21.199, flight is permitted to a base where the requirements of this AD may be accomplished.

This amendment becomes effective April 6, 1990.

Issued in Fort Worth, Texas, on February 23, 1990.

John J. Shapley,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 90-5135 Filed 3-6-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-ANE-06; Amdt. 39-6449]

Airworthiness Directives; General Electric Company (GE) CF6-50/-45 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that would require initial and repetitive inspections of the turbine mid frame (TMF) case installed on GE CF6-50/-45 series engines. The AD is needed to prevent failure of the TMF case which could result in the release of hot gases within the nacelle that may activate the fire warning system or cause an inflight shutdown.

DATES: Effective April 9, 1990. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 9, 1990.

COMPLIANCE: As indicated in the body of the AD.

ADDRESSES: The applicable service bulletin (SB) may be obtained from General Electric Company, 1 Neumann Way, Cincinnati, Ohio 45215, or may be examined in the Regional Rules Docket, Room 311, Office of the Assistant Chief Counsel, Federal Aviation Administration, New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: John Golinski, Engine Certification Branch, ANE-142, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273-7097.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (FAR) to include an AD which requires initial and repetitive ultrasonic and visual inspections of certain CF6-50/-45 TMF case assemblies, was published in the **Federal Register** on April 6, 1989.

The proposal was prompted by two incidents in which the aircraft takeoff was aborted due to an engine fire warning indication on GE CF6-50 engines. In one incident, the aircraft overran the runway, sheared off the landing gear, and skidded a short distance on its fuselage and engine nacelles. The second incident was uneventful and no damage occurred to the aircraft. In both cases, the engine fire warning indications were the result of hot gas released through a large open crack, 66 and 60 inches in length respectively, in the TMF aft flange circumferential weld. Additional TMF cases have been found with similarly located cracks, 11 to 35 inches in length. The FAA has determined that these large TMF case cracks may result in engine fire warning indications with potentially adverse impact on aircraft operation during critical flight phases.

Interested persons have been afforded an opportunity to participate in the making of this amendment.

One comment was received The commenter stated that a new more accurate inspection method has been developed by GE utilizing an ultrasonic nondestructive inspection technique. The commenter requested that the new inspection method be included in the AD compliance requirements.

The FAA agrees and has incorporated the ultrasonic inspections into the compliance requirements of this AD.

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

The FAA has determined that this regulation involves approximately 2,153 engines, and the approximate fleet cost would be $160,000 annually. It has also been determined that few, if any, small entities within the meaning of the Regulatory Flexibility Act will be affected, since this rule affects only operators using aircraft in which CF6-50/-45 series engines are installed, none of which are believed to be small entities. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and (4) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

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

General Electric Company: Applies to General Electric Company (GE) CF6-50/-45 series turbofan engines installed on, but not limited to, McDonnell Douglas DC-10, Boeing 747 and Airbus A300 type aircraft.

Compliance is required as indicated, unless already accomplished.

To prevent turbine mid frame (TMF) cracks which could cause the release of hot gas, increased nacelle temperature, activation of the fire warning indication system, and an inflight shudown, accomplish the following:

(a) Inspect the TMF, Part Numbers (P/N) 9128M52 and 9137M92, in accordance with GE Service Bulletin (SB) 72-957, Revision 1, dated April 18, 1989, as follows:

(1) Inspect TMF cases with 1,050 or greater cycles in service since new (CSN) on the effective date of this AD, at the next TMF exposure prior to return to service, or prior to accumulating the next 450 cycles in service (CIS) after the effective date of this AD, whichever occurs first.

(2) Inspect TMF cases with less than 1,050 CSN on the effective date of this AD, prior to accumulating 1,500 CSN.

(3) Remove from service, prior to further flight, and replace with serviceable parts, TMF cases which exceed the serviceable limits specified in Tables 1-4 inclusive of the above noted GE SB.

(4) Thereafter, reinspect TMF cases with no cracks or indications at intervals not to exceed 450 CIS since previous inspection. Reinspect TMF cases with cracks or indications in accordance with the schedules and limits specified in Tables 1-4 inclusive of the above noted GE SB.

Note: For the purpose of this AD, exposure of the TMF is defined as any uninstalled engine or uninstalled TMF module.

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

(c) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, an alternative method of compliance with the requirements of this AD or adjustments to the compliance schedule specified in this AD may be approved by the Manager, Engine Certification Office, ANE-140, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803.

The TMF inspections shall be done in accordance with GE SB 72-957, Rev. 1, dated April 18, 1989. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from General Electric Company, 1 Neumann Way, Cincinnati, Ohio 45215. Copies may be inspected at the Regional Rules Docket, Office of the Assistant Chief Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Room 311, Burlington, Massachusetts 01803, or at the Office of the Federal Register, 1100 L Street NW., Room 8301, Washington, DC 20591.

This amendment becomes effective on April 9, 1990.

Issued in Burlington, Massachusetts, on December 20, 1989.

Jack A. Sain,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 90-5138 Filed 3-6-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-NM-181-AD; Amdt. 39-6533]

Airworthiness Directives; Airbus Industrie Model A300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Industrie Model A300 series airplanes, which requires repetitive inspections to detect cracks in the main landing gear (MLG) fittings on the rear wing spar, and repair, if necessary. This amendment is prompted by results of the manufacturer's full-scale fatigue testing which revealed cracks in the rear spar emanating from certain bolt holes at the attachment of the MLG forward pick-up fitting and the MLG rib 5 aft. This condition, if not corrected, could result in reduced structural capability of the rear wing spar.

EFFECTIVE DATE: April 13, 1990.

ADDRESSES: The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Standardization Branch, ANM-113; telephone (206) 431-1918. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to certain Airbus Industrie Model A300 series airplanes, which requires repetitive inspections to detect cracks in the main landing gear (MLG) fittings on the rear wing spar, and repair, if necessary, was published in the Federal

Register on September 26, 1989 (54 FR 39394).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Two commenters requested that the proposed rule not be adopted because the provisions of the proposed rule are included in the Supplemental Structural Inspection Program (SSIP). The FAA does not concur. The FAA acknowledges that the service bulletin is a part of the SSIP; however, when the Notice was issued, the SSIP document was under preparation and its date of issuance was not known. Now that the SSIP has been issued, the FAA may consider further, separate rulemaking to address it. Since some operators may currently have airplanes which are approaching the specified number of cycles where the actions described in the service bulletin are necessary, the FAA has determined that it is appropriate to proceed with this rulemaking to require those actions.

Another commenter objected to the proposed rule in its present form since it would require the use of a specific kind of high frequency eddy current inspection (rototest). The commenter requested that only a high frequency eddy current inspection be specified in the adopted rule. The FAA does not concur. Since the purpose of the test is to detect cracks in specific materials at a precise location, the type of high frequency eddy current needs to be specified to ensure that all cracks are detected; the FAA has determined that the rototest technique is the most effective method of ensuring this. However, if the operator desires to use an alternative test method that will provide an equivalent level of safety, the operator may apply for an alternative means of compliance under paragraph E. of this AD.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 66 airplanes of U.S. registry will be affected by this AD, that it will take approximately 180 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $475,200.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13—[Amended]

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

Airbus Industrie: Applies to Model A300 series airplanes, as listed in Airbus Industrie Service Bulletin A300-57-157, dated January 30, 1989, certified in any category. Compliance is required as indicated, unless previously accomplished.

To prevent reduced structural capability of the rear wing spar, accomplish the following:

A. Perform a high frequency eddy current (HFEC) rototest inspection of certain bolt holes where the main landing gear (MLG) forward pick-up fitting and MLG rib 5 aft are attached to the rear wing spar, in accordance with Airbus Industrie Service Bulletin A300-57-157, dated January 30, 1989, as follows:

1. Model A300 B2, B4-2C, and B4-100 series airplanes:

a. For airplanes that have accumulated less than 20,000 landings, the initial inspection must be performed prior to the accumulation of 22,000 landings.

b. For airplanes that have accumulated at least 20,000 landings but not more than 25,000 landings, the initial inspection must be performed within 2,000 landings after the effective date of this AD.

c. For airplanes that have accumulated 25,000 or more landings, the initial inspection must be performed within 1,000 landings after the effective date of this AD.

2. Model A300 B4-200 series airplanes:

a. For airplanes that have accumulated less than 17,000 landings, the initial inspection must be performed prior to the accumulation of 19,000 landings.

b. For airplanes that have accumulated at least 17,000 landings but not more than 21,000 landings, the initial inspection must be performed within 1,500 landings after the effective date of this AD.

c. For airplanes that have accumulated 21,000 or more landings, the initial inspection must be performed within 750 landings after the effective date of this AD.

B. If no cracks are found and no oversizing of the holes concerned is accomplished, repeat the inspection required by paragraph A., above, at the following intervals:

1. For Model A300 B2 series airplanes, repeat the inspection at intervals not to exceed 7,000 landings:

2. For Model A300 B4-2C and B4-100 series airplanes, repeat the inspection at intervals not to exceed 5,800 landings;

3. For Model A300 B4-200 series airplanes, repeat the inspection at intervals not to exceed 5,000 landings.

C. If no cracks are found and a spar life extension by oversizing of the holes concerned has been accomplished in accordance with Airbus Industrie Service Bulletin A300-57-157, dated January 30, 1989, repeat the inspection required by paragraph A., above, at the following intervals:

1. For Model A300 B2 series airplanes, repeat the inspection at intervals not to exceed 20,000 landings;

2. For the Model A300 B4-2C and B4-100 series airplanes, repeat the inspection at intervals not to exceed, 17,000 landings; and

3. For the Model A300 B4-200 series airplanes, repeat the inspection at intervals not to exceed 15,000 landings.

D. If cracks are found, repair prior to further flight, and determine repeat inspections at intervals in a manner approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

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

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive

who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective April 13, 1990.

Issued in Seattle, Washington, on February 27, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-5143 Filed 3-6-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 73

[Airspace Docket No. 90-ASO-1]

Amend Time of Designation for Restricted Area, R-2931; Florida

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action reduces the time of designation for Restricted Area R-2931, Cape Canaveral, FL, from "Continuous" to "By NOTAM 24 hours in advance." The United States Air Force no longer requires this airspace on a continuous-use basis. Future use of the airspace can be accommodated by issuance of a NOTAM 24 hours in advance.

EFFECTIVE DATE: 0901 U.t.c., May 3, 1990.

FOR FURTHER INFORMATION CONTACT: Itchy Sell, Military Operations Branch (ATO-140), Operations Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-7685.

The Rule

This amendment to part 73 of the Federal Aviation Regulations changes the time of designation for Restricted Area R-2931, Cape Canaveral, FL, from "Continuous" to "By NOTAM 24 hours in advance." The United States Air Force has deactivated the Tethered Aerostat Radar System and therefore no longer requires the area on a continuous-use basis. A requirement exists to periodically utilize the airspace to conduct aerostat balloon flight tests. These tests can be accomplished by activating R-2931 by NOTAM 24 hours in advance. Because this action reduces the amount of time R-2931 is active and lessens the burden on the flying public, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor technical amendment in which the public would not be particularly interested. Section 73.29 of part 73 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

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

List of Subjects in 14 CFR Part 73

Aviation safety, Restricted areas.

Adoption of the Amendment

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

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

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

§ 73.29 [Amended]

2. Section 73.29 is amended as follows:

R-2931 Cape Canaveral, FL [Amended]

By removing the present time of designation and substituting the following: Time of designation. By NOTAM 24 hours in advance.

Issued in Washington, DC, on February 27, 1990.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 90-5140 Filed 3-6-90; 8:45 am]

BILLING CODE 4910-13-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Trading Cards and Submission of Trading Records; Amendments to Commission Regulation 1.35

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission ("Commission") has amended Commission Regulation 1.35, 17 CFR 1.35, to limit the opportunity for the fabrication or alteration of trade records, to assure accountability for trading cards and to enhance exchange audit trails and trade surveillance. These final amendments require, among other things, the collection of trading records within specified time frames; the timestamping of trading cards upon collection; the use of pre-printed sequentially-numbered trading cards which are unique to each member of the contract market and distinguishable from any other trading cards used by the member for a period of not less than one week; the recording of trades on both trading cards and order tickets in non-erasable ink; and the designation of the opening and closing periods on trading cards. The final amendments to Regulation 1.35 impose these and other obligations directly on contract market members and require each contract market to promulgate implementing rules to that effect. A contract market, however, may petition the Commission for an exemption from these requirements based upon the demonstrated current availability of hand-held terminals or other automated means for trade recordation which can eliminate improper alteration or fabrication of such records.

EFFECTIVE DATE: Commission Regulations 1.35(a), (a-1) (2) and (4), (d)(1)-(3), (5), (7)-(8), (j) (1)-(4) and (7)-(8), (k) and (l) are effective 60 days after publication. Commission Regulations 1.35(d) (4) and (6), and (j)(5)-(6) are effective 90 days after publication.

FOR FURTHER INFORMATION CONTACT: Ann H. Sulzberg, Attorney, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone: (202) 254-8955.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Burden

The public reporting burden for this collection of information is estimated to average 80.83 hours per response,

including the time for reviewing instructions, searching existing data resources, 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 Joe F. Mink, CFTC Clearance Officer, 2033 K Street NW., Washington, DC 20581, and the Office of Management and Budget, Paperwork Reduction Project (3038-0022), Washington, DC 20503.

I. Introduction

On September 7, 1989, the Commission published for public comment in the **Federal Register** proposed amendments to Regulation 1.35, 54 FR 37117, September 7, 1989. Regulation 1.35 governs the records of cash commodity, futures, and options transactions which must be prepared and maintained for all purchases and sales of commodities for future delivery or commodity options on designated contract markets. Regulation 1.35, among other things, imposes various obligations on a contract market and its members to ensure that members prepare accurate and complete trading records.

The Commission has found, based upon its oversight activities and the prosecutions resulting from the joint Commission/Department of Justice undercover investigation of trading practices on the Chicago Mercantile Exchange ("CME") and the Chicago Board of Trade ("CBOT"), instances where members have not prepared accurate and complete trading records in accordance with existing regulatory standards. In particular, it appears that members have altered or created fictitious trading records to facilitate illegal purposes. Such alterations of trading records are evidenced by recent plea agreements entered into by defendants in the criminal actions stemming from the investigation of trading on the Chicago exchanges. As demonstrated by these plea agreements, floor traders and brokers, who under current practices can at times retain control of trading records well after trades have been executed, have altered the price or quantity originally recorded for a trade in order to defraud customers or accommodate illegal transactions by others. They also have used retained trading cards to fabricate trades by inserting notations on the cards as if trades had been executed by open outcry, often doing so after the close of trading.

Indeed, defendants entering guilty pleas generally have admitted to participating in a scheme to convert customer funds and market opportunities by, among other means, "illegally changing the price of previously executed orders * * * to the detriment of the broker's customer." [1] For example, one defendant admitted to buying a Treasury Bond futures contract on behalf of a customer at a price of 89 and 14/32. When the market then fell by one tick (1/32 of a point), the defendant immediately told the opposite trader to change the price of the trade to 89 and 15/32, thus furthering the customer's loss and benefiting the opposite trader. "Plea Agreement" at p. 5-6, *United States* v. *Goberstein*, No. 89 CR 667-1 (N.D. Ill. January 22, 1990). Similarly, another defendant admitted to altering trading records to raise the execution price of a 10-contract customer fill in the Japanese Yen futures contract in order to benefit the opposite trader. "Plea Agreement" at p. 2, *United States* v. *Callahan*, No. 89 CR 668-5 (N.D. Ill. August 25, 1989).

The plea agreements also contain admissions by defendants of fabricating trades during the course of trading or after the close, and then using retained records to record the trades for clearing. In one instance, the defendant admitted to approaching an FBI undercover agent 24 minutes after the close of trading, and requesting the agent to insert on trading cards used earlier in the day a purchase and sale of 25 soybean futures contracts, and to record falsely that the trades were executed during a time bracket approximately one hour earlier. "Plea Agreement" at pp. 1-2, *United States* v. *Eggum*, No. 89 CR 666-7 (N.D. Ill. October 2, 1989). Another plea agreement describes defendants using retained trading records to falsify a trade in order to settle a loss on an earlier outtrade. After the close of trading, the defendant who entered into the plea agreement was instructed by a co-defendant to record the purchase of 15 soybean contracts from a customer order and the sale opposite a second customer at a higher price. Thus, neither customer's order was filled by open outcry, and the first defendant received a profit to compensate for his earlier loss in connection with the outtrade. "Plea Agreement" at 2-3, *United States* v. *Gillen*, 89 CR 666-15 (N.D. Ill. August 1989).

[1] *See, e.g.*, "Plea Agreement" at pp. 4-5, *United States* v. *Parz*, No. 89 CR 668-15 (N.D. Ill. February 2, 1990); "Plea Agreement" at p. 3, *United States* v. *Furhman*, No. 89 CR 669-3 (N.D. Ill. August 10, 1989); "Plea Agreement" at p. 5, *United States* v. *Kosar*, No. 89 CR 667-2 (N.D. Ill. December 5, 1989); "Plea Agreement" at p. 4, *United States* v. *Eggum*, No. 89 CR 666-10 (N.D. Ill. October 2, 1989).

The Commission proposed various amendments to Regulation 1.35 to establish more stringent document collection and recordkeeping requirements which would limit the opportunity of members to engage in abusive trading activity. Toward that end, the proposed amendments, in general, would have required more frequent collection of trading cards, timestamping of such cards upon completion or submission, pre-printed and pre-sequenced trading cards unique to each member, specific procedures for completing trading cards, and members to be accountable for all trading cards. The Commission intended that each of these proposals would provide increased customer protection with respect to order execution, while taking into account that trading practices differ across contract markets. In this manner, the Commission sought to reduce the degree of individual trader control over trading records without unduly affecting trading or mandating electronic trading or automated trade recordation systems. Although such systems may provide superior customer protection from trade record alteration and falsification, they currently are in the developmental or testing stages and, therefore, have not yet been implemented on the contract markets. [2]

II. Comments Received

The Commission received letters from 36 commenters on the proposed amendments,[3] including eight futures exchanges,[4] two trade associations, two grain elevators, seven local traders, and seven futures commission merchants ("FCMs"). Although most commenters agreed with the Commission that there is a need to enhance the integrity and verifiability of trading records, the commenters nevertheless stated that certain proposed amendments were impracticable or otherwise would

[2] For example, the Commission has approved GLOBEX and Amex ACCESS, the electronic trading systems developed by the CME and Amex Commodities Corporation, respectively. Neither system is in operation. The CME and CBOT have announced a joint effort for the development of hand-held terminals to allow members to record trades upon execution. This system, the Exchanges have indicated, is to be ready for testing in the third quarter of 1990. The Commodity Exchange, Inc. ("Comex") also is developing such a terminal.

[3] This figure includes four identical letters from partners of the same clearing firm.

[4] The exchanges are: the CBOT; CME; Coffee, Sugar & Cocoa Exchange, Inc. ("CSCE"); Comex; Kansas City Board of Trade ("KCBT"); Minneapolis Grain Exchange ("MGE"); New York Cotton Exchange ("NYCE"); and New York Mercantile Exchange ("NYMEX"). The CBOT and CSCE each responded to the proposed amendments on two occasions.

impose unnecessary burdens on contract market members. In particular, many commenters objected to the Commission's proposal to require that trading cards be timestamped upon completion. Several commenters also generally objected to the proposed requirements that beginning 90 days after the amendments became effective, trading records be collected every 15 minutes, and that trading records be collected within five minutes following the close. In addition, commenters requested clarification with respect to certain aspects of the proposed amendments. For example, some commenters inquired as to what trading records would be subject to the proposed collection and pre-printing and sequencing requirements.

The Commission has carefully reviewed the comments received. As a result, the Commission has modified and clarified the proposed amendments to Regulation 1.35. Comments addressing specific amendments and an explanation of the Commission's revisions are discussed below.

III. Amendments to Regulation 1.35

Both the proposed and final regulations impose obligations directly upon contract market members with regard to the content, completion, collection, and timestamping of trading records. These final regulations also require that each contract market implement rules to that effect.

A. Collection of Trading Records

1. Proposed Regulations 1.35(j) (1) and (2)

Proposed Regulation 1.35(j)(1) would have required each contract market to have rules requiring its members to submit their trading records [5] to either the contract market or the clearing member at intervals not to exceed 30 minutes. In addition, members of contract markets would have been required to submit their trading records within five minutes of the close of trading. Proposed Regulation 1.35(j)(2) would have required each contract market to have rules providing that, 90 days after proposed Regulation 1.35(j)(1) became effective, the designated interval for collection purposes could not exceed 15 minutes.

The purpose of these proposed regulations was to transfer control of trading records from the executing member to either the clearing member or the contract market within a limited period of time after execution in order to lessen the opportunity for alteration or fabrication of trading records. The Commission believed that the proposed collection periods would be sufficiently long for members to record and confirm their trades and submit them to the clearing member or contract market without impeding trade executions.

2. Comments Received

Commenters, including five exchanges,[6] objected to the length of the proposed time frames for the submission of trading records. These commenters stated that the designated 15-minute interval for the intra-day submission of trading records was impracticable, but differed with respect to whether submission at the end of a 30-minute interval was feasible.[7] Some of these commenters noted that clearing members might need to increase the size of their floor staffs to collect trading cards on time and that having such additional people on the floor would disrupt trading. Commenters also argued that in fast markets members would not have sufficient time to complete all necessary information on their trading cards and, therefore, the number of outtrades would increase. Several commenters, including the MGE and KCBT, expressed concern about the impact of the proposed collection requirements on members whose trading cards contained partially-filled orders at the end of a designated interval.[8]

Six commenters, including four exchanges,[9] questioned whether the collection of trading cards should occur by the end of the designated interval (*e.g.*, the 30-minute interval upon which collection initially would be based) or, instead, should take place during a specific time period following the end of that interval. In that connection, the CME proposed that trading cards be turned in every half-hour for trades executed during the previous half-hour. In contrast, the NYCE, MGE, and KCBT recommended that trade data be entered for clearing within a specified time following execution rather than at designated intervals.

Almost all commenters objected to the proposed requirement that trading records be collected within five minutes of the close of trading. This provision, they argued, would make it difficult for members to confirm every trade executed during the close because of the greater volume which typically occurs during that period.[10] An increase in the number of outtrades, therefore, might result. One CBOT member noted that "locals," [11] to facilitate confirmation of trades, might choose to trade during the close only with those members standing nearby or using the same clearing member. Three commenters suggested that locals might choose to be inactive during the close to avoid noncompliance with the proposed five-minute collection requirement.[12]

Commenters differed with regard to what would be a sufficient time frame for the collection of trading cards after the close. The CBOT, for example, proposed that the Commission extend this time frame to 15 minutes and thereafter evaluate the operation of the trade submission process in light of the purposes of the regulation. The Comex, CME, CSCE, and three other commenters also recommended an expansion of the time frame to 15 minutes.[13] One member suggested a 20-minute time frame; two FCMs suggested at least 30 minutes; and several commenters noted that in their experience brokers may not complete confirmation of trades until 30 minutes after the close.

3. Regulations 1.35(j)(1), 1.35(k), 1.35(l), and 1.35(d)(7)(i)

After full consideration of the comments, the Commission believes that it is appropriate to provide additional

[5] The term "trading records," for purposes of proposed regulation (j)(1) and the final regulations, refers to order tickets prepared under Regulations 1.35(a-1) (2) and (4), trading cards prepared under Commission Regulation 1.35(d), and trading records prepared for "flashed" orders. *See* the discussion of flashing *infra* p. 21.

[6] Those exchanges are the CBOT, CME, CSCE, MGE and NYMEX. As discussed *infra* p. 20, the CSCE and NYMEX objected to the collection of order tickets and trading cards at their exchanges, respectively.

[7] Of the five Exchanges commenting on the time intervals, the CME, CBOT, and MGE indicated that a 30-minute interval was feasible.

[8] The MGE, for example, requested that there be an exception to the collection requirements for a trading card containing a partially-filled order. The Exchange proposed that, in such circumstances, members submit those trading cards during the first collection period following completion of the order's execution.

[9] Those exchanges are the CME, KCBT, MGE, and NYCE.

[10] Trade confirmation or checking consists of executing members and/or their clerks comparing the essential terms of a trade, such as the price and quantity.

[11] The term "local" refers to a member who trades for his own account or an account which he controls.

[12] This observation was made by one FCM, one clearing member, and one member.

[13] The CME also proposed that floor officials be permitted to extend the 15-minute period in exceptional circumstances. The NYCE stated that the period should provide sufficient time to accommodate the calculation of average prices pursuant to the Exchange's average price order procedure.

time for the collection of trading records. As a result, Regulation 1.35(j)(1) [14] provides for a 15-minute time frame after the designated 30-minute interval to permit members to confirm those trades that occurred at or near the end of the 30-minute interval and to accommodate the logistics of collection, particularly in higher-volume markets.

Pursuant to Regulation 1.35(j)(1), collection of trading records [15] prepared during an exchange-designated 30-minute interval would have to be completed by contract market personnel or the clearing member within 15 minutes after the end of that preceding designated 30-minute interval.[16] Notwithstanding the additional 15 minutes provided for collection, the Commission expects that contract market collection procedures should be designed to encourage collection of trading records throughout the preceding 30-minute interval. Trading records should be removed from a member's control as early as possible to promote overall compliance with collection requirements. Toward this end, Regulation 1.35(j)(1) requires that those trading records subject to collection be collected as often as is practicable. Contract markets may choose to stagger the collection periods among their markets so as to enhance collection efficiency, as long as they meet the standard set by the regulation.

The Commission has extended the period for the collection of trading cards after the close from five to 15 minutes. The Commission believes that, as a consequence, all collection times will be consistent and that the collection requirement during the closing period will not affect trading or result in increased outtrades. This requirement establishes the maximum permissible time for collection after the close. The contract markets should require cards to be collected as soon as possible but no later than 15 minutes after the close.

Pursuant to Regulation 1.35(j)(1), all trading cards reflecting trades executed within a designated 30-minute interval must be collected no later than the end of the subsequent 15-minute period. This requirement applies to a trade reflected on a trading card which constitutes a partial fill of a customer order. However, any order ticket reflecting a partial fill need not be submitted until the order is completely executed, the broker has determined that he is unable to fill any remaining quantity, or the unexecuted remainder has been cancelled.[17]

The Commission considered current contract market practices in determining the time frames for collection. Generally, the time frames for trading card collection on many of the New York futures exchanges are consistent with the regulation. The Comex rules currently require the collection of trading cards and order tickets 15 minutes after the conclusion of designated half-hour bracket periods,[18] although the Exchange has represented in its comment that collection actually occurs within 15 minutes following a preceding 15-minute (rather than 30-minute) period. The NYFE requires that the top copy of multi-ply trading cards be submitted to the Exchange promptly at the end of each 30-minute bracket, but no later than 15 minutes after the end of such bracket.[19] The CSCE, collects the top copy of multi-ply trading cards at the end of each 30-minute bracket.[20] The NYMEX pit card system requires the immediate submission of trade information for each transaction.[21] Finally at the NYCE, trades must be submitted by the clearing member to the clearing house within one-half hour after the bracket in which the trade occurred.

In Chicago, the CBOT is implementing a requirement that trading cards be collected within the hour following the hour in which trades were executed.[22] The CME is implementing a requirement that trading cards be collected every hour on the half-hour for trades executed during the preceding hour.[23]

With respect to the previously proposed requirement that the designated interval upon which collection is based be reduced from 30 minutes to 15 minutes, the Commission believes it is prudent to determine the practicability of the shorter time frame after evaluating the operation of the 30-minute time frame.[24] In this regard,

[14] Regulation 1.35(d)(7)(i) requires a member to submit his trading cards in accordance with contract market rules adopted pursuant to paragraph (j)(1).

[15] The order tickets which must be submitted in accordance with this requirement include any records of customer orders used on the floor of an exchange, whether prepared on the floor or transmitted via wire.

[16] The schedule below is a model of how the Commission intends the contract markets to implement the collection requirement.

For trades executed during	Collection no later than
2:30:00 p.m.-3:00:00 p.m.	3:15:00 p.m.
3:00:01 p.m.-3:10:00 p.m. (market closes) (closing period: 3:09-3:10).	3:25:00 p.m.

In this example, the close falls within a collection period for the preceding 30-minute interval. In such a situation, the Commission would consider a proposed contract market rule permitting the collection of all trading records for both the 30-minute interval and the closing period to be accomplished within 15 minutes following the close of trading (3:25:00 p.m. in the example). This would extend the time for completing collection as to the preceding 30-minute interval in order to address the potential for disruption of trading during the close.

[17] The Commission believes that the use of multi-ply cards by members may be helpful to keep track of executed trades; provided, however, that the top copy of the card be turned in at the appropriate time and no further trades be recorded on the copies remaining in the member's possession. The CSCE currently requires its members to record their trades on three-ply carbon trading cards and submit the original copy to the Exchange. CSCE Rule 3.18. The NYCE also requires a multi-ply carbon trading card. NYCE Rule 5.10. The Commission, however, does not agree with the commenter that the use of multi-ply cards should be an alternative to the Commission's proposal, discussed *infra* Section III.C.1, that a member not skip lines when recording trades.

[18] Comex Rule 4.83(a).

[19] NYFE Regulatory Memo 84-11 (December 21, 1984).

[20] CSCE Rule 3.18.

[21] NYMEX Rule 6.10.

[22] On July 25, 1989, the Division of Trading and Markets approved, pursuant to Regulation 1.41a(a)(3), amended CBOT Rule 332.05 which provides for the intra-day collection of trading cards at times specified by the Board of Directors. In its comment letter of October 9, 1989, the CBOT indicated that it passed rules regarding the hourly pick-up of trading cards. The CBOT requested that the 30-minute interval be phased in between between January 1990 and July 1990 in order to adjust the trade reconciliation and outtrade procedures as necessary and to evaluate whether this shorter time period would further the Commission's objectives.

[23] For example, trading cards reflecting trades executed between 8:00 a.m. and 9:00 a.m. would be collected by 9:30 a.m. On December 14, 1989, the Commission, pursuant to Commission Regulation 1.41(b), approved, *inter alia*, proposed amendments to CME Rule 536.A (Records for Orders and Personal Transactions) and proposed Interpretations which included the hourly schedule, subject to any subsequently imposed Commission requirements.

[24] The CSCE stated that if the Commission required collection at 15-minute intervals, it would be able to change its bracket periods upon 90-120 days notice. The Exchange, however, expressed its reservations about the need for more frequent collection of cards if the final Commission regulations were not mandating the use of trading cards for all trades in exact chronological order.

Continued

Regulation 1.35(j)(1) requires that each contract market, no later than nine months after the regulation becomes effective, submit a written report to the Commission describing with particularity its systems in place to comply therewith and the level of compliance to date. Based upon those reports and other available information, the Commission, in its discretion, may determine a schedule for reducing the designated interval upon which collection is based from 30 minutes to 15 minutes. Should the schedule become effective for a contract market, collection would be required to be completed within 15 minutes after the end of the preceding designated 15-minute interval. Pursuant to Regulation 1.35(k), this schedule will be published in the **Federal Register**, no earlier than 11 months after the 30-minute time frame under Regulation 1.35(j)(1) becomes effective. A published schedule would establish deferred effective date(s) to provide an opportunity for public comment and Commission consideration of those comments.

The Commission believes that trading records should be removed from the member's control as soon as possible. The Commission recognizes, however, that the CBOT and CME (jointly) and the Comex are developing hand-held computer terminals for use by floor members. These devices are intended to enable members to record all trades promptly upon execution, time such transactions, and transmit data for matching and clearing purposes. The demonstrated availability of such technology for use on a contract market may obviate the need to continue to comply with the Regulations, as appropriate. That is, the potentially unalterable and contemporaneous trade record that would be generated may eliminate the need to collect trading records and even may eliminate the currently generated trading records themselves. Regulation 1.35(1), therefore provides that a contract market which can demonstrate that it currently has available hand-held terminals or other automated means for the recordation of trades which can eliminate the opportunity for improper alteration or fabrication of trading records, may petition the Commission for an exemption from Regulations 1.35(a-1) (2) and (4), (d), (j), or (k). This provision may encourage contract markets to develop automated trade recordation systems which would further reduce opportunities for improper alteration of trading records, improve trade timing data, and overall, limit trading abuses.[25]

B. Types of Trading Records to be Collected

1. Proposed Regulations 1.35(j) (1) and (2)

Proposed Regulations 1.35(j) (1) and (2) required that "trading records" prepared pursuant to 1.35(a-1) (2) and (4) and 1.35(d), *i.e.*, customer order tickets and trading cards, be collected within the designated time frames. Currently, Regulation 1.35(a-1)(4), 17 CFR 1.35(a-1)(4), requires that order tickets be timestamped upon report of execution, which should be as soon as possible after an order has been filled. The Commission decided to include order tickets in the proposed regulations to assure that under no circumstances would order tickets be held by a broker longer than the time periods provided for the collection of trading cards.

2. Comments Received

Commenters requested that the Commission clarify which trading records would be subject to the collection requirements of proposed Regulations 1.35(j) (1) and (2). As discussed in more detail below, commenters noted, that pursuant to contract market rules, members may prepare certain trading records which are not relied upon by either the contract market or the clearing member for submission of trade information to clearing. These commenters stated that Commission-required collection of these documents, in certain circumstances, may alter current contract market practices.

At the NYMEX, for example, the pit card is the document submitted to begin the clearing process for a trade. The selling member prepares a pit card and indicates the commodity, month, quantity, price, and buying and selling members. Pit cards must be submitted to an Exchange employee upon execution and thereafter are timestamped by the Exchange. The NYMEX also requires that both members prepare a trading card, but the information recorded on the trading card ordinarily is not submitted to clearing. The NYMEX, therefore, stated that proposed Regulations 1.35(j) (1) and (2) should not apply to its markets.

Unlike some other contract markets, the CSCE requires that its members record all trades on trading cards, including those executed for customer orders, rather than only personal trades. Information from the trading cards is recorded onto brokerage submission sheets for entry into clearing. The customer order tickets prepared pursuant to Regulations 1.35(a-1) (2) and (4) ordinarily would not be used for clearing purposes. The CSCE requested that these tickets not be subject to the collection requirements of proposed Regulations 1.35(j) (1) and (2).

At the CME and CBOT, the practice of "flashing," the handsignalling of order, price and fill information, is used in financial instrument contact markets, especially for arbitrage orders. In general, a phone clerk flashes an order to a broker or his clerk in the pit. The phone clerk contemporaneously prepares and timestamps an order ticket reflecting the flashed order, and the broker generally records the order information, usually on a trading card. Upon execution, the broker handsignals the price and quantity back to the order desk. That execution information is written on both the trading card in the pit and the order ticket at the desk.[26]

At both of those Exchanges, the order ticket ordinarily is the record used for submitting the trade to clearing, whereas the trading card generally is used to facilitate the flashing process. However, the trading card also may be referred to by members in determining the information to be submitted to clearing. Both Exchanges questioned whether the trading cards generated in connection with a flashed order, which are not required to be created by contract market rules, should be subject to the collection requirements of the proposed regulations.

3. Regulations 1.35(a), (a-l)(4), (j)(1) and (d)(5)

The Commission, in response to the comments received, has clarified the trading documents which will be subject to the collection requirements. The Commission has revised proposed

The CSCE also argued that more frequent collection of trading cards than its current 30-minute time frame would not provide an additional safeguard against alteration or fabrication of trading cards if they are pre-numbered, unique to a broker, contain all trades recorded sequentially with no skipped lines, and the cards are in sequential order. The Commission disagrees with the CSCE because removing trading records from a member's control as soon as possible is of paramount importance. Placing both personal and customer trades on trading cards provides enhanced audit trail information, but is not a substitute for collection.

[25] The exemption provision also is consistent with the recommendations of a recent General Accounting Office ("GAO") study, U.S. GENERAL ACCOUNTING OFFICE, Report to the Chairman and the Ranking Minority Member, Committee on Agriculture, Nutrition and Forestry, U.S. Senate, Futures Markets: Strengthening Trade Practice Oversight, (B-236443, September 7, 1989) at 23-24 (hereinafter cited as "GAO Report"), and pending legislation, S. 1729, 101st Cong., 1st Sess. § 201 (1989).

[26] At the CME, the original trading card ultimately is stapled to the order ticket.

Regulation 1.35(j)(1) to require collection of those trading records on which the contract market or clearing member relies as an "original source document" for clearing submission purposes.[27] Amended Regulation 1.35(a) defines an "original source document" as a document on which a member originally records trade information, whether or not Commission regulations or contract market rules require the member to prepare the document.[28]

Therefore, for example, order tickets which cannot be relied upon as the original source document for submissions to clearing would not be subject to the collection requirement of Regulation 1.35(j)(1) but would continue to be subject to the prompt reporting requirement for order executions under Regulation 1.35(a-l)(4).[29] In that situation, the trading cards, which contain a complete record of all transactions executed by a member, would be the original source document for collection. In contrast, at contract-markets where order tickets are used as original source documents for submissions to clearing, the order tickets would be subject to collection no later than is required by the collection schedule in the regulation.

Notably, there may be situations where both an order ticket and trading card reflecting a trade are original source documents for clearing. For example, at the CME and CBOT, trading cards and order tickets created in connection with flashed orders both may be relied on to clear a trade. At NYMEX, although the pit card is the primary record submitted for clearing purposes, there may be instances where a trading card or order ticket subsequently is relied upon to determine the terms of a trade. This may occur when a member submits a late pit card or fails to submit a pit card.

Therefore, unless an exchange expressly requires that trading cards and/or order tickets cannot be relied upon for determining the terms of a trade, the exchange would have to require the collection of such documents. Notwithstanding the foregoing, the Commission would consider a request from a contract market for exemption from the collection requirements where such a request demonstrates, at a minimum, that the relevant trading records are relied upon only for clearing in an identifiable small number of instances, and that the contract market will establish substantial alternative safeguards to assure protection against trading record alteration or fabrication.[30]

The Commission emphasizes that Regulation 1.35(j)(1) requires that collection be accomplished by submission of trading records to a clearing member or contract market personnel. Accordingly, where a member's clerk initially collects a trading record, that record must be submitted either to a clearing member or a contract market within the designated time frames.

C. Requirements for Recording Trades

In proposed Regulation 1.35, the Commission specified several requirements for recording trades on trading cards. These requirements were: recording the trades in exact chronological sequence without skipping lines; identifying specified opening and closing periods on trading cards; and marking through any lines remaining after the last execution recorded on trading cards. The Commission proposed these regulations to lessen the opportunity for a member to alter or fabricate a trading card and to obtain a better record of the sequence in which a member executed trades. Ten commenters, including the CBOT, CME, and three members, stated that certain aspects of these proposed regulations were overly burdensome and would interfere with the efficient operation of the open outcry system without sufficiently improving trade surveillance.

1. Sequential Recording of Trades Without Skipping Lines and Marking Through of Remaining Lines: Regulations 1.35 (d)(2) and (j)(4)

Several commenters, including the CME and four members, argued that the requirement that members sequentially record their trades without skipping lines could cause difficulty in trade recordation. Specifically, three of the commenting members stated that the requirement would be inconsistent with the common practice of quickly recording trades as they occurred in any existing space on a trading card.[31] The CME and one member expressed concern about trades executed by a local opposite a floor broker representing multiple clearing members. In such a trade the local must leave space on his trading card to record information later obtained from the opposite broker. Two other FCM commenters claimed that this requirement might cause keypunch and trade-checking errors because of illegible entries, thus possibly causing outtrades. Finally, three commenters suggested that, as an alternative to this proposed requirement, any unused lines be crossed out or that a contemporaneous explanation be recorded for any unused lines.[32]

The Commission, after reviewing these comments, continues to believe that it is essential that lines on trading cards not be skipped because of the potential for improper insertion of trades. The Commission also believes that compliance with a requirement that lines not be skipped and that remaining lines be marked through is readily achievable. This is evidenced by the fact that four exchanges, the NYCE, NYFE, NYMEX, and CSCE, currently have such requirements in effect.[33]

The contract markets and their members may enhance their ability to comply with these requirements by redesigning trading cards to contain wider lines for the recording of trades. Such redesigned cards, which currently are in use in some of the futures markets, should provide adequate space

[27] An original source document is relied on for clearing purposes if it provides the terms of a trade for clearing, including with respect to the resolution of outtrades. Regulation (a-l)(4), as amended, requires that written records of customer orders be submitted to the contract market or clearing member as required by the contract market rules adopted in accordance with paragraph (j)(1).

[28] Documents upon which trade information is transcribed for clearing purposes from other trading records are not original source documents. In addition, *see* note 42 regarding retention of original source documents.

[29] *See* note 27. The CSCE, NYCE, NYFE, KCBT, and MGE require all trades to be recorded on trading cards. Those trading cards would be considered original source documents subject to the collection requirements. If any of these exchanges provides by rule that order tickets cannot be relied upon as original source documents for clearing, those tickets would not have to be collected pursuant to the regulations. As noted earlier, however, the existing order ticket timestamping and reporting requirements of Regulation 1.35(a-l) would continue to apply.

[30] Such safeguards may include, but should not necessarily be limited to, independent review (*e.g.*, by exchange personnel), before the subject trade clears, of all available trading records reflecting both sides of that trade, time and sales data, and other relevant trade data, such as those reflecting the sequence and timing relationship between the trade and other trades executed by each of the executing members. In addition, the requesting contract market must collect and retain in an orderly condition the relevant trading records as part of the above process and demonstrate surveillance procedures for subsequent analysis of such trades.

[31] Those commenters included two FCMs and one member.

[32] These commenters were the CBT, CME and a member of one of the Chicago exchanges.

[33] NYCE Rule 5.10(d)(4), NYFE Rule 409, NYMEX Rule 6.90, and CSCE Rule 3.18. The NYCE rules, however, permit a member to skip lines if he has advised the Compliance Department in writing that this is his practice and that it does not result in trades being recorded out of sequence.

for recording all necessary trade data. For example, in instances where locals have executed trades opposite floor brokers representing multiple clearing members, there should be sufficient space to record the relevant trade data.

With regard to the marking through of remaining lines on trading cards, the regulation requires that all lines remaining open on a trading card when the member has completed it or at the end of a designated interval upon which collection is based, whichever occurs first, be marked through by the executing member. This requirement can be met regardless of whether a member records trades on a one-sided trading card, used in the New York markets, or a two-sided trading card, used in the Chicago markets.

In the former instance, where buys and sells are recorded on one side of the trading card, the executing member will mark through only those lines remaining after the last trade is entered on the card. The member need not mark through other unused lines to the left or right of trades on the trading card which, by necessity, will exist when a buy or sell is recorded in exact chronological order.[34] An executing member using a two-sided trading card, *i.e.*, buys on one side and sells on the other, will be required to mark through any remaining lines on *both* sides of the card. For example, when one side of a card is completely filled out and the other side is blank, the entire blank side must be marked through.[35]

2. Designation of Trades Executed During Opening and Closing Periods: Regulations 1.35 (d)(3) and (j)(7)

As previously stated, the Commission believes that requiring contract markets to designate opening and closing periods for each market and requiring each member to identify on trading cards trades executed during these periods would enhance the ability of exchange and Commission staff to monitor these trades for potential abuses with no increased costs and no material increase in the time needed to prepare the records. FR 37117, 37122, September 7, 1989. Generally, the comments addressing this proposal suggested that existing contract market rules satisfactorily address the need to identify such trades. For example, the CBOT argued that its rule designating a specific opening and closing bracket (as opposed to the period upon which the opening and closing ranges are based) would meet the Commission's objective of identifying trades during these periods for surveillance purposes. The Comex requested that the Commission indicate that its rule requiring members on each side of a trade to record to the nearest minute the time of execution would meet the requirements of the proposed regulation. The NYMEX, MGE and CSCE currently require floor members to identify all trades executed during the opening and closing ranges.[36]

The Commission has decided, as previously proposed, to require designation of opening and closing periods and the identification of trades executed during those periods in the final amendments. For this purpose, opening and closing periods refer to those trading periods which determine the opening and closing ranges, respectively. The opening and closing periods commonly are the most active periods of the trading day and, as a result, there is an increased potential for abuse of customer orders. The rules of most contract markets currently provide for the advance designation of the opening and closing periods by contract markets so that members of those contract markets should be able to comply with the regulation without any material changes in the contract market rules identifying those periods.[37] The regulations do not provide for any exceptions to the requirement that members so designate their trades because the Commission believes none are warranted and because the required designation of trades during the opening and close is likely to be more effective than one-minute trade times for this purpose.

3. Use of Non-erasable Ink: Regulation 1.35(a–1) (2) and (4), (d)(7)(ii), and (j)(8)

In their comments, two exchange members suggested that members be required to use ink in completing their trading cards. One of those commenters suggested that such a requirement could serve as an alternative to requiring that trading card lines not be skipped. Notably, members of various exchanges currently record trades in ink.[38]

The Commission believes that recording trades in ink will serve as an added protection against improper alteration of trading records through erasures. Accordingly, the Commission has added to the Regulations paragraphs (d)(7)(ii) and (j)(8). Errors on trading cards may be corrected by either crossing out the erroneous information or rewriting the trading card. A member would be fully accountable for any such rewritten card pursuant to Regulation 1.35(d)(6). Similarly, the Commission has amended Regulations 1.35(a–1) (2) and (4) to require that customer order tickets prepared pursuant to those regulations be written in non-erasable ink.

D. Timestamping of Trading Cards

1. Proposed Regulation 1.35(d)(4)

The Commission proposed that trading cards be timestamped to the nearest minute with the earlier of the time the card is completed or collected. The Commission intended that this proposal would provide an objective indicator of when a member ceased using a trading card so that any subsequent entries on the card could be detected more readily.

2. Comments Received

Commenters presented a two-fold objection to this proposed regulation. First, commenters contended that timestamping within one minute of completion would be physically difficult to accomplish. The commenters stated that the most likely alternatives—placing time stamp machines in the pits or requiring members to leave the pit to timestamp their cards—would be physically hazardous to those on the trading floor and would disrupt trading. The commenters added that although some contract markets have employees who timestamp trading cards, that approach may not be feasible for the high-volume exchanges. Second, the commenters stated that timestamping upon completion would do little to enhance the audit trail because it may not always be clear to the trader when he has completed a trading card. For example, the trader may hold onto a card with unused lines in anticipation of making additional trades. In this regard, ten commenters requested clarification of when a trading card or order ticket would be considered complete.

[34] On one-sided trading cards only cross trades and spreads can be recorded on the buy and sell. side of a single line.

[35] Although the regulations do not require the use of a one-sided trading card, the Commission believes that one-sided trading cards improve the audit trail by sequencing all trades recorded thereon. Those exchanges which do not now use one-sided trading cards may wish to consider introducing such cards in connection with any revisions to trading cards which will result from the regulations.

[36] NYMEX Rule 6.90, MGE Regulation 2059, and CSCE Rule 3.18.

[37] Such designation of opening and closing periods also enables members to determine when orders designated for execution during those periods, such as "market-on-close" and "opening-only" orders, should be filled.

[38] *E.g.*, Comex Rules 4.80 and 4.81 (requiring members to make entries on trading records in ink).

3. Regulations 1.35 (d)(5) and (j)(2)

The Commission is persuaded that requiring trading cards to be timestamped upon completion could disrupt trading. The Commission, therefore, has required in the regulations that trading cards be timestamped upon collection by either the contract market or the relevant clearing member. Since trading cards will be required to be timestamped only after they have been collected pursuant to the time intervals discussed in section III.A.3. above, this provision should not affect trading activity. Further, the Commission believes that timestamping upon collection is readily achievable given that Regulation 1.35(a-1)(4) currently requires that order tickets be timestamped upon report. Trading cards generally could be timestamped upon collection in the same manner, and, in fact, some clearing members currently do so.[39]

E. Pre-Printed Sequence Numbers and Identifying Information

1. Proposed Regulation 1.35(d)(3)

The Commission proposed that trading cards contain a preprinted sequence number which would permit the sequencing of such records at least intra-day. The proposed regulations also would have required that trading cards contain information to identify the member and to distinguish each of that member's trading cards from other trading cards the member prepares for a period of one week. The Commission left to the discretion of each contract market the method of implementation.[40] The Commission, in proposing these amendments, noted that the CBOT, CME, and CSCE, as part of their computerized audit trail systems, currently require that a card sequence number be submitted with other data for clearing. These sequence numbers aid the sequencing of trades on the exchanges where they are required.

2. Comments Received

Several commenters requested that the Commission clarify how compliance with the requirements could be achieved. For example, the Comex suggested that the Exchange issue pre-sequenced trading cards of a series long enough to assure that no number would repeat within a period of one week and no two members would have the same numbered cards within the same week. The NYMEX proposed that the Exchange issue cards to members, keeping a record of which numbers are issued to which members. When numbers are repeated, they would be distinguishable by the use of a single letter as a prefix or suffix. Members could continue their current practice of handstamping trading cards with an identifying acronym.

Four commenters specifically requested that the Commission clarify what trading records are subject to the pre-printing and pre-sequencing requirements. These commenters inquired whether the requirements apply only to members executing trades for their personal accounts or to trading cards upon which customer orders are entered as well. Further, these commenters objected to the application of the proposed regulation to brokers executing orders on behalf of public customers or other members because of the way in which such orders are handled. For example, brokers may combine multiple orders and execute them as quickly as possible as a block. The commenters argued that distinguishing such trades through the sequencing of cards would be unnecessarily burdensome. The CBOT and CME stated that the requirement should not apply to trading cards prepared in connection with "flashed" orders because compliance would not be feasible given how such trades are executed.[41]

3. Regulations 1.35 (d)(4) and (j)(5)

The Commission has added to the regulations the requirement that any information on a trading card used to distinguish trading within a one-week period must be pre-printed on trading cards when pre-printed numbers alone are insufficient to meet that requirement. The regulations have been modified to provide that only those trading cards that the member must prepare pursuant to contract market rules are subject to the pre-printing and pre-sequencing requirements of Regulation 1.35(d)(4). As a result of this modification, Regulation 1.35(d)(4) would not apply if a trading card were used to record trade information to facilitate flashing and such a card was not required to be prepared by exchange rule, such as at the CBOT and CME. Significantly, however, the order ticket prepared in that process must be timestamped in accordance with Regulations 1.35(a-1) (2) and (4), and those timing data serve the same purpose as does the trading card sequence information. On the NYMEX, where trading cards are required to be prepared by Exchange rule, those cards would be subject to Regulation 1.35(d)(4).

The proposals made by the Comex and NYMEX in their respective comments for compliance with the proposed pre-printing requirements appear consistent with the design of the regulations. Of course, however, the Commission would have to evaluate the specifics of each exchange-proposed method for compliance when reviewing the implementing rules submitted by the contract markets.

F. Accountability for Trading Cards

1. Proposed Regulations 1.35 (d)(5) and (j)(3)

Proposed Regulations 1.35(d)(5) and 1.35(j)(3) specified that pursuant to contract market rule, each contract market member would be accountable for all trading cards prepared pursuant to Regulation 1.35(d) in exact numerical sequence, whether or not such trading cards were used in the submission of trades for clearing purposes. For this purpose, accountability means that the member must be able to produce all sequentially-numbered trading cards or provide an acceptable explanation as to why a trading card is missing. A member does not necessarily have to use all of his trading cards, but must be able to account for such records. As the Commission previously stated, if a member's clearing member ordinarily retains the member's trading cards, the clearing member would be responsible for those trading cards. 54 FR 37117, 37122, September 7, 1989.

2. Comments Received

Three commenters requested clarification as to the potential liability of the clearing member in connection with the proposed accountability requirement. Three other commenters stated that the existing audit trail systems and exchange-proposed enhancements adequately provide for the accountability of trading cards. Finally, two commenters asked what procedures could be implemented to cover situations in which trading cards were lost or inadvertently placed out of sequence.

3. Regulations 1.35 (d)(6) and (j)(6)

The Commission believes that the member should be responsible for

[39] Further, in December 1989, the Division of Trading and Markets, pursuant to the authority delegated by Commission Regulation 1.41(b), approved an Interpretation of CME Rule 536.A which requires clearing members to timestamp trading cards upon pick-up.

[40] In its notice of proposed rulemaking, the Commission illustrated several means by which the contract markets and their members could comply with these requirements. 54 FR 37117, 37121, September 7, 1989.

[41] *See* discussion of flashing, *supra* p. 21.

retaining the trading cards.[42] If a member has arranged with his clearing member for that clearing member to retain all of his clearing records, the clearing member also would be responsible for retaining any of the sequenced trading cards which were given to it by the member. The clearing member, in such circumstances, is not directly obligated under the regulations to review these documents and, therefore, should not ordinarily be liable if the trading records prepared by the member are not consistent with the requirements of Regulation 1.35(d)(4). Nonetheless, the regulations would not alter any existing supervisory or other legal responsibilities which the clearing member may have pursuant to the Commodity Exchange Act, other laws, other Commission regulations, or contract market rules.

Based on Regulations 1.35 (d)(6) and (j)(6), the Commission and the contract markets should be assured that trading cards which may assist in determining whether improper activity has occurred are available. The regulations also establish who must retain and make the trading cards available for inspection. When the contract markets implement rules regarding the accountability for trading cards, they should include appropriate procedures for assuring compliance, specifically addressing, among other things, lost or missequenced trading cards.

G. Use of New Trading Card: Regulations 1.35 (d)(8) and (j)(3)

In order to provide an additional means for assuring compliance with the trading card collection requirements set forth in the regulations, Regulation 1.35(d)(8) requires that members use a new trading card at the beginning of each designated 30-minute period. Should the period be changed by the Commission to 15 minutes, this requirement would apply to that shorter period.

H. Compliance

The Commission underscores that it is critical for contract markets to develop effective and vigorous surveillance and compliance procedures to assure that the final regulations are enforced. Given the nature of the requirements, it is essential that contract market programs require inspection of trading records on a regular basis. Toward that end as well as to facilitate prompt Commission inspection, contract markets and their members must keep their records in orderly condition at a readily accessible location.[43]

III. Effective Dates

The amendments to Commission Regulation 1.35 will become effective 60 days after publication in the **Federal Register**. However, the requirements of Commission Regulation 1.35 (d)(4) and (j)(5), that trading cards contain pre-printed sequence and identifying information, and of Regulations 1.35 (d)(6) and (j)(5), that members be accountable for all such trading cards, will not become effective until 90 days after publication of the Regulations. The 90-day implementation period for these requirements is intended to give the contract markets and the members sufficient time to make the applicable changes to existing practices.

IV. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.*, requires that agencies, in proposing rules, consider the impact of the rules on small businesses. The amendments to Commission Regulation 1.35 are intended to enhance the accuracy and reliability of trading records and to enable the contract markets and the Commission to enforce various trade data submission requirements. Specifically, the amendments impose a variety of requirements on members of contract markets with respect to preparation of trading cards and collection of trading records. Corresponding obligations are imposed on contract markets to adopt rules implementing those requirements.

The amendments to Commission Regulation 1.35 will affect contract markets. The Commission previously has determined that contract markets are not "small entities" for purposes of the RFA, and that the Commission, therefore, need not consider the effect of a proposed regulation on contract markets in relation to the RFA. 47 FR 18618, 18619, April 30, 1982.[44]

The amendments to Commission Regulation 1.35 also may affect clearing members and other FCMs. However, the Commission previously has determined that FCMs should be excluded from the definition of "small entity" based upon the fiduciary nature of the relationship between the FCM and its customers as well as the fact that FCMs must meet minimum financial requirements. 47 FR 18618, 18619, April 30, 1982. The Commission has determined that clearing members, by contract market or clearing house rule, are subject to minimum capital requirements which are at least as great as that imposed on FCMs, and, therefore, are not small entities for purposes of the RFA. Further, many clearing members are also FCMs. As a result, the Commission need not consider the effect of Commission Regulation 1.35 as amended on clearing members and other FCMs.

With respect to contract market members, the Commission has stated that it is appropriate to evaluate within the context of a particular proposed regulation whether some or all members that would be affected by the rule should be considered small entities and, if so, to analyze the economic impact on such entities at that time. 47 FR 18618, 18620, April 30, 1982. The contract market members affected by the amendments to Commission Regulation 1.35, other than clearing members and FCMs, would be floor brokers and local traders. The Commission recognizes that certain floor brokers and local traders could be considered to be small entities for purposes of the RFA. The Commission believes, however, that the amendments to Regulation 1.35 are designed so that they can be implemented without imposing a significant economic burden on a substantial number of small entities. In this connection, the Commission has modified the proposed rules, based upon the comments received and further analysis, so as to reduce further any potential economic burden on small entities which may result from the regulations. These modifications more fully take into account existing trading practices and the logistical considerations of implementing the regulations.

In promulgating the amendments to Regulation 1.35, the Commission intends to improve compliance by contract market members with existing statutory and regulatory prohibitions as to improper alteration or fabrication of currently required trading records. The

[42] Regulation 1.35(a) requires that members retain and produce for inspection all documents on which trade information originally is recorded. Therefore, the trading cards which are not used for trade submission, *i.e.*, which are not original source documents, need not be turned in routinely at the collection times, but must be available upon request.

[43] Retention of these records is required by Commission Regulations 1.31 and 1.35(a).

[44] Compliance with the regulations will not pose any greater economic burden on the smaller contract markets than it will on higher-volume markets because floor participants on all exchanges will continue to be obligated to create accurate trading records and there will be no change in the manner in which members execute trades. The regulations also do not mandate that compliance be achieved in any specific manner—the contract markets can limit the potential impact on their members by implementing systems which are most consistent with their existing market practices.

regulations will do so by establishing additional requirements for the preparation and submission of trading cards and order tickets. The regulations also will improve timing information and trade sequencing. Significantly, several of the requirements set forth in the regulation are already in effect at one or more of the contract markets.

The Commission intends that these regulations provide immediate and substantial improvement in regulatory controls over the creation of trading records in a manner compatible with existing trading practices under the open outcry system of trading. The Commission believes that the regulations are essential to limit the opportunity of members to achieve or facilitate illegal trading activity by altering or fabricating records and will accomplish that purpose through the least intrusive method currently available. Should automated means for accomplishing the purposes of the regulations become available, the regulations provide that a contract market may apply for an exemption from relevant requirements.[45]

The Commission modified its proposal, making significant changes to those aspects which commenters argued would impose the greatest burden. Specifically, commenters objected to the proposed schedule for collection of trading records intra-day and within five minutes of the close and to the timestamping of trading cards upon completion. They stated that these requirements, if implemented as proposed, could disrupt trading and cause increased outtrades. The commenters also expressed concern about the cost of additional personnel that may be needed by contract markets or clearing members, and, in limited instances, by individual members, to comply with the proposed requirements. Commenters stressed that timestamping trading cards upon completion of a trade would be physically difficult to accomplish and likely would interrupt a member's trading activity. Each of these proposals has been modified materially as discussed in detail above and highlighted below.

1. Collection Requirements

The Commission intended that the collection requirements of proposed Regulations 1.35(j) (1) and (2) would limit the opportunity for floor participants to alter trading records by having these records removed from their possession as quickly as possible. Specifically, the proposal would have required that trading records be submitted during the trading day at 30-minute intervals, and, after 90 days, at 15-minute intervals, and within five minutes after the close of trading. As noted above, commenters raised logistical and financial concerns regarding the costs of the proposed collection requirements.

The Commission has determined to provide for a 15-minute period for the collection of trading records following the end of each designated 30-minute trading interval in order to provide adequate time for personnel to collect those documents, and for members to obtain all necessary information from the opposite member to verify their trades. The Commission also has extended the time period for the collection of documents after the close from five to 15 minutes.

These modifications should permit members, clearing members, and contract markets to implement the collection requirements without disrupting trading activity and with minimal or no increase in current staffing levels. Moreover, a number of exchanges currently have collection requirements which either meet or approximate the requirements of the regulations. For example, at the Comex, CSCE, and NYFE, trading records are submitted at 30-minute intervals, and the time period for submission does not exceed 15 minutes following the end of a 30-minute bracket period. The Chicago exchanges recently implemented rules requiring the hourly submission of trading cards. Other exchanges likewise have periodic record submission requirements which can be modified to comply with the Commission's regulations.

These existing practices indicate that the contract markets and their members already have recognized the importance of measures to reduce the potential for trading abuse through alteration or fabrication of records, and that those objectives can be met without a significant economic impact on members. Moreover, the contract market or clearing member personnel who currently are performing these functions can continue to do so under the regulations.

Finally, the Commission has delayed the implementation of the requirement that intra-day collections take place at the end of designated 15-minute intervals until contract markets have submitted reports on their compliance with the regulations. In this regard, the Commission, in its discretion, may publish a schedule for implementation of a shorter interval. The Commission's schedule would provide for a deferred implementation date for the shorter interval so as to provide an opportunity for Commission consideration of any comments received thereon.[46] As is the case with the 30-minute interval, the 15-minute interval would be followed by an additional 15 minutes in which to complete collection.

2. Printing Costs

Regulations 1.35 (d)(4) and (j)(5) require that trading records prepared pursuant to contract market rules contain pre-printed sequence numbers and other pre-printed identifying information. The Commission has neither specified any particular method for compliance nor stated who is responsible for printing the cards. The cost for these pre-printed cards, however, should not be great, since trading cards already are necessary, and there should be only a modest incremental increase, if any, in the cost of printing those records with the additional required information. Since pre-printed sequence numbers already are required at the CBOT and CSCE only the other required pre-printed information will have to be added to the documents. Four exchanges either currently provide trading cards for their members or have indicated their intention to do so upon the Commission's issuance of the regulations. At three other exchanges trading cards generally are provided by the clearing members. In those cases where an exchange elects to be responsible for obtaining pre-printed trading cards for its members, trading card printing costs could be lower than those now incurred by floor members and clearing members individually.

3. Timestamping Requirements

The timestamping requirement of the proposed amendments was intended to provide additional information on the time of execution and sequence of trades to improve the audit trail and to enhance enforcement of the trading card collection requirements. The proposal would have required timestamping of trading cards upon completion or collection, whichever occurred first. The

[45] *Cf.* GAO Report at 23–24 (recommending that contract markets provide for independently, precisely and completely timed trades); S. 1729 101st Cong., 1st Sess., § 201 (1989) (essentially implementing GAO's recommendation within three years); and H.R. 2869, 101st Cong., 1st Sess., § 201 (September 18, 1989) (requiring that trades be timed to the nearest 30 seconds within three years).

[46] Regulation 1.35(j)(1) (requiring contract markets to submit reports within nine months of the effective date) and Regulation 1.35(k) (providing that the Commission issue such a schedule no earlier than 11 months after Regulation 1.35(j)(1) becomes effective).

Commission has modified the proposal materially by requiring that trading cards be timestamped only upon submission to the clearing member or contract market employee who collects the trading cards in accordance with Regulation 1.35(j)(1).

This requirement will not impose any additional obligations on floor participants, who will be required to submit their trading cards at the end of collection intervals, and, therefore, should have no effect on trading activity. Since Commission regulations currently provide for the timestamping of order tickets, the mechanisms for the timestamping of trading cards upon collection currently exist and easily could be extended to trading cards, particularly if the trading cards are collected by clearing members, which is the case at most exchanges. Because timestamping can be accomplished by the employees of either the contract market or the clearing firm which is responsible for collecting the cards, the requirement should not result in materially increased personnel costs.

4. Other Costs

The Commission does not believe that the other requirements set forth in the regulations should create any additional costs for floor members. The requirement that members be accountable for all trading cards that must be pre-sequenced does not impose any additional requirements because Commission Regulation 1.31(a)(1) already requires members to maintain trading cards for a period of five years. To the extent that rewritten trading cards would have to be retained under the regulations, those records should be relatively few in number, since errors may instead be corrected by crossing out and re-recording information on the same card. Retaining these records with others currently required to be retained should involve no increase in costs. The requirement that a new trading card be used at the beginning of each 30-minute interval also should have no financial impact on members. Finally, the use of non-erasable ink to record trades will not alter the method of executing trades and, therefore, should not result in any additional costs.

5. Conclusion

Based on the foregoing discussion the certification made by the Chairman, pursuant to section 3(a) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), regarding the proposed regulations remains in effect as to the final regulations.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, ("Act") 44 U.S.C. 3501 *et. seq.*, imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the Paperwork Reduction Act. In compliance with the Act, the Commission previously submitted this rule in proposed form and its associated information collection requirements to the Office of Management and Budget. The Office of Management and Budget approved the collection of information associated with this rule on June 6, 1989 and assigned OMB control number 3038–0022 to the rule. The burden associated with this entire collection, including this final rule, is as follows:

Average Burden Hours per Response.	80.83
Number of Respondents	339
Frequency of Response	on occasion

Copies of the OMB approved information collection package associated with this rule may be obtained from Gary Waxman, Office of Management and Budget, Room 3220, NEOB, Washington, DC 20503, (202) 395–7340.

PART I—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

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

Authority: 7 U.S.C. 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 7, 7a, 8, 9, 12, 12a, 12c, 13a, 13a–1, 16, 19, 21, 23, and 24, unless otherwise stated.

2. Regulation 1.35 is amended by revising paragraph (a) to read as follows:

§ 1.35 Records of Cash Commodity, Futures, and Option Transactions.

(a) *Futures commission merchants, introducing brokers, and members of contract markets.* Each futures commission merchant, introducing broker, and member of a contract market shall keep full, complete, and systematic records, together with all pertinent data and memoranda, of all transactions relating to its business of dealing in commodity futures, commodity options, and cash commodities. Each futures commission merchant, introducing broker, and member of a contract market shall retain the required records, data, and memoranda in accordance with the requirements of § 1.31, and produce them for inspection and furnish true and correct information and reports as to the contents or the meaning thereof, when and as requested by an authorized representative of the Commission or the United States Department of Justice. Included among such records shall be all orders (filled, unfilled, or canceled), trading cards, signature cards, street books, journals, ledgers, canceled checks, copies of confirmations, copies of statements of purchase and sale, and all other records, data and memoranda, which have been prepared in the course of its business of dealing in commodity futures, commodity options, and cash commodities. Among such records each member of a contract market must retain and produce for inspection are all documents on which trade information is originally recorded, whether or not such documents must be prepared pursuant to the rules or regulations of either the Commission or the contract market. For purposes of this section, such documents are referred to as "original source documents."

3. Regulation 1.35 is amended by revising paragraph (a–1)(2) to read as follows:

(a–1) * * *

(2) Except as provided in paragraph (a)(3) of this section, each member of a contract market who on the floor of such contract market receives a customer's or option customer's order which is not in the form of a written record including the account identification, order number, and the date and time, to the nearest minute, such order was transmitted or received on the floor of such contract market, shall immediately upon receipt thereof prepare a written record of such order in non-erasable ink, including the account identification and order number and shall record thereon, by time-stamp or other timing device, the date and time, to the nearest minute, the order is received.

4. Regulation 1.35 is amended by revising paragraph (a–1)(4) to read as follows:

(a–1) * * *

(4) Each member of a contract market reporting the execution of a customer's or option customer's order from the floor of a contract market shall record on a written record of such order, including the account identification and order number, by time-stamp or other timing device, the date and time, to the nearest minute, such report of execution is made. Each member of a contract market shall submit the written records of customer orders to contract market personnel or the clearing member responsible for the collection of orders prepared pursuant to this paragraph as required by contract market rules

adopted in accordance with paragraph (j)(1) of this section. The execution price and other information reported on such order tickets must be written in non-erasable ink.

5. Regulation 1.35 is amended by revising paragraph (d) to read as follows:

* * * * *

(d) *Members of contract markets.* (1) Each member of a contract market who, in the place provided by the contract market for the meeting of persons similarly engaged, executes purchases or sales of any commodity for future delivery or commodity option on or subject to the rules of such contract market, shall prepare regularly and promptly a trading card or other record showing such purchases and sales. Such trading card or record shall show the member's name, the name of the clearing member, transaction date, time (as specified in rules of the contract market which comply with the requirements of this section), quantity, and, as applicable, underlying commodity, contract for future delivery or physical, price or premium, delivery month or expiration date, whether the transaction involved a put or a call and strike price. Such trading card or other record shall also clearly identify the opposite floor broker or floor trader with whom the transaction was executed, and the opposite clearing member (if, in accordance with the rules or practice of the contract market, such opposite clearing member is made known to the member).

(2) Each member of a contract market recording purchases and sales on trading cards must record such purchases and sales in exact chronological order of execution on sequential lines of the trading card without skipping lines between trades; Provided, however; That if lines remain after the last execution recorded on a trading card, the remaining lines must be marked through.

(3) Each member of a contract market must identify on his trading cards in the manner prescribed by the rules of the contract market the purchases and sales executed during the opening and closing periods designated by the contract market pursuant to paragraph (j)(7) of this section.

(4) Trading cards prepared by a member of a contract market pursuant to contract market rules must contain:

(i) Pre-printed member identification or other unique identifying information which would permit the trading cards of one member to be distinguished from those of all other members;

(ii) Pre-printed sequence numbers to permit the intra-day sequencing of the cards; and

(iii) Unique and pre-printed identifying information which would distinguish each of the trading cards prepared by the member from other such trading cards for no less than a one-week period.

(5) Trading cards prepared by a member of a contract market and collected pursuant to paragraph (j)(1) of this section must be timestamped promptly to the nearest minute upon collection by either the contract market or the relevant clearing member.

(6) Each member of a contract market shall be accountable for all trading cards prepared pursuant to contract market rules in exact numerical sequence, whether or not such trading cards are relied on as original source documents.

(7) Trading cards prepared by a member of a contract market pursuant to contract market rules must:

(i) Be submitted in accordance with contract market rules adopted pursuant to paragraph (j)(1) of this section; and

(ii) Be completed in non-erasable ink. A member of a contract market may correct any errors by crossing out erroneous information or rewriting the trading card; provided, however, that the member is accountable pursuant to paragraph (d)(6) of this section for any card that is subsequently rewritten.

(8) Each member of a contract market must use a new trading card at the beginning of each designated 30-minute interval required by paragraph (j)(1) of this section (or such lesser interval as may be determined appropriate by the applicable contract market) or as may be required pursuant hereto.

* * * * *

6. Regulation 1.35 is amended by adding paragraph (j) to read as follows:

* * * * *

(j) *Contract markets.* Each contract market must maintain in effect rules which require that:

(1) Trading records prepared by a member of the contract market pursuant to paragraphs (a-1) and (d) of this section be submitted to contract market personnel or the clearing member within 15 minutes of designated intervals not to exceed 30 minutes, commencing with the beginning of each trading session. The time period permitted for the submission of trading records after the close of trading in each market shall not exceed 15 minutes from the close. Such documents should nevertheless be collected as often as is practicable by the contract market or relevant clearing member. Such contract market rules need not, however, require that those original source documents which cannot be relied upon by the contract market or clearing member for clearing purposes be submitted pursuant to this paragraph. Each contract market shall submit a written report to the Commission no later than nine months after the effective date of this paragraph describing with particularity the contract market's system(s) in place to comply with this paragraph and the level of compliance achieved to date.

(2) Trading cards collected pursuant to this paragraph must be timestamped promptly to the nearest minute upon collection by either the contract market or relevant clearing member.

(3) A member of the contract market must use a new trading card at the beginning of each designated 30-minute interval required by paragraph (j)(1) of this section.

(4) A member of the contract market must record trades in the manner prescribed by paragraph (d)(2) of this section.

(5) Trading cards prepared by a member of the contract market must contain the identifying information prescribed by paragraph (d)(4) of this section.

(6) A member of the contract market must be accountable for all trading cards prepared pursuant to contract market rules in exact numerical sequence, whether or not such trading cards are relied on as original source documents.

(7) A member of the contract market must identify on his trading cards trades executed during opening and closing periods either by drawing a line on the trading card to separate those trades from others recorded thereon or by some other method. Each contract market must designate as opening and closing periods for this purpose those periods upon which the opening and closing trading ranges are based for each of its markets.

(8) A member of the contract market must complete trades in non-erasable ink in the manner prescribed by paragraph (d)(7)(ii) of this section.

* * * * *

7. Regulation 1.35 is amended by adding paragraph (k) to read as follows:

* * * * *

(k) *Collection of trading cards in intervals not to exceed 15 minutes.* The Commission, in its discretion, may publish a schedule in the **Federal Register** no earlier than 11 months after paragraph (j)(1) of this section becomes effective, indicating when the records required to be submitted pursuant to

that paragraph must be submitted to contract market personnel or the clearing member within 15 minutes of designated intervals not to exceed 15 minutes, commencing with the beginning of each trading session.

* * * * *

8. Regulation 1.35 is amended by adding paragraph (l) to read as follows:

* * * * *

(l) A contract market which can demonstrate that it currently has available hand-held terminals or such other automated means for the recordation of trades which can eliminate the opportunity for improper alteration or fabrication of trading records, may petition the Commission for an exemption from Regulations 1.35(a-1) (2) and (4), (d), (j) or (k), as appropriate.

Dated: March 1, 1990.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 90-5087 Filed 3-6-90; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 177

[Docket No. 89F-0050]

Indirect Food Additives: Polymers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of a polymeric reaction product of poly(*N*-vinyl-*N*-methylamine), *N,N'*-bis(3-aminopropyl)ethylenediamine, 1,3-benzenedicarbonyl dichloride and 1,3,5-benzenetricarbonyl trichloride as a reverse osmosis membrane intended for use in contact with food. This action is in response to a petition filed by Stork Friesland B.V.

DATES: Effective March 7, 1990; written objections and requests for a hearing by April 6, 1990.

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

FOR FURTHER INFORMATION CONTACT: Rudolph Harris, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of March 8, 1989 (54 FR 9897), FDA announced that a food additive petition (FAP 9B4128) had been filed by Stork Friesland B.V., c/o Suite 200, 1029 Vermont Avenue NW., Washington, DC 20005-3517, proposing that § 177.2250 *Reverse osmosis membranes* (21 CFR 177.2550) be amended to provide for the safe use of a polymeric reaction product of poly(*N*-vinyl-*N*-methylamine), *N,N'*-bis-(3-aminopropyl)ethylenediamine, 1,3-benzenedicarbonyl chloride and 1,3,5-benzenetricarbonyl chloride as a reverse osmosis membrane intended for use in contact with food.

FDA has evaluated data in the petition and other relevant material. The agency finds that 1,3-benzenedicarbonyl dichloride and 1,3,5-benzenetricarbonyl trichloride are the preferred names for the two acid chloride reactants used to make this substance, and the agency is adopting this nomenclature in the identity of the cross-linked polyamide. The agency concludes that the proposed food additive use is safe, and that 21 CFR 177.2550 should be amended by adding new paragraph (a)(4), by revising paragraph (d)(1), by redesignating paragraphs (d)(2) and (d)(3) as paragraphs (d)(3) and (d)(4), respectively, and by adding new paragraph (d)(2) as set forth below.

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

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

Any person who will be adversely affected by this regulation may at any time on or before April 6, 1990 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulations to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 177

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR Part 177 continues to read as follows:

Authority: Secs. 201, 402, 409, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 342, 348, 376).

2. Section 177.2550 is amended by adding new paragraph (a)(4), by revising paragraph (d)(1), by redesignating paragraphs (d)(2) and (d)(3) as paragraphs (d)(3) and (d)(4), respectively, and by adding new paragraph (d)(2) to read as follows:

§ 177.2550 Reverse osmosis membranes.

* * * * *

(a) * * *

(4) A cross-linked high molecular weight polyamide reaction product of poly(*N*-vinyl-*N*-methylamine) (CAS Reg. No. 31245-56-4), *N,N'*-bis(3-aminopropyl)ethylenediamine (CAS Reg. No. 10563-26-5), 1,3-benzenedicarbonyl dichloride (CAS Reg. No. 99-63-8) and 1,3,5-benzenetricarbonyl trichloride (CAS

Reg. No. 4422-95-1). The membrane is the food-contact surface. Its maximum weight is 20 milligrams per square decimeter (1.3 milligrams per square inch) as a thin film composite on a suitable support.

* * * * *

(d) * * *

(1) Reverse osmosis membranes described in paragraphs (a)(1), (2), and (3) of this section may be used in contact with all types of liquid food at temperatures up to 80 °C (176 °F).

(2) Reverse osmosis membranes described in paragraph (a)(4) of this section may be used in contact wit all types of liquid food, except food containing more than 8 percent alcohol, at temperatures up to 80 °C (176 °F).

* * * * *

Dated: March 1, 1990.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 90-5122 Filed 3-6-90; 8:45 am]

BILLING CODE 4160-01-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1612

Government in the Sunshine Act of 1976

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final rule.

SUMMARY: The Equal Employment Opportunity Commission is amending its regulations to set forth the new location in which the Commission will post public announcements of Commission meetings.

EFFECTIVE DATE: March 7, 1990.

FOR FURTHER INFORMATION CONTACT: Nicholas M. Inzeo, Assistant Legal Counsel, or Wendy L. Adams, Attorney, at (202) 663-4669.

For the Commission.

Clarence Thomas,

Chairman.

List of Subjects in 29 CFR Part 1612: Sunshine Act.

Accordingly, 29 CFR part 1612 is amended as follows:

PART 1612—GOVERNMENT IN THE SUNSHINE ACT REGULATIONS

1. The authority citation for part 1612 continues to read:

Authority: 5 U.S.C. 552b, sec. 713, 78 Stat. 265; 42 U.S.C. 2000e-12.

§ 1612.7 [Amended]

2. Section 1612.7(a) is amended as follows:

After "telephone message at telephone number" delete "202-634-6748" and insert "202-663-7100". After "posting such announcement" delete "on the agency's bulletin board located near the entrance of the Second Floor of the Columbia Plaza Building at 2401 E Street NW., Washington, DC 20506" and insert "in the lobby of the Commission's headquarters at 1801 L Street NW., Washington, DC 20507".

[FR Doc. 90-5156 Filed 3-6-90; 8:45 am]

BILLING CODE 6570-06-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900-AE25

Exchange Rates for Foreign Currencies

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) has amended its adjudication regulations to establish a procedure for converting foreign currencies into U.S. dollar equivalents. This action is necessary because some beneficiaries receive income or pay expenses affecting their entitlement in foreign currencies. The intended effect of this amendment is to establish a regulatory method for calculating the rates or amounts due those beneficiaries.

EFFECTIVE DATE: April 6, 1990.

FOR FURTHER INFORMATION CONTACT: Don England, Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-3005.

SUPPLEMENTARY INFORMATION: On pages 46629-46631 of the **Federal Register** of November 6, 1989, VA published a proposed regulatory amendment concerning the conversion of foreign currencies into U.S. dollar equivalents for the purpose of determining entitlement to VA benefits. Interested persons were invited to submit written comments, suggestions or objections on or before December 6, 1989. Since no comments, suggestions or objections were received, the regulation has been adopted as proposed.

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that this regulatory amendment is non-major for the following reasons:

(1) It will not have an annual effect on the economy of $100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance program numbers are 64.101, 64.104, 64.105 and 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pension, Veterans.

Approved: February 9, 1990.

Edward J. Derwinski,

Secretary of Veterans Affairs.

PART 3—[AMENDED]

38 CFR part 3, Adjudication, is amended by adding § 3.32 to read as follows:

§ 3.32 Exchange rates for foreign currencies.

When determining the rates of pension of parents' DIC or the amounts of burial, plot or headstone allowances or accrued benefits to which a claimant or beneficiary may be entitled, income received or expenses paid in a foreign currency shall be converted into U.S. dollar equivalents employing quarterly exchange rates established by the Department of the Treasury.

(a) *Pension and parents' DIC.* (1) Because exchange rates for foreign currencies cannot be determined in advance, rates of pension and parents' DIC shall be projected using the most recent quarterly exchange rate and shall be adjusted retroactively based upon actual exchange rates when an annual eligibility verification report is filed.

(2) Retroactive adjustments due to fluctuations in exchange rates shall be calculated using the average of the four most recent quarterly exchange rates. If the claimant reports income and expenses for a prior reporting period, the retroactive adjustment shall be calculated using the average of the four quarterly rates which were the most recent available on the closing date of the twelve-month period for which income and expenses are reported.

(b) *Burial, plot or headstone allowances and accrued benefits.* Payment amounts for burial, plot or headstone allowances and claims for accrued benefits as reimbursement from the person who bore the expenses of a deceased beneficiary's last illness or burial shall be determined using the quarterly exchange rate for the quarter in which the expenses forming the basis of the claim were paid. If the claim is filed by an unpaid creditor, however, the quarterly rate for the quarter in which the veteran died shall apply. When entitlement originates during a quarter for which the Department of the Treasury has not yet published a quarterly rate, amounts due shall be calculated using the most recent quarterly exchange rate.

Cross-references:
Accrued benefits..... See § 3.1000.
Accrued benefits payable to foreign beneficiaries..... See § 3.1008

(Authority: 38 U.S.C. 210(c))

[FR Doc. 90-5111 Filed 3-6-90; 8:45 am]

BILLING CODE 8320-01-M

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38 CFR Part 3

RIN 2900-AD71

Definition of Former Prisoner of War

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) has amended its adjudication regulation defining former prisoner of war (POW) and has established criteria for deciding such status. The Veterans' Benefits and Services Act of 1988 provided the basis for redefinition. The effect of the change is to permit VA to decide POW status for an extended class of veterans.

EFFECTIVE DATE: April 6, 1990.

FOR FURTHER INFORMATION CONTACT: Don England, Consultant, Regulations Staff, Compensation and Pension Service (211B), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-3005.

SUPPLEMENTARY INFORMATION: On pages 40686-87 of the **Federal Register** of October 3, 1989, VA published a revised proposed rule on the definition of "former prisoner of war". Interested persons were given until November 2, 1989, to submit comments, suggestions or objections to the proposed rule. Since no comments were received, the amendment is adopted as proposed with the addition of a title for paragraph (y)(3) for consistency of format.

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that this regulatory amendment is non-major for the following reaons.

(1) It will not have an annual effect on the economy of $100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance program nubmers are 64.104, 64.105, 64.109, and 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved: February 13, 1990.

Edward J. Derwinski,
Secretary of Veterans Affairs.

PART 3—[AMENDED]

In 38 CFR Part 3, Adjudication, § 3.1 is amended by revising paragraph (y) to read as follows:

§ 3.1 Definitions.

* * * * *

(y) *Former prisoner of war.* The term "former prisoner of war" means a person who, while serving in the active military, naval or air service, was forcibly detained or interned in the line of duty by an enemy or foreign government, the agents of either, or a hostile force.

(1) *Decisions based on service department findings.* The Department of Veterans Affairs shall accept the findings of the appropriate service department that a person was a prisoner of war during a period of war unless a reasonable basis exists for questioning it. Such findings shall be accepted only when detention or internment is by an enemy government or its agents.

(2) *Other decisions.* In all other situations, including those in which the Department of Veterans Affairs cannot accept the service department findings, the following factors shall be used to determine prisoner of war status:

(i) *Circumstances of detention or internment.* To be considered a former prisoner of war, a serviceperson must have been forcibly detained or interned under circumstances comparable to those under which persons generally have been forcibly detained or interned by enemy governments during periods of war. Such circumstances include, but are not limited to, physical hardships or abuse, psychological hardships or abuse, malnutrition, and unsanitary conditions. Each individual member of a particular group of detainees or internees shall, in the absence of evidence to the contrary, be considered to have experienced the same circumstances as those experienced by the group.

(ii) *Reason for detainment or internment.* The reason for which a serviceperson was detained or interned is immaterial in determining POW status, except that a serviceperson who is detained or interned by a foreign government for an alleged violation of its laws is not entitled to be considered a former POW on the basis of that period of detention or internment, unless the charges are a sham intended to legitimize the period of detention or internment.

(3) *Central Office approval.* The Director of the Compensation and Pension Service, VA Central Office, shall approve all VA regional office determinations establishing or denying POW status, with the exception of those service department determinations accepted under paragraph (y)(1) of this section.

(4) *In line of duty.* The Department of Veterans Affairs shall consider that a serviceperson was forcibly detained or interned in line of duty unless the evidence of record discloses that forcible detainment or internment was the proximate result of the serviceperson's own willful misconduct. Willful misconduct means an act

involving conscious wrongdoing or known prohibited action. It involves deliberate or intentional wrongdoing with knowledge of or wanton and reckless disregard of its probable consequences.

(5) *Hostile force.* The term "hostile force" means any entity other than an enemy or foreign government or the agents of either whose actions are taken to further or enhance anti-American military, political or economic objectives or views, or to attempt to embarrass the United States.

(Authority: 38 U.S.C. 101(32))

* * * * *

[FR Doc. 90-5112 Filed 3-6-90; 8:45 am]

BILLING CODE 8320-01-M

POSTAL RATE COMMISSION

39 CFR Part 3001

Publication of Domestic Mail Classification Schedule; Order of Rulemaking; First-Class Mail

CFR Correction

In title 39 of the Code of Federal Regulations, revised as of July 1, 1988 and July 1, 1989, in appendix A to subpart C of part 3001, under the heading >CLASSIFICATION SCHEDULE 100-FIRST-CLASS MAIL> appearing on page 349 (revision of July 1, 1988 and page 353 (revision of July 1, 1989), a portion of text was incorrectly published.

PART 3001 [CORRECTED]

Appendix A to Subpart C-[Corrected]

On page 349 (revision of July 1, 1988) and page 353 (revision of July 1, 1989), in the first column of both volumes, under *100.021 Postal and post cards*, paragraphs b and c were incorrectly published. They should read as follows:

100.021 Postal and post cards.

* * * * *

b. Double postal or post cards may be mailed as postal or post cards. A double postal or post card consists of two attached cards, one of which may be detached by the receiver and returned by mail as a single postal or post card.

c. To be eligible to be mailed as a first-single post card, a card may not exceed any of the following dimensions.

i. Length not greater than 6 inches.

ii. Width not greater than 4 1/4 inches; or

iii. Thickness not greater than 0.0095 inch and uniform.

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-200213; FRL-3707-4]

Oryzalin; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: This document corrects 40 CFR 180.304 to specify the correct chemical formula for the herbicide oryzalin.

EFFECTIVE DATE: March 7, 1990.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Emergency Response and Minor Use Section (H7505C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716C, CM No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-2310.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 4, 1976 (41 FR 9345), EPA issued 40 CFR 180.304 establishing tolerances for the herbicide oryzalin (3,5-dinitro-N^4,N^4-dipropylsulfanilamide). In the Code of Federal Regulations (40 CFR parts 150 to 189) revised as of July 1, 1981; a typographical error was inadvertently introduced, i.e., (3,4-dinitro * * *). This document corrects the chemical expression for oryzalin in the introductory text of 40 CFR 180.304 to read as follows: "Oryzalin (3,5-dinitro-N^4,N^4-dipropylsulfanilamide)."

Authority: 21 U.S.C. 346a.

Dated: February 19, 1990.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 90-5043 Filed 3-6-90; 8:45 am]

BILLING CODE 6560-50-D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 675

[Docket No. 900129-0029]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule; technical amendment.

SUMMARY: NOAA issues this final rule implementing a technical amendment to clarify the common name of one species of groundfish, and the categories of groundfish species the fishing for which is regulated by rules appearing at 50 CFR 611.93 and part 675. This action is taken to improve the understanding of persons affected by these rules regarding applicable species and species categories.

EFFECTIVE DATE: March 7, 1990.

FOR FURTHER INFORMATION CONTACT: Jay J. C. Ginter (Fishery Management Biologist), NMFS Alaska Region, P.O. Box 21668, Juneau, Alaska 99802-1668, telephone 907-586-7229.

SUPPLEMENTARY INFORMATION: Groundfish fisheries in the Bering Sea and Aleutian Islands (BSAI) Area are governed by Federal regulations (at 50 CFR 611.93 and part 675) which implement the Fishery Management Plan for the Groundfish Fishery in the Bering Sea and Aleutian Islands Area (FMP). The FMP was developed by the North Pacific Fishery Management Council (Council) and approved by the Secretary of Commerce (Secretary) under provisions of the Magnuson Fishery Conservation and Management Act.

Greenland Halibut/Turbot

The groundfish species, the fishing for which is governed under the FMP and its implementing regulations, are defined in section 5.1 of the FMP and §§ 611.93(b)(1)(ii) and 675.2. Two different common names, Greenland halibut and Greenland turbot, are used in these definitions for one species. To avoid any potential confusion in interpreting the regulations, they are amended as indicated below to use both common names. Greenland halibut and Greenland turbot are the same species *Reinhardtius hippoglossoides* (Walbaum). Although the common name Greenland halibut is preferred by some fish taxonomists, the common market name is recognized as Greenland turbot. Biological reasons for retaining the name Greenland halibut are given in the annual report of the Committee on Names of Fishes, 1969, Transactions of the American Fisheries Society, 98(1): 179. This groundfish species should not be confused with Pacific halibut (*Hippoglossus stenolepis*) which is a prohibited species under the FMP and its implementing regulations.

Species Categories

Regulations at §§ 611.93(b)(1)(ii) and 675.20(a)(1) and the FMP at Annex V describe categories of groundfish and

prohibited species. However, Table 1 in § 675.20(a)(1) is potentially misleading because it does not describe the same species categories defined elsewhere in the FMP and implementing regulations. Therefore, this action revises Table 1 to describe the same four categories of groundfish and prohibited species as are described in Annex V of the FMP and § 611.93(b)(1)(ii).

Classification

This final rule, technical amendment, is issued under 50 CFR part 675. Because this rule makes only minor, non-substantive changes, it is unnecessary under 5 U.S.C. 553(b)(B) to provide for prior public comment and there is good cause under 5 U.S.C. 553(d) not to delay for 30 days its effective date.

Because this rule is being issued without prior comment, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act and none has been prepared.

This rule makes minor technical changes to a rule that has been determined not to be a major rule under Executive Order 12291, does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612, and does not contain a collection-of-information requirement for the purposes of the Paperwork Reduction Act. There is no change in the regulatory impacts previously reviewed and analyzed.

List of Subjects

50 CFR Part 611

Fisheries, Foreign fishing.

50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

Dated: February 28, 1990.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 611 and 675 are amended as follows:

PART 611—FOREIGN FISHING

1. The authority citation for part 611 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 971 *et seq.*, 22 U.S.C. 1971 *et seq.*, and 16 U.S.C. 1361 *et seq.*

§ 611.93 [Amended]

2. In § 611.93(b)(1)(ii), table 1 is amended by deleting the word "Turbots" in the second column under the heading "Target species" and adding in the same column the words "Greenland halibut or Greenland turbot."

* * * * *

PART 675—GROUNDFISH OF THE BERING SEA AND ALEUTIAN ISLANDS

3. The authority citation for part 675 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

§ 675.2 [Amended]

4. Section 675.2, is amended by amending the definition of "groundfish" by adding the words "or Greenland turbot" after the words "Greenland halibut."

5. Table 1 in § 675.20(a)(1) is revised to read as follows:

§ 675.20 General limitations.

(a) * * *

(1) * * *

TABLE 1.—CATEGORIES OF SPECIES INVOLVED IN THE BERING SEA AND ALEUTIAN ISLANDS GROUNDFISH FISHERY

Target species [1]	Other species [2]	Non-specified species [3]	Prohibited species [4]
Pollock, cod, sablefish, Atka mackerel, Pacific ocean perch, other rockfish, yellowfin sole, Greenland halibut or Greenland turbot, arrowtooth flounder, rock sole, other flatfish, squid.	Sculpins, sharks, skates, eulachon, smelts, capelin, octopus.	All species not included in other categories.	Pacific halibut, any species of Pacific salmon, steelhead trout, Pacific herring, king crab and Tanner crab.

[1] Records must be maintained (see § 675.5).
[2] Records must be maintained of the aggregate catches (see § 675.5).
[3] No records must be maintained.
[4] Records must be maintained (see § 675.5).

* * * * *

[FR Doc. 90-5104 Filed 3-6-90; 8:45 am]
BILLING CODE 3510-22-M

50 CFR Part 641

[Docket No. 900253-0053]

Reef Fish Fishery of the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Emergency rule.

SUMMARY: The Secretary of Commerce (Secretary) announces an emergency amendment to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP) prohibiting the harvest or possession of jewfish in or from the exclusive economic zone (EEZ) in the Gulf of Mexico and issues an emergency rule implementing the prohibition. The intended effect of this rule is to respond to an emergency in the reef fish fishery by reducing the fishing mortality of jewfish.

EFFECTIVE DATES: March 2, 1990, through May 31, 1990, except that §§ 641.24 (b)(3) and (b)(5) are effective from April 23, 1990, through May 31, 1990; and § 641.29 is effective from March 2, 1990, through April 22, 1990.

ADDRESSES: Copies of documents supporting this action may be obtained from Robert A. Sadler, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Robert A. Sadler, 813-893-3722.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico is managed under the FMP prepared by the Gulf of Mexico Fishery Management Council (Council), and its implementing regulations at 50 CFR part 641, under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act), 16 U.S.C. 1801 *et seq.* Amendment 1 to the FMP and its implementing regulations (55 FR 2078; January 22, 1990) made major changes to the FMP's management measures to conserve and manage the reef fish fishery, some species of which are severely overfished. This rule implements additional measures to conserve and manage jewfish.

Background

Commercial and recreational fishermen who target jewfish report that the species has been decreasing in abundance and is disappearing in some areas. Jewfish are highly residential, that is, they remain associated with

specific high-profile reef and wreck structures, and, thus, are easily targeted by anglers and divers. They are a curious fish that will often approach divers. In some locations, they form spawning aggregations during the summer months when diving and angling pressures are the heaviest and, thus, are even more susceptible to harvest. In addition, they are slow-growing and late-maturing fish. All of these characteristics make them highly susceptible to overfishing.

Jewfish are known to range throughout the Gulf of Mexico but are concentrated off the west coast of Florida. Data on the spawning stock biomass and other data on jewfish are not available. In view of the relative scarcity of jewfish, such data are not likely to become available, and consequently, a definitive stock assessment cannot readily be accomplished.

Amendment 1 provided some protection for jewfish by imposing a 50-inch minimum size limit, a recreational bag limit of 5 groupers in aggregate (including jewfish) per person per day, and a prohibition on the sale of reef fish caught under recreational bag limits. However, after submission of Amendment 1, the Council received testimony from knowledgeable commercial jewfish fishermen and correspondence from fishermen, divers, and dive-boat operators which presented an informed consensus that jewfish are seriously overfished and in need of total protection.

The Council has initiated Amendment 2 to the FMP, which would prohibit the harvest or possession of jewfish in the EEZ. However, Amendment 2 has not yet been submitted to the Secretary for approval. Once submitted the amendment could not be approved and implemented for several months because of administrative review requirements and the Magnuson Act's requirements for public notice and opportunity for public comment. Effective February 1, 1990, Florida banned possession and sale of jewfish in or from its waters. Florida's ban is expected to reduce significantly the fishing mortality of jewfish, but the enforcement of Florida's rule is hindered, and its effect is reduced, by lack of a compatible prohibition applicable to the EEZ adjacent to Florida's waters. Accordingly, the Council requested that an emergency rule be implemented to prohibit the harvest or possession of jewfish in the EEZ. In addition to its beneficial effect in the waters off Florida, such emergency rule provides needed additional protection for jewfish in the EEZ throughout the Gulf of Mexico.

The Council has found that the lack of a prohibition on harvest or possession of jewfish in the EEZ constitutes an emergency. The Secretary concurs. Accordingly, the Secretary has amended the FMP on an emergency basis and is hereby promulgating this emergency rule to be effective for 90 days, as authorized by sections 305 (e)(2)(B) and (e)(3)(B) of the Magnuson Act. Upon agreement of the Secretary and the Council, the emergency amendment and rule may be extended for an additional period of not more than 90 days.

Classification

The Secretary has determined that this rule is necessary to respond to an emergency situation and is consistent with the Magnuson Act and other applicable law.

This emergency rule is exempt from the normal review procedures of E.O. 12291 as provided in section 8(a)(1) of that order. It is being reported to the Director of the Office of Management and Budget, with an explanation of why it is not possible to follow the regular procedures of that order.

This rule is exempt from the procedures of the Regulatory Flexibility Act because it is issued without opportunity for prior public comment.

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

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

The Secretary determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the appoved coastal zone management programs of Alabama, Florida, Louisiana, and Mississippi. Texas does not have an approved coastal zone management program. These determinations have been submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act.

The Council prepared an environmental assessment (EA) for this action which concludes that there will be no significant impact on the human environment. The Assistant Administrator for Fisheries, NOAA, concurs. A copy of the EA is available from the address above.

The Secretary finds for good cause (i.e., to prevent fishing that would seriously interfere with necessary protection of the jewfish resource) that the reasons justifying promulgation of this rule on an emergency basis also make it impracticable and contrary to the public interest to provide prior notice and opportunity for public comment on this rule, or to delay for 30 days its effective date, under the provisions of section 553 (b)(B) and (d)(3) of the Administrative Procedure Act.

List of Subjects in 50 CFR Part 641

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: March 2, 1990.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries.

For the reasons set forth in the preamble, 50 CFR Part 641 is amended as follows:

PART 641—REEF FISH FISHERY OF THE GULF OF MEXICO

1. The authority citation for part 641 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 641.7, effective from March 2, 1990, through May 31, 1990, a new paragraph (v) is added to read as follows:

§ 641.7 Prohibitions.

* * * * *

(v) Harvest or possess a jewfish in or from the EEZ.

3. In § 641.21, effective from March 2, 1990, through May 31, 1990, paragraph (a)(4) is suspended.

4. In § 641.24, effective from April 23, 1990, through May 31, 1990, paragraph (b)(3) is revised and a new paragraph (b)(5) is added to read as follows:

§ 641.24 Bag and possession limits.

* * * * *

(b) * * *

(3) Groupers, excluding jewfish—5.

* * * * *

(5) Jewfish—0.

* * * * *

5. In § 641.25, effective from March 2, 1990, through May 31, 1990, a new paragraph (d) is added to read as follows:

§ 641.25 Commercial quotas.

* * * * *

(d) Jewfish—0 pounds.

6. Effective from March 2, 1990, through April 22, 1990, a new § 641.29 is added to read as follows:

§ 641.29 Jewfish restrictions.

Effective from March 2, 1990, through April 22, 1990, a jewfish may not be

harvested or possessed in or from the EEZ.

[FR Doc. 90-5192 Filed 3-2-90; 2:41 pm]

BILLING CODE 3510-22-M

50 CFR Part 675

[Docket No. 91046-0006]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of reapportionment; reopening of fishery.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that the prohibited species catch (PSC) allowance for *Chionocetes bairdi* Tanner crab in Zone 1 will remain uncaught by the joint venture processing (JVP) flatfish fishery. Therefore, the Secretary of Commerce (Secretary) is reapportioning the PSC allowance of *C. bairdi* Tanner crab to the domestic annual processing (DAP) flatfish fishery as specified in this notice. This action will allow reopening of the DAP flatfish fishery.

EFFECTIVE DATE: This notice is effective March 1, 1990. Public comments are invited through March 16, 1990.

FOR FURTHER INFORMATION CONTACT: Janet E. Smoker (Fishery Management Biologist), NMFS Alaska Region, P.O. Box 21668, Juneau, Alaska 99802-1668, telephone 907-586-7229.

SUPPLEMENTARY INFORMATION: The Secretary implemented Amendment 12A to the Fishery Management Plan for the Groundfish Fishery in the Bering Sea and Aleutian Islands Area (FMP) under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act) with a final rule published August 9, 1989 (54 FR 32642), and effective September 3, 1989, through December 31, 1990.

The purpose of Amendment 12A is to limit incidental catches of the prohibited species *C. bairdi* Tanner crab, red king crab, and Pacific halibut by the groundfish fisheries in the Bering Sea and Aleutian Islands area (BSAI). The amendment establishes five prohibited species catch (PSC) limits, each of which are apportioned among four fisheries: DAP fisheries for flatfish, DAP fisheries for other species; JVP fisheries for flatfish, and JVP fisheries for other species. Each of the 20 PSC allowances prescribed for the 1990 flatfish fisheries were published January 16, 1990 (55 FR 1434), in the initial specifications notice for 1990 for the BSAI area. The PSC allowances were based on the anticipated by catch of prohibited species through the use of a mathematical prediction procedure using statistical information derived from fishery performance in previous years and projected performance for the 1990 fishing year.

Reapportionment

The Regional Director has determined that the JVP flatfish fishery has an uncaught PSC allowance balance for *C. bairdi* Tanner crab in Zone 1 which cannot be taken in 1990 because Zone 1 is closed to further JVP fishing for the remainder of the year. PSC allowances for JVP fishing have been taken for both red king crab and Pacific halibut. The JVP flatfish fishery was closed on January 25, 1990, due to attainment of its red king crab allowance (January 31, 1990, 55 FR 3229). At that time, JVP fishing had taken approximately 210,000 *C. bairdi* Tanner crabs from its 400,000 Zone 1 allowance. The remainder of 190,000 crabs is available for transfer to other fisheries. The DAP flatfish fishery reached its 339,600 *C. bairdi* Tanner crab allowance as of February 27, 1990, and was closed on that date.

Therefore, the Secretary is adjusting the *C. bairdi* Tanner crab allowances, specified in Table 2 of the final notice of initial specifications for 1990 (January 16, 1990; 55 FR 1434), to redistribute uncaught allowances among fisheries as follows:

REAPPORTIONMENT OF 1990 PROHIBITED SPECIES CATCH (PSC) ALLOWANCE

[Number of crabs]

Type	Target species	Area	Prohibited species	Current PSC allowance	Change	New PSC allowance
JVP	Flatfish	Zone 1	*C. bairdi*	400,000	−190,000	210,000
DAP	Flatfish	Zone 1	*C. bairdi*	339,600	+190,000	529,600

This action is authorized by § 675.20(e)(4), allows redistribution of uncaught PSC allowances among fisheries and allows DAP fisheries to be prosecuted that otherwise would be closed.

Reopening of Fishery

The new allowance for the DAP flatfish fishery, 529,600 crabs, now exceeds the current DAP flatfish fishery catch of *C. bairdi* Tanner crab in Zone 1. Therefore, the DAP flatfish fishery may resume in Zone 1 effective 12 noon, March 1, 1990.

Classification

This action is taken under §§ 675.20 and 675.21 and complies with Executive Order 12291. The Assistant Administrator for Fisheries, NOAA, finds for good cause that it is impractical and contrary to the public interest to provide prior notice and comment. Immediate effectiveness of this notice is necessary to benefit domestic fishermen whose fisheries would otherwise be closed from key fishing areas. Interested persons are invited to submit comments in writing to the above address for 15 days after the effective date of this notice.

List of Subjects in 50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*,

Dated: March 2, 1990.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90-5193 Filed 3-2-90 1:41 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 55, No. 45
Wednesday, March 7, 1990

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 979

[Docket No. FV-90-110]

Melons Grown in South Texas; Proposed Amendment to Continuing Handling Regulation To Authorize a New Container

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize the use of a smaller corrugated carton for shipping South Texas cantaloups to fresh markets on an experimental test shipment basis. Allowing handlers to ship cantaloups in such containers should enable the South Texas Melon Committee to determine whether the use of this new carton would benefit the South Texas melon industry.

DATES: Comments must be received by April 6, 1990.

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

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

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Agreement No. 156 and Marketing Order No. 979 (17 CFR part 979), both as amended, regulating the handling of melons grown in South Texas. The marketing agreement and order are authorized by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

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

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

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

There are approximately 40 handlers of South Texas melons subject to regulation under the marketing order, and approximately 80 producers in the production area. The Small Business Administration (13 CFR 121.1) has defined small agricultural producers as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of handlers and producers of South Texas melons may be classified as small entities.

South Texas spring cantaloup plantings are estimated at 15,000 acres, the same as in 1989. Honeydew melon plantings in south Texas in 1990 are expected to total 6,000 acres, 20 percent less than the approximately 7,500 acres planted in 1989. Total 1990 cantaloup shipments are projected at 5.3 million cartons. Honeydew melon shipments are expected to total 2.4 million cartons during the 1990 season.

Handling requirements for South Texas melons are specified in § 979.304 (47 FR 13118, March 29, 1982; 54 FR 13507, April 4, 1989). Current requirements specify that cantaloups must meet at least U.S. Commercial grade, and that at least half of the honeydew melons in any lot must meet U.S. Commercial grade and contain at least eight percent sugar. Container sizes are also specified under the handling regulation. Cantaloups must be packed in fiberboard cartons with inside dimensions of not more than 17¼ inches nor less than 16¾ inches long, not more that 13 inches nor less than 12¾ inches wide, and not more than 10⅜ inches nor less than 9¾ inches deep. Honeydew melons must be packed in fiberboard cartons with inside dimensions of 17 inches long by 15¼ inches wide and not more than 7½ inches nor less than 6½ inches deep. Honeydew melons may also be packed in bulk containers and, upon approval by the South Texas Melon Committee (committee), in pony cartons having dimensions of 17 inches long by 14½ inches wide by 5⅝ inches deep.

The committee, which is the agency responsible for local administration of the marketing order, unanimously recommended authorizing the use of a smaller carton for cantaloups. This action is authorized by §§ 979.52 and 979.54 of the marketing order.

Specifically, the committee recommended authorizing the use of a corrugated carton with dimensions of 15 3/16 inches long by 12⅞ inches wide by 10 inches deep for shipping cantaloups on an experimental basis. This carton is about an inch and a half shorter in length than currently authorized cartons and holds 15 to 20 percent less fruit by weight and about 12 percent less fruit by volume. The committee reports that this new container was designed by a group of California cantaloup shippers and is being used by some of those shippers on a test basis for the first time this season. The smaller container was designed so that more cartons can be placed on a standard 48- by 40- inch pallet, resulting in better space utilization and an improved stacking pattern It is also expected that the smaller carton will result in better arrivals at receiving points because the decreased volume of fruit per container should result in less damage to the packed cantaloups during transit.

The committee believes that South Texas handlers should also be able to test this carton and therefore recommended authorizing its use on an experimental basis. To enable the committee to determine the

acceptability of the smaller carton, handlers would be required to notify the committee on their intent to use the carton on an experimental basis by filing with the committee an application for a Certificate of Privilege. Subsequent to the committee's approval and issuance of a Certificate of Privilege, the handler would be entitled to use the new carton. Additionally, the handler would be required to prepare a special purpose shipment report for each shipment of cantaloups in the smaller carton. Copies of the report would be fowarded by the handler to the committee and to the receiver. The receiver would then sign a copy of the report and return it to the committee office. The information collected should enable the committee to determine whether the use of this new carton would benefit the South Texas melon industry as a whole.

The requirements for obtaining a Certificate of Privilege and filing reports are the same as those that apply to shipments of melons for relief, charity, canning or freezing. Unlike those special purpose shipments, however, cantaloups packed in the smaller container for experimental purposes would be required to meet the grade and inspection requirements specified in the handling regulation. This would ensure that only cantaloups of acceptable quality enter commercial fresh market channels.

The committee believes that this action would provide South Texas handlers with additional flexibility in marketing cantaloups. It also would enable the industry to remain competitive with other producing areas and have a positive impact, particularly if it is found that the use of this smaller carton is benefical.

The information collection requirements contained in this proposed rule have been previously approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB No. 0581-0079. The appropriate forms for reporting shipments for experimental purposes have been submitted previously to the OMB for approval and are currently approved by OMB to be used for information collection purposes.

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

A 30-day comment period is provided to allow interested persons to respond to this proposal. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 979

Marketing agreements, Melons, Reporting and Recordkeeping Requirements.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 979 be amended as follows:

PART 979—MELONS GROWN IN SOUTH TEXAS

1. The authority citation for 7 CFR part 979 continues to read as follows:

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

2. Section 979.304 is amended by redesignating paragraph (e)(4) as (e)(5), adding a new paragraph (e)(4) and revising the introductory text of paragraph (f) to read as follows:

§ 979.304 Handling regulation.

* * * * *

(e) * * *

(4) Shipments of cantaloups may be made for experimental purposes in cartons having dimensions of 15 3/16 inches in length by 12 7/8 inches in width by 10 inches in depth. Such shipments shall be subject to the grade, inspection and reporting requirements set forth in paragraphs (a), (c) and (f) of this section.

* * * * *

(f) *Safeguards.* Each handler making shipments of melons for relief, charity, canning, freezing, or experimental purposes under paragrah (e) of this section shall:

* * * * *

Dated: March 2, 1990.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 90-5204 Filed 3-6-90; 8:45 am]

BILLING CODE 3410-02-M

FEDERAL RESERVE SYSTEM

12 CFR Parts 208 and 225

[Regulation H, Regulation Y; Docket No. R-0658]

Appraisal Standards for Federally Related Transactions; Correction

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects the Regulatory Flexibility Act Analysis contained in the Supplementary Information section of a notice of proposed rulemaking which appeared in the **Federal Register** as part V on February 9, 1990 (55 FR 4810).

FOR FURTHER INFORMATION CONTACT: Roger Cole, Assistant Director (202/452-2618), Rhoger H Pugh, Manager, (202/728-5883), or Stanley B. Rediger, Senior Financial Analyst (202/452-2629), Division of Banking Supervision and Regulation, Board of Governors; or Michael J. O'Rourke, Senior Attorney (202/452-3288), or Mark J. Tenhundfeld, Attorney (202/452-3612), Legal Division, Board of Governors. For the hearing impaired *only*, Telecommunication Device for the Deaf (TDD), Earnestine Hill or Dorothea Thompson (202)/452-3544).

The following correction is made to FR Doc. 90-3054 published in the **Federal Register** as part V on February 9, 1990 (55 FR 4810).

1. On page 4814, third column, the Regulatory Flexibility Act Analysis is revised to read as follows:

Regulatory Flexibility Act Analysis

Title XI of FIRREA requires the Board to establish standards for performing appraisals in connection with federally related transactions within the Board's jurisdiction. In addition, title XI requires the Board to distinguish those transactions that require State certified appraisers from those that require state certified or licensed appraisers. This proposed regulation is in response to this legislative mandate.

Title XI specifies certain transactions requiring the services of an appraiser, but allows the agencies some discretion in determining which other transactions should also require an appraiser. In this regard, the Board has attempted to alleviate the economic impact on small businesses, including small regulated institutions, by not requiring a State certified or licensed appraiser for transactions in which (i) the transaction value is below the *de minimis* cutoff established in the regulation, or (ii) a lien on real estate is taken as collateral solely as an abundance of caution.

The Board invites comments on the costs and benefits of the proposed regulation with regard to the operation of depository institutions, the provision of real estate credit, the impact of loan losses, and the cost of appraisals.

The Board anticipates that the proposed regulation may have a tendency to increase costs, to some degree, for borrowers and member banks and bank holding companies. The cost increase may stem from at least two aspects of the rule. First, since member banks and bank holding companies are required to use certified or licensed appraisers, the cost of an

appraisal may rise somewhat. Some borrowers may resist the increased appraisal cost and decide not to take out a loan secured by real estate. Alternatively, some banking organizations may elect to absorb all or a portion of any increased appraisal cost. Second, the proposed regulation includes certain provisions that go beyond the Federal Reserve's existing appraisal guidelines. Those provisions could add to appraisal costs.

On the other hand, the proposed regulation should serve to decrease costs to member banks and bank holding companies of all sizes. Such banking organizations will have better information about the value of the real estate involved in federally related transactions and can better ensure that each loan is collateralized adequately. As a result, the events of default should be reduced, with a corresponding reduction in loan losses. In addition, for those organizations that already have strong appraisal policies or procedures that exceed minimum supervisory standards, the marginal costs of the proposed regulation should be limited. On balance, the Board believes that adoption of this proposal would not have a significant adverse economic impact on a substantial number of small business entities, in accordance with the spirit and purposes of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

By order of the Board of Governors of the Federal Reserve System, March 1, 1990.

William W. Wiles,

Secretary of the Board.

[FR Doc. 90-5119 Filed 3-6-90; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90-NM-12-AD]

Airworthiness Directives; Airbus Industrie Model A300-B2, A300-B2K, and A300-B4 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to Airbus Industrie Model A300-B2, A300-B2K, and A300-B4 series airplanes, which would require repetitive visual or high frequency eddy current inspections to detect cracks in the upper skin and spar web joining parts of the trimmable horizontal stabilizer (THS). This proposal is prompted by reports that cracks have been found on the THS center box rear upper skin outboard of Rib 3 and in the rear web joining part. This condition, if not corrected, could result in reduced structural capability of the horizontal stabilizer.

DATES: Comments must be received no later than April 30, 1990.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 90-NM-12-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Standardization Branch, ANM-113; telephone (206) 431-1918. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt for their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90-NM-12-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The Direction Generale de L'Aviation Civile (DGAC), which is the airworthiness authority of France, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on Airbus Industrie Model A300-B2, A300-B2K, and A300-B4 series airplanes. Recent reports indicate that cracks have been found on in-service airplanes in the trimmable horizontal stabilizer (THS) center box rear upper skin outboard of Rib 3 and in the rear web joining part. The cracks on the upper skin run from the rear corner radius forward and under the top outboard skin, and vertically down the rear flange. The cracks in the spar web joining part run from the upper edge vertically downwards and through the THS fitting outboard top bolt hole. This condition, if not corrected, could result in reduced structural capability of the horizontal stabilizer.

Airbus Industrie has issued Service Bulletin A300-55-0035, dated September 11, 1989, which describes procedures for repetitive visual or high frequency eddy current (HFEC) inspections to detect cracks in the upper skin and spar web joining parts of the THS, and repair, if necessary. The DGAC has classified this service bulletin as mandatory, and has issued Airworthiness Directive 89-157-098(B) addressing this subject.

This airplane model is manufactured in France and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require repetitive inspections to detect cracks in the upper skin and spar web joining parts of the THS, and repair, if necessary, in accordance with the service bulletin previously described.

It is estimated that 11 airplanes of U.S. registry would be affected by this AD, that it would take approximately 14 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $6,160.

The regulations proposed herein would not have substantial direct effects

on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

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

Airbus Industrie: Applies to all Model A300–B2, A300–B2K, and A300–B4 series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent reduced structural capability of the horizontal stablizer, accomplish the following:

A. Perform a visual inspection of the upper skin and spar web joining parts of the trimmable horizontal stablizer (THS), in accordance with either the "preferred" or "alternative" method as described in Airbus Industrie Service Bulletin A300–55–0035, dated September 11, 1989, as follows:

1. For airplanes that have accumulated less than 11,000 landings, perform the initial inspection within 1,000 landings after the effective date of this AD, or prior to the accumulation of 11,400 landings, whichever occurs first.

2. For airplanes that have accumulated 11,000 or more landings, but less than 16,000 landings, perform the initial inspection within 400 landings after the effective date of this AD, or prior to the accumulation of 16,200 landings, whichever occurs first.

3. For airplaines that have accumulated 16,000 or more landings, perform the initial inspection within 200 landings after the effective date of this AD.

B. If cracks found are less than 20 mm and have not reached the outer box skin, repair prior to further flight, and thereafter perform high frequency eddy current inspections (HFEC) at intervals not to exceed 7,500 landings, in accordance with Airbus Industries Service Bulletin A300–55–0035, dated September 11, 1989.

C. If cracks found are more than 20 mm in length, or if the crack has reached the outer box skin, repair, prior to further flight, in a manner approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region. Thereafter, perform HFEC inspections at internvals approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

D. If no cracks are found in the center box upper skin, perform repetitive visual inspections in accordance with Airbus Industrie Service Bulletin A300–55–0035, dated September 11, 1989, at the following intervals:

1. If the immediately preceding inspection was accomplished using the "preferred method," as specified in the service bulletin, perform the next inspection within 6,000 landings.

2. If the immediately preceding inspection was accomplished using the "alternate method," as specified in the service bulletin, perform the next inspection within 1,700 landings.

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

Note: The request should be fowarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM–113.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on February 27, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Cetification Service.

[FR Doc. 90–5151 Filed 3–6–90; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 89–NM–120–AD]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to supersede an existing airworthiness directive (AD), applicable to all Boeing Model 747 series airplanes except the Model 747SP, which currently requires periodic inspection of both inboard and outboard trailing edge flap carriage spindles for cracks and corrosion, and overhaul or replacement, if necessary. This action would require periodic inspection to detect cracks or corrosion of all exposed surfaces of the carriage spindles, including inner bore, and aft links; and overhaul or replacement, if necessary. This action would also shorten the current compliance intervals to ensure continued airworthiness. This proposal is prompted by a report of two aft link failures on one flap. This condition, if not corrected, could lead to the failures of the trailing edge flaps carriage spindles, which could reduce the ability of the pilot to safely control the airplane during landing.

DATES: Comments must be received no later than April 30, 1990.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 89–NM–120–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Steven C. Fox, Airframe Branch, ANM-120S; telephone (206) 431-1923. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-120-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

On March 8, 1989, the FAA issued AD 88-04-06-RI, Amendment 39-6164 (54 FR 11172; March 17, 1989), applicable to Boeing Model 747 series airplanes except the Model 747SP, to require periodic inspection of both inboard and outboard trailing edge flap carriage spindles for cracks or corrosion, and overhaul or replacement, if necessary. That action was prompted by a report of failure of two spindles on one flap, causing control problems during approach and landing. This condition, if not corrected, could lead to the failure of the trailing edge flaps carriage spindles, which could reduce the ability of the pilot to safely control the airplane during landing.

Since issuance of that AD, the manufacturer reported that two fractured aft links on one flap were discovered on one airplane during a walk-around inspection. The fracture was the result of stress corrosion. Unchecked corrosion of the flap spindle may lead to the fracture of the carriage spindle and result in extensive flap damage and control problems during approach and landing.

The FAA has reviewed and approved Boeing Service Bulletin 747-27-2280, Revision 3, dated November 30, 1989, which describes an inspection program that would ensure early detection of corrosion of the flap carriage spindle. This program shortens the compliance interval and expands the areas of inspection (required by AD 88-04-06-R1) to include all exposed surfaces of the carriage spindles and aft links.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would supersede AD 88-04-06-R1 with a new airworthiness directive that would require inspection of all exposed surfaces and aft links for cracks and corrosion, and overhaul or replacement, if necessary, in accordance with the service bulletin previously described.

There are approximately 630 Model 747 series airplanes of the affected design in the worldwide fleet. It is estimated that 170 airplanes of U.S. registry would be affected by this AD, that it would take approximately 84 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $571,200.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding AD 88-04-06-R1, Amendment 39-6164 (54 FR 11172; March 17, 1989), with the following new airworthiness directive:

Boeing: Applies to Model 747 series airplanes, except the Model 747SP, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent failure of the trailing flap's carriage spindles, accomplish the following:

A. Prior to the accumulation of 30,000 flight hours or 8 years service on each new or previously overhauled flap carriage spindle, whichever occurs first, or within the next 30 days after the effective date of this AD, whichever occurs later, remove the aft link and thrust collars from the spindles and perform a detailed visual inspection of all exposed surfaces of the carriage spindles, including the inner bore, and aft links for cracking and corrosion, in accordance with Boeing Service Bulletin 747-27-2280, Revision 3, dated November 30, 1989.

1. If a cracked carriage spindle or aft link is found, prior to further flight, replace the part(s) in accordance with Boeing Service Bulletin 747-27-2280, Revision 3, dated November 30, 1989.

2. If no cracking or corrosion is found, repeat the inspections required by paragraph A., above, at intervals not to exceed 12 months until the carriage spindles are overhauled in accordance with paragraph B., below.

3. If corrosion is found on one carriage spindle or aft link but not the other on the same flap, perform a repetitive general visual inspection in accordance with Boeing Service Bulletin 747-27-2280, Revision 3, dated November 30, 1989, at intervals not to exceed 2 months. Overhaul or replace corroded part(s) within 36 months after detection, but no later than 5 years after the effective date of this AD.

4. If corrosion is found on both carriage spindles or aft links on the same flap, prior to further flight, overhaul or replace the part(s) in accordance with Boeing Service Bulletin 747-27-2280, Revision 3, dated November 30, 1989; or repair in accordance with a method

approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

B. Within 5 years after the effective date of this AD, or prior to the accumulation of 30,000 flight hours or 8 years on each new or previously overhauled flap carriage spindle, whichever occurs later, remove the carriage spindle and aft link and overhaul, in accordance with Boeing Service Bulletin 747-27-2280, Revision 3, dated November 30, 1989. Repeat this overhaul thereafter at intervals not to exceed 8 years or 30,000 flight hours, whichever occurs first.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Seattle Aircraft Certification Office.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on February 27, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-5142 Filed 3-6-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Parts 71 and 73

[Airspace Docket No. 90-ASW-1]

Proposed Establishment of Restricted Area R-6320 Matagorda, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Restricted Area R-6320 located in the vicinity of Matagorda, TX. The U.S. Customs Service proposes to install an aerostat-borne radar system in R-6320. The aerostat-borne radar system would provide surveillance to detect suspected illegal drug transportation into the United States. The aerostat balloon is proposed to fly up to 15,000 feet MSL. This action would support the drug interdiction program. In addition, the Continental Control Area would be amended to reflect R-6320.

DATES: Comments must be received on or before April 23, 1990.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ASW-500, Docket No. 90-ASW-1, Federal Aviation Administration, Fort Worth, TX 76193-0530.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, room 916, 800 Independence Avenue SW., Washington, D.C.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposals. Comments are specifically invited on the overall regulatory, aeronautical, economic and energy aspects of the propsals. Send comments on environmental and land use aspects to: Department of Treasury, U.S. Customs Service, Mr. Robert O. Holliday, Director, Research and Development Division, 1301 Constitution Avenue NW., Washington, DC 20229; (202) 566-5372. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 90-ASW-1." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before talking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing data for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue SW., Washington, DC 20591, or be calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposals

The FAA is considering amendments to parts 71 and 73 of the Federal Aviation Regulations (14 CFR parts 71 and 73) to establish Restricted Area R-6320 located in the vicinity of Matagorda, TX. The restricted area would provide airspace for the operation of a tethered aerostat-borne radar system. This system would provide surveillance of airspace to detect low-altitude aircraft attempting to penetrate U.S. airspace undetected. The restricted area encompasses a 3-statute mile radius of a geographical point, lat. 28°42'34" N., long. 95°57'34" W., from the surface up to and including 15,000 feet mean sea level. The system would increase the probability of the interception and interdiction of suspect aircraft and provide low altitude radar coverage for the Customs Service. The Continental Control Area would be amended to reflect R-6320. Sections 71.151 and 73.63 of parts 71 and 73 of the Federal Aviation Regulations were republished in Handbook 7400.6E dated January 3, 1989.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034;

February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Parts 71 and 73

Aviation safety, Continental control area, Restricted areas.

The Proposed Amendments

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend parts 71 and 73 of the Federal Aviation Regulations (14 CFR parts 71 and 73) as follows:

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

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

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

§ 71.151 [Amended]

2. Section 71.151 is amended as follows:

R–6320 Matagorda, TX [New]

PART 73—SPECIAL USE AIRSPACE

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

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

§ 73.63 [Amended]

4. Section 73.63 is amended as follows:

R–6320 Matagorda, TX [New]

Boundaries. That airspace within a 3-mile circle centered at lat. 28°42′34″ N., long. 95°57′34″ W.
Designated altitudes. Surface up to and including 15,000 feet MSL.
Time of designation. Continuous.
Controlling agency. Houston ARTCC.
Using agency. United States Customs Service.

Issued in Washington, DC, on February 27, 1990.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Service.

[FR Doc. 90–5146 Filed 3–6–90; 8:45 am]

BILLING CODE 1910-13-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: Notice of informal public hearing.

SUMMARY: OSHA is scheduling an informal public hearing on its proposed standard (54 FR 23991, June 5, 1989) to modify the existing provisions for controlling employee exposure to toxic substances found in 29 CFR 1910.1000(e) and 29 CFR 1910.134(a)(1). This hearing will allow interested persons to present information and evidence on the issues raised by the proposed standard.

DATES: Notices of intention to appear at the informal public hearing must be postmarked by April 18, 1990.

Testimony, comments and all evidence which will be introduced into the hearing record must be postmarekd by May 7, 1990. The hearing will be held in Washington, DC beginning Wednesday, May 30, 1990 at 9:30 a.m. The hearing will continue, if necessary, through Friday, June 1, 1990.

ADDRESSEE: Notices of intention to appear at the hearing and testimony and documentary evidence which will be introduced into the hearing record must be submitted in quadruplicate to Mr. Tom Hall, Occupational Safety and Health Administration, Division of Consumer Affairs, Room N3649, 200 Constitution Avenue NW., Washington, DC 20210; (202) 523–8615.

The informal public hearing will be held in the auditorium of the Frances Perkins Department of Labor Building, 200 Constitution Avenue NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT:

Hearings: Mr. Tom Hall, Occupational Safety and Health Administration, Division of Consumer Affairs, Room N3649, 200 Constitution Avenue NW., Washington, DC 20210; (202) 523–8615

Proposal: Mr. James F. Foster, Office of Public Affairs, U.S. Department of Labor, Occupational Safety and Health Administration, Room N3649, 200 Constitution Avenue NW., Washington, DC 20210; (202) 523–8151.

SUPPLEMENTARY INFORMATION: On June 5, 1989, OSHA proposed to amend its existing provisions for the methods of controlling exposure to toxic substances addressed in its Air Contaminant Standard (29 CFR 1910.1000(e)) and Respiratory Protection Standard (29 CFR 1910.134(a)(1)). The Agency proposed to incorporate additional flexibility in its methods of compliance requirements by explicitly setting forth, in regulatory language, the circumstances under which respirators may be used due to the general infeasibility of limiting exposure through implementation of engineering controls. Other approaches to providing employers with greater flexibility in choosing exposure control methodology were also raised in the preamble to the proposed rule.

OSHA's proposed standard is based on data submitted to the record in response to an Advance Notice of Proposed Rulemaking published on February 22, 1983 (48 FR 7473), and on its experience from other rulemakings dealing with the issue of compliance methodology. The record identified specific situations where engineering controls generally may not be feasible and where respirators may have to be used. The circumstances that were identified by OSHA from data in the record where engineering controls may generally be infeasible are:

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.

The proposed standard incorporated regulatory language specifically exempting these circumstances from requirement of control by engineering means.

OSHA proposed paragraph (f)(5) to deal with circumstances where it was infeasible to protect employees from unknown atmospheres through the use of engineering or administrative controls. The discussion of the proposed provision (54 FR at 23995) included reference to confined spaces as examples of workplaces which would be covered by paragraph (f)(5). OSHA wishes to clarify that discussion by noting that there are, in fact, many confined space work situations where it is feasible to protect employees from any hazards which may be confronted in unknown atmospheres through the use

of engineering controls. Therefore, only those confined spaces where it is infeasible to protect employees using such controls would be covered by proposed paragraph (f)(5). OSHA solicits testimony, with supporting information, on any workplace circumstances, including confined spaces, which would be appropriately regulated under the proposed paragraph.

The proposed standard also raised for comment other circumstances and approaches where the use of respirators in lieu of feasible engineering controls have been suggested as being suitable in controlling exposure to toxic substances. Comment was requested on the appropriateness of utilizing respirators to control exposure when performing brief, intermittent tasks, during maintenance activities, and to achieve compliance with short-term exposure limits. Further, OSHA requested comment on: (1) Circumstances in which cost effectiveness factors would be a legitimate consideration in determining the acceptability of one control method over another; (2) the appropriateness of allowing 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; (3) whether reliable and predictable exposure control can be achieved if employers are 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 implementing feasible engineering controls; and (4) whether it would be acceptable to allow employers under any circumstances to comply with exposure limits by any method the employer deems advisable.

OSHA is interested in receiving testimony and data on the issues mentioned above and on other issues relevant to the discussions set-forth in the proposal.

In response to the proposed rule, OSHA has received 89 written comments from interested parties. These comments are available for inspection and copying in the OSHA Docket Office, Room N-2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. In addition, OSHA received requests for a public Hearing from the American Iron and Steel Institute (Ex. 6-20), SPI Composites Institute (Ex. 6-22), and the United Steelworkers of America (Ex. 6-73).

Persons interested in participating in the hearing should refer to the notice of proposed rulemaking on Methods of Compliance (54 FR 23991) for the text of the proposal and a more thorough discussion of issues related to this proceeding.

Public Participation in Hearing

Pursuant to section 6(b) (3) of the Act, an opportunity to submit oral testimony concerning the limited issues raised by this notice will be provided at an informal public hearing scheduled to begin at 9:30 a.m. on May 30, 1990 in the Auditorium, Frances Perkins Department of Labor Building, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice of Intention to Appear

All persons desiring to participate at the hearing must file in quadruplicate a notice of intention to appear, postmarked on or before April 18, 1990, addressed to Mr. Tom Hall, OSHA Division of Consumer Affairs, Docket H-160, Room N-3647, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 523-8615. The notice of intention to appear also may be transmitted by facsimile to (202) 523-5046 or (for FTS) to 8-523-5046, provided the original and 4 copies of the notice are sent to the above address therafter.

The notices of intention to appear, which will be available for inspection and copying at the OSHA Technical Data Center Docket Office, Room N-2625, 200 Constitution Avenue NW., Washington, DC 20210, telephone (202) 523-7894, must contain the following information:

(1) The name, address, and telephone number of each person to appear;

(2) The capacity in which the person will appear;

(3) The approximate amount of time requested for the presentation;

(4) The specific issues that will be addressed;

(5) A statement of the position that will be taken with respect to each issue addressed; and

(6) Whether the party intends to submit documentary evidence, and if so, a brief summary of that evidence.

Filing of Testimony and Evidence Before Hearing

Any party requesting more than 10 minutes for a presentation at the hearing, or who will submit documentary evidence, must provide in quadruplicate the complete text of his testimony, including any documentary evidence to be presented at the hearing, to the OSHA Division of Consumer Affairs. This material must be postmarked by May 7, 1990 and will be available for inspection and copying at the Technical Data Center Docket Office. Each such submission will be reviewed in light of the amount of time requested in the Notice of Intention to Appear. In those instances where the information contained in the submission does not justify the amount of time requested, a more appropriate amount of time will be allocated and the participant will be notified of that fact.

Any party who has not substantially complied with this requirement may be limited to a 10-minute presentation. Any party who has not filed a notice of intention to appear may be allowed to testify, as time permits, at the discretion of the Administrative Law Judge.

OSHA emphasizes that the hearing is open to the public, and that interested persons are welcome to attend. However, only persons who have filed proper Notices of Intention to Appear at the hearing will be entitled to ask questions and otherwise participate fully in the proceeding.

Conduct and Nature of Hearing

The hearing will commence at 9:30 a.m., on May 30, 1990. At that time, any procedural matters relating to the proceeding will be resolved. The informal nature of the rulemaking hearings to be held is established in the legislative history of section 6 of the Act and is reflected by the OSHA hearing regulations (see 29 CFR 1911.15(a). Although the presiding officer is an Administrative Law Judge and questioning by interested persons is allowed on crucial issues, it is clear that the proceeding shall remain informal and legislative in type. The intent, in essence, is to provide an opportuntiy for effective oral presentation by interested persons which can be carried out expeditiously and in the absence of rigid procedures which might unduly impede or protract the rulemaking process.

The hearings will be conducted in accordance with 29 CFR part 1911. The hearing will be presided over by an Administrative Law Judge who will have all the powers necessary and appropriate to conduct a full and fair informal hearing as provided in 29 CFR part 1911 including the powers.

(1) To regulate the course of the proceedings;

(2) To dispose of procedural requests, objections and comparable matters;

(3) To confine the presentation to the matters pertinent to the issues raised;

(4) To regulate the conduct of those present at the hearing by appropriate means;

(5) In the Judge's discretion, to question and permit the questioning of any witness and to limit the time for questioning; and

(6) In the Judge's discretion, to keep the record open for a reasonable, stated time to receive written information and additional data, views, and arguments from any person who participated in the oral proceedings.

Following the close of the hearing, the presiding Administrative Law Judge will certify the record of the hearing to the Assistant Secretary of Labor for Occupational Safety and Health. The Administrative Law Judge does not make or recommend any decisions as to the content of the final standard.

The proposed standard will be reviewed in light of all testimony and written submissions received as part of the record and a standard will be issued based on the entire record of the proceeding, including the written comments and data received from the public.

Authority and Signature

This document was prepared under the direction of Gerald F. Scannell, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

It is issued under section 6(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655), Secretary of Labor's Order No. 9–83 (48 FR 35736) and 29 CFR part 1911.

Signed at Washington, DC on this 28th day of February, 1990.

Gerard F. Scannell,

Assistant Secretary of Labor.

[FR Doc. 5077 Filed 3–6–90; 8:45 am]

BILLING CODE 4510-26-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD5-90-003]

Drawbridge Operation Regulations; Elizabeth River, Eastern Branch, Norfolk, VA

AGENCY: Coast Guard, DOT.

ACTION: Supplemental Notice of Proposed Rulemaking.

SUMMARY: The Coast Guard is issuing a suplemental proposed rule for the operation of the Berkley drawbridge across the Eastern Branch of the Elizabeth River, mile 0.4, in Norfolk, Virginia, to allow commercial vessels with drafts 22 feet or greater passage through the bridge during the morning and evening rush hours. This supplemental proposed rule will include a requirement that these deep draft vessels give a 12-hour advance notice for passage through the drawbridge during peak traffic hours. The proposed changes to these regulations are, to the extent practical and feasible, intended to provide for regularly scheduled drawbridge openings to help reduce motor vehicle traffic delays and congestion on the roads and highways linked by this drawbridge.

DATES: Comments must be received on or before April 23, 1990.

ADDRESSES: Comments should be mailed to Commander (ob), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004. The comments and other materials referenced in ths notice will be available for inspection and copying at the above address, room 507, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Comments may be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District at (804) 398–6222.

SUPPLEMENTARY INFORMATION: On October 17, 1989, the Coast Guard published a proposed rule (54 FR 42517) to evaluate bridge opening restrictions during the morning and evening rush hours for the Berkley Bridge. The Commander, Fifth Coast Guard District also published the proposed rule as a public notice on October 6, 1989. Interested persons were given until December 1, 1989, to comment on the proposed rule that was published in the **Federal Register**. The comment period for the public notice ended November 9, 1989. An amendment to the public notice was issued November 6, 1989, extending the comment period to December 1, 1989, to coincide with the comment period published in the **Federal Register**.

This supplementary proposed rule exempts commercial vessels with drafts of 22 feet or greater from rush hour restrictions provided they give at least 12 hours advance notice for a bridge lift. Imposition of the 12-hour advance notice requirement will provide motorists with an opportunity to learn about scheduled bridge openings by radio broadcasts and any other means established by the bridge owner.

Public comments are requested on the deep draft vessel exemption provision and the 12-hour advance notice to ensure that this proposal is both reasonable and workable. Persons wishing to comment may do so by submitting written comments to the office listed under "**ADDRESSES**" in this preamble. Persons submitting comments should include their names and addresses, identify the bridge and give reasons for their comments. The Commander, Fifth Coast Guard District, will evaluate all communications received and determine a final course of action on this supplemental proposal. This rule may be changed based on comments received.

Drafting Information

The drafters of this notice are Linda L. Gilliam, project officer, and LT S. M. Fitten, project attorney.

Discussion of Proposed Regulations

On June 14, 1989, Senator Stanley C. Walker requested that the regulations for the drawbridge across the Eastern Branch of the Elizabeth River at mile 0.4 in Norfolk, Virginia, be amended to restrict openings during the peak highway traffic hours to help reduce traffic congestion, but remain open on signal during the rest of the time. The proposed change would have closed the Berkley Bridge to commercial, recreational, and public vessels Monday through Friday, except Federal holidays, from 5:30 a.m. to 9 a.m., and from 3:30 p.m. to 6:30 p.m. A provision that allows the draw to open on signal at all times for vessels in distress was made a part of the proposal. This supplemental proposal includes the above with an additional provision which provides commercial deep draft vessels with drafts of 22 feet or greater access through the bridge anytime provided they give a 12-hour advance notice of their arrival during the morning and evening rush hours.

As a result of the proposed rule that was published in the **Federal Register** (54 FR 42517) and the public notice issued on October 6, 1989, written comments were received from the maritime community and the motoring public. The comments from motorists were all in favor of the proposed restrictions during peak traffic hours since elemination of draw openings during these hours should help reduce traffic disruption, delays, congestion and minor accidents. The comments from the commercial marine industry were opposed to restricting the drawbridge based on such generalized factors as safety, economic impact concerns, and deep-draft vessel navigation requirements. The industry stated that restriction of deep draft vessels during the morning and evening rush hours would result in numerous days when vessels with drafts of 22 feet or greater would not be able to navigate through the bridge since these vessels require high tide to go upstream of the bridge due to the channel depth. The original proposal would have generally

restricted their operations to just a 6 and one-half hours of daylight.

Since high tide does not always occur between the hours of 9 a.m. and 3:30 p.m., this supplemental proposal will include an additional provision to permit commercial vessels with drafts of 22 feet or greater to transit the bridge provided they give a 12-hour advance notice of their estimated time of arrival. The 12-hour advance notice requirement will provide motorists with an opportunity to learn about scheduled bridge openings by radio broadcasts and highway sign announcements.

In deciding the issues in case, consideration was given to all views. However, it is felt that the needs of motorists who use the bridge and the requirements of deep draft vessels needing to transit upstream at high tide warrant special consideration. The Coast Guard feels that imposition of this proposed rule, especially in view of the existing "gentlemen's agreement", will not create an undue hardship on other commercial interests who do not use deep-draft vessels in their operations, since these companies can plan most of their vessel transits around the restricted hours of operation. While they may be inconvenienced, they will not suffer the same hardships as deep-draft commercial vessels. Also, we know from past experience that the "gentleman's agreement" is not always an effective method of eliminating rush hour bridge openings.

Federalism Assessment

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

Economic Assessment and Certification

These proposed regulations are not considered major under Executive Order 12291 on Federal Regulation nor significant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of the proposed regulation on commercial navigation or on any industries that depend on waterborne transportation should be minimal. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

Environmental Impact

This rulemaking has been thoroughly reviewed by the Coast Guard and it has been determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.g. of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR part 117

Bridges.

Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 117 of title 33, Code of Federal Regulations to read as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g); 33 CFR 117.43.

2. Section 117.1007(c) is added to read as follows:

§ 117.1007 Elizabeth River-Eastern Branch.

* * * * *

(c) The draw of the Berkley Bridge, mile 0.4 in Norfolk—

(1) Shall open on signal at any time except from 5:30 a.m. to 9 a.m. and from 3:30 p.m. to 6:30 p.m., Monday through Friday, except Federal holidays.

(2) From 5:30 a.m. to 9 a.m. and from 3:30 p.m. to 6:30 p.m., Monday through Friday, except Federal holidays;

(a) Shall open at any time for commercial vessels with a draft of 22 feet or more, provided at least 12 hours advance notice has been given to the Berkley Bridge Traffic Control Room at (804) 494-2424, and

(b) Shall open on signal at any time for a vessel in distress.

Dated: February 23, 1990.

P.A. Welling,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 90-5102 Filed 3-6-90; 8:45 am]

BILLING CODE 4910-14-M

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46 CFR Part 10

[CGD 85-90]

RIN 2115-AB99

Training in the Use of ARPA

AGENCY: Coast Guard, DOT

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to amend the requirements for radar observer courses to include training in the use of Automatic Radar Plotting Aids (ARPA). These changes are necessary because of the regulatory requirement that most vessels over 10,000 gross tons be equipped with ARPA and the voluntary installation of ARPAs on other vessels coupled with the dangers associated the possible misinterpretation of the information provided by ARPA. These rules should enhance navigational safety by providing for better trained merchant marine personnel.

DATES: Comments must be received on or before June 5, 1990.

ADDRESSES: Comments should be mailed to the Executive Secretary, Marine Safety Council (G-LRA-2/3600) (CGD 85-089), U.S. Coast Guard, 2100 Second St., SW., Washington, DC 20593-0001. Comments may be delivered to, and will be available for inspection and copying at, The Marine Safety Council, U.S. Coast Guard, Room 3600, 2100 Second St., SW., Washington, DC 20593-0001, (202) 267-1477, between the hours of 8 a.m. and 3 p.m. Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Flyntz, Merchant Vessel Personnel Division (G-MVP/12), Room 1210, U.S. Coast Guard, 2100 Second Street, SW., Washington, DC 20593-0001, (202) 267-0214.

SUPPLEMENTARY INFORMATION: This proposal would: (1) require that courses leading to Radar Observer (Unlimited) and Radar Observer (Inland Waters) endorsement include training in the fundamentals and operation of ARPA and (2) require that courses leading to Radar Observer (Unlimited Renewal) and Radar Observer (Inland Waters Renewal) include instruction and demonstration of the use of ARPA. All holders of Radar Observer endorsements will be affected, however, those presently holding endorsements will only be required to demonstrate familiarity with ARPA during a renewal course.

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments. Written comments should include the docket number (CGD 85-089), the name and address of the person submitting the comments, and the specific section of the proposal to which each comment is addressed. Persons desiring acknowledgment that their comment has been received should enclose a stamped, self-addressed postcard or envelope. All comments

received will be considered before final action is taken on this proposal. No public hearings are planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The principal persons involved in drafting this proposal are Mr. Frank J. Flyntz, Project Manager, Merchant Vessel Personnel Division, and Lieutenant Commander Don M. Wrye, Project Attorney, Office of Chief Counsel.

Background

The Coast Guard carries out its marine safety mission through the Marine Licensing Program by insuring that mariners have the knowledge and skills necessary to safely operate their vessels. Changes in equipment and conditions have to be taken into account and the program is continuously reviewed for this purpose. The results of changing equipment and conditions are usually reflected in gradual changes in examinations and training programs. Occasionally a change in equipment occurs that is so significant that new training is required.

The introduction of radar is an example of one of these significant changes. Radar in its collision avoidance use is directly and immediately related to safety. At the time of its introduction the proper operation of radar required knowledge and skills that most mariners did not possess. Misinterpretation of radar information is common among the untrained and can lead to disastrous results. Radar has been blamed for several collisions leading to the term "radar assisted collision," which is defined as a situation where ships would have passed clear if watchstanding personnel had not acted on their misinterpretation of radar information. ARPA is in the same category as radar. Although ARPA has not been blamed for disasters, it presents an immediate training need for the same reasons.

ARPA units are required on the majority of large commercial vessels. The chance that a licensed deck officer will encounter ARPA equipment is high. The International Maritime Organization (IMO) has both a recommendation and guidelines for ARPA training. Several maritime training schools have already included ARPA courses in their curriculum.

On October 24, 1985, the Coast Guard published a "Request for Comments" in the **Federal Register** (50 FR 43258) inviting comments on whether regulatory action is necessary to ensure that the training of U.S. licensed officers meets the International Maritime Organization (IMO) recommendations regarding the use of ARPA. Eleven comments were received. Ten comments generally supported the concept that ARPA training be required for all masters, chief mates, and officers in charge of a navigational watch on ships fitted with ARPA. One of those comments expressed doubt that training received on one type of ARPA equipment would be transferable to another type. While ARPA units of different manufacturer have considerable differences, it has been the Coast Guard's experience that training on one type of ARPA equipment has been transferable to equipment of a different manufacturer. In addition to this operational familiarity, the deck officer who has received the required training understands the dangers that can accompany misuse of ARPA. One comment was opposed to requiring ARPA training because it would be duplicative. That comment also suggested granfathering deck officers who had existing radar observer endorsements if ARPA training becomes a requirement. This rulemaking proposes a partial grandfathering for those deck officers who have existing radar observer endorsements. Under the proposed rules, those deck officer who have current radar observer endorsements may continue to serve under those endorsements. However, at renewal some instruction and practical demonstration with ARPA will be required.

Discussion of the Proposed Regulations

It is proposed to amend 46 CFR 10.305 to require ARPA training in courses leading to certificates of Radar Observer (Unlimited) or Radar Observer (Inland Waters). The required training will include knowledge of principles of operation and a practical demonstration of ARPA use. Training in the operating principles will include instruction concerning the possible risks of over-reliance on ARPA; familarization with the principal types of ARPA systems; and system performance and capabilities. The practical training will include a demonstration of acquiring, interpreting, and using navigational information from the ARPA unit; conducting system operational tests; and the use, benefits, and limitations of operational warnings. Courses leading to certificates of Radar observer (Unlimited Renewal) or Radar Observer (Inland Waters Renewal) would only have to include the practical training elements. Deck officers already holding Radar Observer endorsements would not be required to take all of the ARPA training if they could demonstrate proficiency in ARPA operation. No additional license endorsement will be required.

Paperwork Reduction

This proposed rule contains no new or additional information collection or recordkeeping requirements.

Regulatory Evaluation

These proposed regulations are considered to be non-major under Executive Order 12291, and non-significant under DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). Should these proposed rules be adopted, there would be two identifiable additional costs. One would be the cost of additional training necessary to obtain an original radar observer certificate. The average cost of this additional training is estimated at $400. The second would be the cost of additional time needed at a training facility to demonstrate ARPA skills when obtaining a renewal of the radar observer certificate. The average additional cost of renewal is estimated at $100. There are approximately 3500 original and renewal certificates issued each year, of which approximately 700 are original and 2800 are renewals. Therefore, the total estimated annual costs are $280,000 (700 x $400) for original training, and $280,000 (2800 x $100) for renewal. Based on the above, the economic impact of this proposal has been found to be so minimal that further evaluation is unnecessary. Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

Federalism

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

List of Subjects in 46 CFR Part 10

Reporting and recordkeeping requirements, Schools, Seamen.

In consideration of the foregoing, it is proposed that Title 46, part 10 of the Code of Federal Regulations be amended as follows:

1. The authority citation for part 10 continues to read as follows:

Authority: 46 U.S.C. 2103, 7101, 7701, 8105; 46 U.S.C. App. 1295g; 49 CFR 1.45, 1.46; § 10.01-6 also issued under the authority of 44 U.S.C. 3507.

2. Section 10.305 is amended by adding new paragraphs (c)(1)(v) and (c)(1)(vi), and revising paragraphs (c)(3) and (c)(4) to read as follows:

§ 10.305 Radar observer qualifying courses.

* * * * *

(c) * * *

(1) * * *

(v) Theoretical knowledge of the proper operation of an Automatic Radar Plotting Aid (ARPA) unit, including:

(A) The possible risks of over-reliance on ARPA;

(B) The principle types of ARPA systems and their display characteristics;

(C) The IMO performance standards for ARPA;

(D) Factors affecting system performance and accuracy;

(E) Tracking capabilities and limitations of ARPA; and

(F) Processing delays.

(vi) Practical demonstration of the following skills:

(A) Setting up and maintaining ARPA displays;

(B) When and how to use the operational warnings, their benefits, and limitations;

(C) System operational tests;

(D) When and how to obtain information in both relative and true motion modes of display, including;

(*1*) Identification of critical echos;

(*2*) Use of exclusion areas in automatic mode;

(*3*) Speed and direction of a target's relative movement;

(*4*) Time to, and predicted range at, a target's closest point of approach;

(*5*) Course and speed of targets;

(*6*) Dectecting course and speed changes of targets and the limitations of such information;

(*7*) Effect of changes in own ship's course or speed or both; and

(*8*) Operation of the trial maneuver;

(E) Manual and automatic acquisition of targets and their respective limitations;

(F) When and how to use true and relative vectors and typical graphic representation of target information and danger areas;

(G) When and how to use information on past positions of targets being tracked; and

(H) Application of the Rules of the Road.

* * * * *

(3) Radar Observer (Unlimited Renewal). Classroom instruction, including demonstration and practical exercises using simulators, and examinations in the subjects listed in paragraphs (c)(1)(iii), (iv), and (vi) of this section.

(4) Radar Observer (Inland Waters Renewal). Classroom instruction, including demonstration and practical exercises using simulators, and examinations in the subjects listed in paragraphs (c)(1)(iii) and (vi) of this section.

Dated: February 6, 1990.

J.D. Sipes,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 90-5076 Filed 3-6-90; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 251

[Docket No. 900235-0035]

Financial Aid Program Procedures

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Advanced Notice of Proposed Rulemaking.

SUMMARY: NOAA is considering whether to discontinue the conditional fishery status of salmon in Alaska. A number of salmon fishermen have urged such discontinuation, with support from the Governor of Alaska. The result of discontinuation would be to remove restrictions on the use of NOAA's financial aid programs in this fishery.

DATES: Written comments must be received on or before April 6, 1990.

ADDRESSES: Send written comments to Michael L. Grable, Chief, Financial Services Division, National Marine Fisheries Service, F/TS1, 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: John A. Kelly, Jr. (Financial Services Division, NMFS), 301-427-2393. This is not a toll-free telephone number.

SUPPLEMENTARY INFORMATION: Regulations governing NOAA's financial aid programs list a number of fisheries as "conditional" (50 CFR Part 251, subpart (B). Theses regulations implement a provision of authorizing legislation, 46 U.S.C. 1274(d)(1)(B), that requires a determination by the Secretary of Commerce that financing is "consistent with the wise use of the fisheries resources, and with the development, advancement, management, conservation, and protection of the fisheries resources. * * *" The Alaska salmon fishery has been a conditional fishery since September 23, 1974.

Fisheries Obligation Guarantee Program

The purpose of one of NOAA's financial aid programs, the Fisheries Obligation Guarantee program (FOG), is to make long-term financing available to the U.S. fishing industry by providing a U.S. Government guarantee of repayment of 80 percent of the actual cost of fishing vessel and shoreside facility construction, reconstruction, reconditioning, or purchasing. The restriction on the FOG program in a conditional fishery (50 CFR 255.5(c) is that one of the following conditions must be met before a guarantee is available for construction of a new vessel or for transfer of a used vessel into the fishery:

(1) The vessel must also be fully equipped for, and fully capable of, operating in an underutilized fishery;

(2) The vessel must replace a vessel of comparable fishing capacity that had operated in the conditional fishery prior to the designation of such fishery as conditional;

(3) The vessel was contracted for prior to the designation;

(4) The financing will be used for the reconstruction or reconditioning of a vessel already operating in the conditional fishery; or

(5) The application for a guarantee had been submitted prior to designation. 50 CFR 255.5(c).

Capital Construction Fund

The purpose of another financial aid program, the Capital Construction Fund (CCF), is to improve the U.S. fishing fleet by allowing fishermen rapid accumulation of funds with which to replace or improve their vessels. CCF enables fishermen to construct, reconstruct, or acquire fishing vessels with before-tax, rather than after-tax, dollars. This tax-deferred income under the CCF program is, in effect, an interest-free loan from the Government.

A vessel owner may enter a CCF agreement to construct a new vessel in a conditional fishery if it is replacing a vessel of equivalent capacity within one year. The removed vessel must have operated in the conditional fishery for at least 18 months prior to construction of the new vessel, and must be removed from all fishing or placed permanently in a non-conditional fishery. Reconstruction of a vessel in a

conditional fishery will not be deemed to increase the harvesting capacity significantly if it operated substantially in the conditional fishery for at least 36 months before reconstruction (see regulations at 50 CFR 259.32).

Discontinuation of Conditional Status

The Governor of Alaska supports discontinuation of the conditional status for the Alaska salmon fishery. Alaska has a limited entry plan that restricts the number of vessels permitted to harvest this resource. The Governor's letter stated in part: "Since the number of entry permits is fixed, use of these programs could not increase the number of vessels in the salmon fishery. This action would simply allow fishermen to receive the same benefits from these Federal programs that other fishermen have enjoyed for years. It will encourage the upgrading of vessels and provide for more safe and efficient operations." A large number of Alaska salmon fishermen and other interested parties have expressed similar positions.

Regulations at 50 CFR 251.90 set out evaluation criteria for determining whether a fishery should be listed as conditional. The criteria include environmental factors; history, present status, and prospective developments of the fishery; conditions necessary for improvement of a depressed fishery; conditions necessary for reasonable stability of an economically and environmentally sound fishery; conditions that could contribute to adverse fluctuations or declines in yield; the need to improve the economic efficiency of the fleet; the need to assure safe and healthful fishing vessels; the need to improve the engineering efficiency of the vessels; social needs; and information and data related to the fishery.

NOAA has determined that a full record of comment is necessary before determining whether to proceed with a proposed rule. Therefore, through this notice, we invite comments from all interested parties on whether to discontinue the conditional fishery status for the Alaska salmon fishery. We are particularly interested in information and views on the factors listed above, and on the effect of removing the conditional status from the Alaska salmon fishery on other West Coast salmon fisheries.

Dated: March 1, 1990.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 90-5202 Filed 3-6-90; 8:45 am]

BILLING CODE 3510-22-M

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50 CFR Part 641

Reef Fish Fishery of the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of availability of an amendment to a fishery management plan, and request for comments.

SUMMARY: NOAA issues this notice that the Gulf of Mexico Fishery Management Council has submitted amendment 2 to the Fishery Management Plan for the Reef Fish Fishery of the Gulf of Mexico (FMP) for Secretarial review and is requesting comments from the public.

DATES: Comments will be accepted until April 30, 1990.

ADDRESSES: Comments should be sent to Robert A. Sadler, Southeast Regional Office, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702. Mark envelope, "Reef Fish Amendment 2." Copies of amendment 2 may be obtained from the Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 881 Tampa, Florida 33609. Phone (813) 228-2815.

FOR FURTHER INFORMATION CONTACT: Robert A. Sadler, (813) 893-3722.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (Magnuson Act) requires that a council-prepared fishery management plan or amendment be submitted to the Secretary of Commerce (Secretary) for review and approval or disapproval. The Magnuson Act also requires that the Secretary, upon receiving the document, immediately publish a notice of its availability for public review and comment. The Secretary will consider public comment in determining approvability of the document.

Amendment 2 proposes a total prohibition on the harvest or possession of jewfish in or from the exclusive economic zone (EEZ) of the Gulf of Mexico. This action is proposed in response to noted declines in the number of jewfish, especially off Florida where, historically, the geographic center of abundance has been located.

Recently, a 50-inch minimum size limit became effective for jewfish harvest in the Gulf of Mexico. However, in view of the reported decreasing numbers of jewfish, a ban on all harvest was considered the most appropriate approach to conserve and restore this dwindling resource. Certain life history characteristics make jewfish highly vulnerable to fishing mortality. They are generally associated with high-profile reef and wreck structures that make them easy to locate by fishermen. They are curious and often approach divers. They form spawning aggregations during the summer, thereby making themselves readily available to divers and fishermen at a time when effort is usually the heaviest. In addition, jewfish are a relatively long-lived and late-maturing species. All of these attributes combine to make jewfish very susceptible to overfishing, and once overfished, would not be expected to recover readily from a resource collapse. Jewfish are currently afforded protection in the Gulf through an emergency rule that was implemented in the interim of the Council proposing a management system to conserve and rebuild this resource. Proposed regulations to implement Amendment 2 are scheduled to be filed by March 14, 1990, for publication.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 1, 1990.

David S. Crestin,

Acting Director of Office of Fisheries Conservation and Management.

[FR Doc. 90-5105 Filed 3-2-90; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 55, No. 45
Wednesday, March 7, 1990

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Mobil Oil Corporation M-70 Pipeline; Correction of EIS Intent Notice

AGENCY: Forest Service, USDA.

ACTION: Amendment of notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service published on Thursday, February 22, 1990 in the **Federal Register**, Vol. 55, No. 36, the notice of intent to prepare an environmental impact statement for Mobil Oil Corporation's M-70 Pipeline Replacement & System Optimization project. This notice contained the following paragraph which is incorrect:

The Forest Service and the Department of Regional Planning will hold the following public scoping meeting: 7-10 p.m., Friday, March 14, 1989, City Council Chambers, 23920 Valencia Boulevard, Santa Clarita, California 91355.

This paragraph should read:

The Forest Service and the Department of Transportation will hold the following public scoping meeting: 7-10 p.m., Friday, March 16, 1990, City Council Chambers, 23920 Valencia Boulevard, Santa Clarita, California 91355.

Other information published in the Notice of intent is correct.

Dated: February 28, 1990.

Andrew E. Gilliland,

Acting Deputy Forest Supervisor.

[FR Doc. 90-5125 Filed 3-6-90; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 4-90]

Foreign-Trade Zone 155—Calhoun-Victoria Counties, TX; Application for Subzone; Alcoa Alumina and Aluminum Fluoride Plant

Correction

The notice on this case (notice document 90-3885), which appeared in the **Federal Register** on Wednesday, February 21, 1990, at page 6027 (55 FR 6027), is amended to change the address of the Customs office at which the application is available for public inspection to: Port Director's Office, U.S. Customs Service, Southwest Region, P.O. Box 1027, Corpus Christi, TX 78403.

Dated: March 1, 1990.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 90-5206 Filed 3-7-90; 8:45 am]

BILLING CODE 3510-DS-M

[Order No. 464]

Approval for Expansion of Foreign-Trade Zone 82; Mobile, AL

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), and the Foreign-Trade Zones Board Regulations (15 CFR part 400), the Foreign-Trade Zones Board (the Board) adopts the following Resolution and Order:

Whereas, the City of Mobile, Alabama, Grantee of Foreign-Trade Zone No. 82, has applied to the Board for authority to expand its zone at the Brookley Complex in Mobile, within the Mobile Customs port of entry;

Whereas, the application was accepted for filing on April 8, 1988, and notice inviting public comment was given in the **Federal Register** on April 19, 1988 (Docket 20-88, 53 FR 12798);

Whereas, an examiners committeee has investigated the application in accordance with the Board's regulations and recommends approval;

Whereas, the expansion is necessary to improve and expand zone services in the Mobile area; and,

Whereas, the Board has found that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, Therefore, the Board hereby orders:

That the Grantee is authorized to expand its zone in accordance with the application filed April 8, 1988. The grant does not include authority for manufacturing operations, and the Grantee shall notify the Board for approval prior to the commencement of any manufacturing or assembly operations. The authority given in this Order is subject to settlement locally by the District Director of Customs and the District Army Engineer regarding compliance with their respective requirements relating to foreign-trade zones.

Signed at Washington, DC, this 27th day of February, 1990.

Eric I. Garfinkel,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates; Foreign-Trade Zones Board.

[FR Doc. 90-5080 Filed 3-6-90; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[C-357-803]

Initiation of Countervailing Duty Investigation: Leather From Argentina

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether producers in Argentina of leather, as described in the "Scope of Investigation" section of this notice, receive benefits which constitute bounties or grants within the meaning of the countervailing duty law. If this investigation proceeds normally, we will make our preliminary determination on or before May 7, 1990.

EFFECTIVE DATE: March 7, 1990.

FOR FURTHER INFORMATION CONTACT: Kay Halpern or Roy A. Malmrose, Office

of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-0192 and (202) 377-5414.

SUPPLEMENTARY INFORMATION:

The Petition

On February 9, 1990, we received a petition in proper form filed on behalf of the U.S. industry producing leather. In compliance with the filing requirements of 19 CFR 355.12 of the 1989 Commerce Regulations, petitioners allege that leather producers in Argentina receive certain benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act).

Argentina is not a "country under the Agreement" within the meaning of section 701(b) of the Act, and the merchandise being investigated is dutiable. Therefore, sections 303(a)(1) and (b) of the Act apply to this investigation. Accordingly, the petitioners are not required to allege that, and the U.S. International Trade Commission is not required to determine whether, imports of leather from Argentina materially injure, or threaten material injury to, a U.S. industry.

Petitioners have alleged that they are an interested party as defined under section 771(9)(C) of the Act and that they have filed the petition on behalf of the U.S. industry producing the products that are subject to this investigation. If any interested party as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act wishes to register support of or opposition to this petition, please file written notification with the Commerce officials cited in the "**FOR FURTHER INFORMATION CONTACT**" section of this notice.

Initiation of Investigation

Under section 702(c) of the Act, we must make a determination on whether to initiate a countervailing duty proceeding within 20 days after a petition is filed. Section 702(b) of the Act requires the Department to initiate a countervailing duty proceeding whenever an interested party files a petition on behalf of an industry that: (1) Alleges the elements necessary for the imposition of a duty under section 701(a), and (2) is accompanied by information reasonably available to the petitioner supporting the allegations. We have examined the petition on leather from Argentina and have found that it meets these requirements. Therefore, we are initiating a countervailing duty investigation to determine whether leather producers in Argentina receive bounties or grants. If our investigation proceeds normally, we will make our preliminary determination on or before May 7, 1990.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted to the Harmonized Tariff Schedule (HTS), as provided for in section 1201 et seq. of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered or withdrawn from warehouse for consumption on or after this date is classified solely according to the appropriate HTS subheading(s). The HTS subheadings are provided for convenience and Customs purposes. The written description remains dispositive as to the scope of the product coverage.

The product covered by this investigation is leather. The types of leather that are subject to this investigation include, but are not necessarily limited to: Bovine, buffalo, sheep, goat, swine, reptile, chamois, patent leather, calf and kip patent laminated, and metalized leather. Leather is an animal skin that has been subjected to certain treatment to make it serviceable and resistant to decomposition. It is used in the footwear, clothing, furniture and other industries. Leather is classified under HTS numbers 4104.10.20 through 4104.39.80, 4105.11.00 through 4105.20.60, 4106.11.00 through 4106.20.60, 4107.10.00 through 4107.90.60, 4108.00.00, and 4109.00.30 through 4109.00.70, and was formerly classifiable under *Tariff Schedules of the United States Annotated* (TSUSA) item numbers 121.10 through 121.65. The written description remains dispositive.

Allegations of Bounties or Grants

Petitioners list a number of practices by the Government of Argentina which allegedly confer bounties or grants on leather producers in Argentina. We are initiating an investigation of the following programs:

- Embargo on Cattle Hide Exports
- Export Payments under Decree 176: Programa Especial de Exportaciones
- Pre-Export Financing
- Post-Export Financing
- Reembolso
- Financing for Investments for Export (FIDEX)
- Tax Deduction under Decree 173/85
- Corrientes Regional Tax Incentives
- Industrial Parks
- Low Cost Loans for Projects Outside Buenos Aires
- Discounts of Foreign Currency Accounts Receivable under Circular RF-21
- Exemption from Stamp Tax under Decree 186/76
- Government Trade Promotion Programs
- Incentives for Exports from Southern Ports

This notice is published pursuant to section 702(c)(2) of the Act.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 90-5207 Filed 3-6-90; 8:45 am]

BILLING CODE 3510-DS-M

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Douglas J. Aller, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. An original and five (5) copies should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International

Trade Administration, Department of Commerce, Room H1800, Washington, D.C. 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 90-00005." A summary of the application follows.

Summary of the Application

Applicant: California Kiwifruit Commission ("CKC"), 1540 River Park Drive, Suite 110, Sacramento, California 95815, Contact: J. Patrick Boyle, Esquire, Telephone: (202) 347-9300.

Application No.: 90-00005.

Date Deemed Submitted: February 22, 1990.

Members (in addition to applicant): Alkop Farms, Inc.; Bartell Marketing, Inc.; Blue Anchor, Inc.; Davis Kiwi Gardens, Inc.; Cal-Harvest Marketing, Inc.; Calavo Growers of California; Chase National Kiwi Farms, Inc.; Kings Canyon Fruit Sales Corp.; Kiwi Blossom Packing; Pandol Bros., Inc.; Richland Sales Co.; Riverbend International; Sun Fresh Marketing; Sunny Cal Farms; Universal Produce Corp.; Venida Packing Inc.; Visalia Produce Sales; Wes-Pak Sales, Inc.; and Wil-Ker-Son Kiwifruit Ranch.

Export Trade:

Product: Kiwifruit, fresh and processed.

Export Trade Facilitation Services (as they relate to the export of Product): All export-related services, including, but not limited to, international market research, marketing, advertising, sales promotion, brokering, handling, transportation, common marking and identification, communication and processing of foreign orders, financing, export licensing, trade documentation, warehousing, shipping, legal assistance, foreign exchange and taking title to goods.

Export Markets: The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation: Under the proposed Export Trade Certificate of Review, CKC and its Members will:

1. Engage in joint negotiations, joint offerings, or other joint selling arrangements for the sale of kiwifruit in Export Markets;
2. Establish prices, specifications and terms and conditions for the sale of kiwifruit in Export Markets;
3. Allocate sales in Export Markets among Members;
4. Refuse to quote prices or to sell kiwifruit to export customers or in Export Markets;
5. Negotiate and purchase kiwifruit for export from non-Member Suppliers for sale in Export Markets;
6. Cooperate in responding to any unfair trade practice by overseas buyers of kiwifruit or kiwifruit importing countries, including seeking appropriate action from the Federal Government, including its Executive, Legislative and Judicial Branches, and from the appropriate governmental agencies and courts of the importing country;
7. Meet and exchange information on export prices, export terms, product quality and quantity, product source, shipping arrangements, delivery dates, and other areas within the scope of the "Export Trade Certificate of Review," including marketing strategies for Export Markets and economic and business conditions in Export Markets;
8. Agree that any information obtained by the applicant and Members pursuant to this Certificate from another Member shall not be provided to any non-Member; and
9. Provide, within the scope of the Certificate, other Export Trade Facilitation Services.

Dated: February 28, 1990.

Douglas J. Aller,

Director, Office of Export Trading Company Affairs.

[FR Doc. 90-5078 Filed 3-6-90; 8:45 am]

BILLING CODE 3510-DR-M

Export Trade Certificate of Review

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice of application for an amendment to an export trade certification of review

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an amendment to an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be amended.

FOR FURTHER INFORMATION CONTACT: Douglas J. Aller, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (Pub. L. 97-290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be amended. An original and five (5) copies should be submitted not later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1800, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 86-2A011."

OETCA has received the following application for an amendment to Export Trade Certificate of Review No. 86-00011, issued on June 30, 1987 (52 FR 25621, July 8, 1987) and previously amended on October 31, 1988 (53 FR 44639, November 4, 1988).

Summary of the Application

Applicant: Millers' National Federation (MNF), 600 Maryland Avenue, Suite 305 West, Washington, DC 20024, Contact: Roy M. Henwood, Jr., President, Telephone: (202) 484-2200.

Application No.: 86-2A011.

Date Deemed Submitted: February 21, 1990.

The Millers' National Federation (MNF) seeks to amend its Certificate by:

1. Deleting Dixie Portland Flour Mills, Inc. of Memphis, Tennessee as a "Member" of the Certificate.
2. Revising Item 1c of the Export Trade Activities and Methods of Operation section of the Certificate to reflect that MNF may refuse to offer the foreign buyer's terms to USDA by

adding the following provision after Item lc:

If, in the course of negotiations with such foreign buyers, any of the above terms demanded by the foreign buyer are considered to be onerous, excessively costly for technical reasons, or damaging to the operation of the Export Enhancement Program, the Members may agree not to submit the buyer's tender terms and individual bonus requests to USDA. The Members may use this refusal to offer as a method of obtaining changes in such terms by the foreign buyer.

Dated: March 2, 1990.

Douglas J. Aller,

Director, Office of Export Trading Company Affairs

[FR Doc. 90-5208 Filed 3-6-90; 8:45 am]

BILLING CODE 3510-DR-M

Notice of Short-Supply Review and Request for Comments on Certain Tin-Free Steel

AGENCY: Import Administration/ International Trade Administration, Commerce.

ACTION: Notice of Short-Supply Review and Request for Comments on Certain Tin-Free Steel.

SUMMARY: The Secretary of Commerce ("Secretary") hereby announces a review and request for comments on a short-supply request for 4,438 metric tons of various sizes of certain tin-free steel ("TFS") under Paragraph 8 of the U.S.-Japan Arrangement Concerning Trade in Certain Steel products.

SHORT-SUPPLY REVIEW NUMBER: 12.

SUPPLEMENTARY INFORMATION: Pursuant to section 4(b)(3)(B) of the Steel Trade Liberalization Program Implementation Act, Pub. L. No. 101-221, 103 Stat. 1886 (1989) ("the Act"), and Section 357.104(b) of the Department of Commerce's Short-Supply Regulations, published in the **Federal Register** on January 12, 1990, 55 Fed. Reg. 1348 ("Commerce's Short-Supply Regulations"), the Secretary hereby announces that a short-supply determination is under review with respect to certain TFS for use in the manufacture of photopolymer newspaper printing plates. On March 2, 1990, the Secretary received an adequate petition from NAPP Systems (USA) Incorporated (NAPP) requesting a short-supply allowance for 4,438 metric tons of this product under Paragraph 8 of the Arrangement Between the Government of Japan and the Government of the United States Concerning Trade in Certain Steel Products.

The requested material meets the following specifications:

Thickness:
0.0066 inch (60 lbs/base box)
0.0094 inch (85 lbs/base box)
Thickness Tolerance: ±0.0005 inch
Chromium Coating Weight:
Metallic Chromium—100 mg/m2
Chemical Composition (maximum):
C-0.13%
Mn-0.60%
Si-0.15%
Cu-0.20%
P-0.04%
S-0.05%
Al-0.20-%
Inclusion/Foreign Matter: No more than 15 inclusions/foreign matter in 15 feet (4.6 meters)
Camber: ¼ inch (6.3 mm) per 20 feet (6.1 meters)
Coilset or Curling: Maximum 5/32 inch (5.0 mm)
Oil Can: Target Depth maximum 3/64 inch (1.2 mm). Absolute depth maximum 5/64 inch (2.0 mm)
Wavy Edge: Height—maximum 5/64 inch (2.0 mm)
Width Ranges:
0.0066 inch—27.75 to 36 inches
0.0094 inch—28 to 34 inches
Width Tolerance per width: −0.0 + 1/16 inch (1.6 mm)
Weight: Minimum net 18,000 lbs. (8,164.8 kg). Maximum net 20,000 lbs. (9,071.0 kg)

The quality of 0.0066 inch and 0.0094 inch material requested by NAPP totals 4,068.5 and 369.5 metric tons, respectively, for March-December 1990.

Section 4(b)(4)(B)(i) of the Act and Section 357.106(b)(1) of Commerce's Short-Supply Regulations require the Secretary to make a determination with respect to a short-supply petition not later than the 15th day after the petition is filed if the Secretary finds that one of the following conditions exists: 1) the raw steelmaking capacity utilization in the United States equals or exceeds 90 percent; 2) the importation of additional quantities of the requested steel product was authorized by the Secretary during each of the two immediately preceding years; or 3) the requested steel product is not produced in the United States. The Secretary finds, on the basis of available information, that the requested steel product is not produced in the United States at this time. Therefore, in accordance with Section 4(b)(4)(B)(i)(III) of the Act and Section 357.106(b)(1)(iii) of Commerce's Short-Supply Regulations, the Secretary is applying a rebuttable presumption that this product is presently in short supply. Unless domestic steel producers provide comments in response to this notice indicating that they can and will supply this product within the requested period of time, provided it represents a normal order-to-delivery period, the Secretary will issue a short-supply allowance not later than March 16, 1990.

Comments: Interested parties wishing to comment upon this review must send written comments not later than March 14, 1990, to the Secretary of Commerce, Attention: Import Administration, Room 7866, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street NW., Washington, DC 20230. Interested parties may file replies to any comments submitted. All replies must be filed not later than 5 days after March 14, 1990. All documents submitted to the Secretary shall be accompanied by four copies. Interested parties shall certify that the factual information contained in any submission they make is accurate and complete to the best of their knowledge.

Any person who submits information in connection with a short-supply review may designate that information, or any part thereof, as proprietary, thereby requesting that the Secretary treat that information as proprietary. Information that the Secretary designates as proprietary will not be disclosed to any person (other than officers or employees of the United States Government who are directly concerned with the short-supply determination) without the consent of the submitter unless disclosure is ordered by a court of competent jurisdiction. Each submission of proprietary information shall be accompanied by a full public summary or approximated presentation of all proprietary information which will be placed in the public record. All comments concerning this review must reference the above-noted short-supply review number.

FOR FURTHER INFORMATION CONTACT: Richard O. Weible, Office of Agreements Compliance, Import Administration. U.S. Department of Commerce, Room 7866, Pennsylvania Avenue and 14th Street, NW., Washington, DC 20230, (202) 377-0159.

Dated: March 5, 1990.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 90-5384 Filed 3-6-90; 8:45 am]

BILLING CODE 3510-05-M

Withdrawal of Request for Short-Supply Determination on Certain Steel Pile Weaving Wire

AGENCY: Import Administration/ International Trade Administration, Commerce.

ACTION: Notice of withdrawal of a request for a short-supply determination on certain steel pile weaving wire.

SUMMARY: On February 21, 1990, York Saw and Knife Company, Inc., ("York Saw") submitted a letter to the Secretary withdrawing its 1990 request for a short-supply allowance for 6 net tons of certain steel pile weaving wire.

SHORT-SUPPLY REVIEW NUMBER: 6.

EFFECTIVE DATE: February 21, 1990.

SUPPLEMENTARY INFORMATION: On February 8, 1990, the Secretary of Commerce ("the Secretary") received an adequate short-supply petition from York Saw under Article 8 of the Arrangement Between the European Coal and Steel Community and the European Economic Community and the Government of the United States of America Concerning Trade in Certain Steel Products for 6 net tons of certain steel pile weaving wire for use in the carpet manufacturing industry. The Secretary established an official record on this short-supply request on February 8, 1990 (Case Number 6) in the Central Records Unit, Room B-099, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Section 4(b)(4)(B)(i) of the Steel Trade Liberalization Program Implementation Act, Public Law 101-221, 103 Stat. 1886 (1989) ("the Act"), and § 357.106(b)(1) of the Department of Commerce's Short-Supply Regulations, published in the **Federal Register** on January 12, 1990, 55 FR 1348 ("Commerce's Short-Supply Regulations") require the Secretary to apply a rebuttable presumption that a product is in short supply and to make a determination with respect to a short-supply petition not later than the 15th day after the petition is filed if the Secretary finds that one of the following conditions exists: (1) the raw steelmaking capacity utilization in the United States equals or exceeds 90 percent; (2) the importation of additional quantities of the requested steel product was authorized by the Secretary during each of the two immediately preceding years; or (3) the requested steel product is not produced in the United States. The Secretary finds that the importation of certain sizes of pile weaving wire was authorized during each of the two immediately preceding years and that, on the basis of available information, other sizes of pile weaving wire ranging from 0.120-0.875 inch in width and 0.038-0.090 inch in thickness are not produced in the United States. On February 13, 1990, the Secretary published a notice in the **Federal Register** announcing a review of this request and providing domestic steel producers an opportunity to rebut the presumption of short supply. This notice stated that unless domestic steel producers provided proof that they could and would supply the requested quantity of this product within the desired period of time, provided it represented a normal order-to-delivery period, the Secretary would issue a short-supply allowance not later than February 23, 1990.

On February 21, 1990, York Saw submitted a letter to the Secretary indicating that it was withdrawing its short-supply petition. York Saw noted that its foreign supplier, William B. Swift Ltd., (Swift) had received a regular export license from the EC for a quantity of 5 net tons to be shipped before April 30, 1990. York Saw was optimistic that since Swift had obtained this license, Swift would be able to obtain additional licenses during the balance of 1990 to meet York Saw's total needs.

Conclusion

The Secretary considers York Saw's petition for a short-supply allowance to be withdrawn. The Secretary's short-supply review with respect to certain steel pile weaving wire is hereby terminated.

Dated: February 27, 1990

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 90-5081 Filed 3-6-90; 8:45 am]

BILLING CODE 3510-DS-M

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with subsections 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in Room 2841, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC.

Docket Number: 90-015. Applicant: The William Paterson College of New Jersey, 300 Pompton Road, Wayne, NJ 07470. *Instrument:* Electron Microscope, Model EM 900. *Manufacturer:* Carl Zeiss, West Germany.

Intended Use: The instrument will be used for studies of plant and animal tissues, especially cell morphology. The experiments conducted will include: (1) isolation of microtubules and their protein analysis, (2) studies of the effect of selenium on spermatogenesis in rats, (3) studies of embryonic development in soybean plant tissue culture and (4) studies of embryonic development of the wasp *Mormoniella.* In addition, the instrument will be used for educational purposes in tbe courses: Transmission Electron Microscopy, Bio 485; Independent Study, Bio 499 and Thesis Research, Bio 799. *Application Received by Commissioner of Customs:* January 24, 1990.

Docket Number: 90-019. *Applicant:* Union College, Geology Department, Schenectady, NY 12308. *Instrument:* Mass Spectrometer, Model PQ2. *Manufacturer:* VG Instruments, United Kingdom. *Intended Use:* The instrument will be used for routine analyses of geological materials. The analyses of geological materials will be used to evaluate and better understand the origin of the materials analyzed. These analyses will be used to do mathematical modeling based on the chemical analyses, using standard geochemical procedures. Undergraduate students will be involved in most aspects of research, making education an extension of the research objectives. *Application Received by Commissioner of Customs:* January 31, 1990.

Docket Number: 90-020. *Applicant:* California Institute of Technology, Division of Geological & Planetary Sciences, Pasadena, CA 91125. *Instrument:* Mass Spectrometer, Model 262V. *Manufacturer:* Finnigan MAT West Germany. *Intended Use:* The instrument will be used for the isotopic and chemical analyses, using the isotope dilution technique, of diverse geological meteoritic and lunar samples, and samples produced by special laboratory processes, e.g. glasses of special composition. The phenomena to be studied include the ages of diverse samples; diffusion, including processes associated with containment of radioactive materials and early solar system isotopic and chemical components. In addition, the instrument will be used by graduate students involved in research toward a doctorate degree in geology, geochemistry, physics or chemistry. *Applicant Received by Commissioner of Customs:* February 1, 1990.

Docket Number: 90-021. *Applicant:* Southern University and A & M College, Southern Branch Post Office, Baton Rouge, LA 70813. *Instrument:* Electron Microscope with Accessory, Model H-7000. *Manufacturer:* Hitachi, Ltd., Japan. *Intended Use:* The instrument will be used for investigation of organic (carbon-containing) tissue and macromolecules (DNA, RNA, proteins, lipids, and carbohydrates). Research topics will include:

(1) "The Effects on the Biology of the Host-Parasite Relationship of *Faciola hepatica* and Snail Host"
(2) "Biochemical Characterization of the Pine Needles"
(3) "Fluorescent Carcinogen-like Bridge Annulenes"
(4) "Feasibility of Assessing Organ Damage Via Quantitating Thiamine and Thiamine Metabolites in the Urine"
(5) "Physio-chemical and Immunological Characterization of the Female Bovine Reproductive Tract Fluids"
(6) "Cadmium and Lead Toxicity and Bio-accumulation in Selected Tissues of Laboratory Exposed Juveniles and Adult Crayfish"
(7) "Inhibition of Viral Protein Processing"
(8) "The Relation of Increased Blood-brain Barrier Permeability in Hypertensive Rats to Their Plasma and Urine Volume and Composition"
(9) "The Modifying Potential of the Pineal Hormone—Melatonin, When Measured Against Two Stressful Factors (Dinoseb and Crowding) on the Body Temperature Circadian Rhythm in Rats During Estrous Cyclicity"
(10) "Mode of Action of Natural Inhibitors (Essential Oils) Against Fungi"
(11) "Ultrastructure of Microfilaments and Microtubular Elements in Zoospores and Gametes."

Application Received by Commissioner of Customs: February 2, 1990.

Docket Number: 90-022. *Applicant:* The Connecticut Agricultural Experiment Station, 123 Huntington Street, P.O. Box 1106, New Haven, CT 06504. *Instrument:* Emitter-Detector Unit for P 700 Absorbance Measurement, Model ED 800T. *Manufactuer:* H. Walz Co., West Germany. *Intended Use:* The instrument will be used for examining the effects of oxygen, CO_2 and light intensity and species and regulating magnitude of absorbance change in leaf tissue. The experiments will be conducted in order to learn what limits photosynthetic efficiency in agronomically important crops. *Application Received by Commissioner of Customs:* February 5, 1990.

Docket Number: 90-023. *Applicant:* Woods Hole Oceanographic Institution, Woods Hole, MA 02543. *Instrument:* Mass Spectrometer, Model Prism Series II. *Manufacturer:* VG Isotech, United Kingdom. *Intended Use:* The instrument will be used to measure the stable carbon isotope ratios of CO_2 from samples submitted for radiocarbon analysis. *Application Received by Commissioner of Customs:* February 6, 1990.

Docket Number: 90-024. *Applicant:* Oregon State University, Department of Civil Engineering, Apperson 206, Corvallis, OR 97331-2302. *Instrument:* Water Velocity Meter, Model SD-12. *Manufacturer:* Sensordata AS, Norway. *Intended Use:* The instrument will be used to measure wave induced water particle velocities in wave basins. The velocity data will be used to predict prototype behavior and validate theoretical models. In addition, the instrument will be used in the course CE 647 Ocean and Coastal Engineering Measurements providing graduate students with practical experience in the collection and analysis of field and laboratory experiments associated with ocean engineering. *Application Received by Commissioner of Customs:* February 6, 1990.

Docket Number: 90-025. *Applicant:* Argonne National Laboratory, P.O. Box 2528, Idaho Falls, ID 83403. *Instrument:* Mass Spectrometer, Model MAT 262V. *Manufacturer:* Finnigan MAT GmbH, West Germany. *Intended Use:* The instrument will be used as a tool in the Integral Fast Reactor program which is key to the development of economically competitive liquid metal reactors to increase utilization of our energy resources and to reduce nuclear wastes. Mass spectrometric analyses of the following elements are required: Am, B, Cm, I_2, La, Nd, Np, U and Zr. The chemical composition of irradiated reactor fuels, the process streams from IFR reprocessing and transuranic wastes will be measured for total element concentrations and their isotopic distributions. In addition, the instrument will be used for educational purposes in a summer program in mass spectrometry. *Application Received by Commissioner of Customs:* February 7, 1990.

Docket Number: 90-026. *Applicant:* University of Arizona, Lunar & Planetary Laboratory, Tucson, AZ 85721. *Instrument:* Mass Spectrometer, Model VG 5400. *Manufacturer:* VG Isotope, Ltd., United Kingdom. *Intended Use:* The instrument will be used for studies of rock samples, both extraterrestrial (meteorites, lunar samples, interplanetary dust particles) and terrestrial. Experiments will include analysis of the isotopic composition of noble gases in whole rock samples and selected phases; determination of ages of samples using the ^{40}AR-^{39} dating technique, the I-Xe dating technique, and cosmic ray exposure ages and study of the possibility of using I-Pu-Xe and Pu-REE-Xe dating techniques for extraterrestrial samples. The research effort is focused on chronology, trying to determine what happened when. *Application Received by Commissioner of Customs:* February 8, 1990.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 90-5082 Filed 3-6-90; 8:45 am]

BILLING CODE 3510-DS-M

Minority Business Development Agency

Business Development Center Applications: Savannah, GA

AGENCY: Minority Business Development Agency.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a 3-year period, subject to available funds. The cost performance for the first 12 months is estimated at $194,118 for the project performance of 08/1/90 to 07/31/91. The MBDC will operate in the Savannah, Georgia Metropolitan Statistical Area (MSA). The first year cost for the MBDC will consist of $165,000 in Federal Funds and a minimum of $29,118 in non-Federal funds (which each can be a combination of cash, in-kind contribution and fees for services).

The funding instrument for the MBDC will be cooperative agreement and competition is open to individuals, non-profit and for-profit organizations, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to

accomplish this, MBDA supports MBDC programs that can: Coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a 3-year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

CLOSING DATES: The closing date for applications April 16, 1990. Applications must be postmarked on or before April 16, 1990.

ADDRESSES: Atlanta Regional Office, Minority Business Development Agency, U.S. Department of Commerce, Suite 505, Atlanta, Georgia 30309, 404/347-3438.

FOR FURTHER INFORMATION CONTACT: Carlton L. Eccles, Regional Director of the Atlanta Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

Note: A pre-application conference to assist all interested applicants will be held at the U.S. Department of Commerce, Minority Business Development Agency, 1371 Peachtree Street, NE., Suite 505, Atlanta, Georgia, Friday, March 30, 1990, at 9 a.m.

11.800 Minority Business Development. (Catalog of Federal Domestic Assistance).

Dated: March 1, 1990.

Carlton L. Eccles,

Regional Director, Regional Office.

[FR Doc. 90-5160 Filed 3-6-90; 8:45 am]

BILLING CODE 3510-21-M

National Oceanic and Atmospheric Administration

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council will hold a public meeting of its Ad Hoc Limited Entry Committee on March 14-15, 1990, at the Perdido Beach Hilton, Highway 182, Orange Beach, AL. On March 14 the Committee will begin its meeting at 1 p.m., and recess at 5 p.m. On March 15 the meeting will reconvene at 8 a.m., and adjourn at noon. The Committee will prepare its report to the Gulf of Mexico Council on limited entry systems.

For more information contact Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 881, Tampa FL; telephone: (813) 228-2815.

Dated: March 1, 1990.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90-5106 Filed 3-6-90; 8:45 am]

BILLING CODE 3510-22-M

North Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The North Pacific Fishery Management Council's Groundfish Plan Teams for the Gulf of Alaska and the Bering Sea/Aleutian Islands Fishery Management Plans (FMPs) will hold a public meeting on March 20-21, 1990. The meeting will begin at 9 a.m., p.s.t., on March 20 at the Alaska Fisheries Science Center, National Marine Fisheries Service, 7600 Sand Point Way, N.E., Building 4, Room 2079, Seattle, WA. The purpose of the meeting will be to review preliminary analyses of alternatives for each amendment topic in the proposed Amendment 21/16, Environmental Assessment/Regulatory Impact Review document.

For more information contact Bill Wilson or Hal Weeks, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99501; telephone: (907) 271-2809.

Dated: March 1, 1990.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90-5107 Filed 3-6-90; 8:45 am]

BILLING CODE 3510-22-M

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's Limited Entry Amendment Drafting and Oversight Committees will hold a public meeting on March 19-21, 1990, at the Pacific Council's Chamber, Metro Building, main floor, 2000 Soutwest First Avenue, Portland, OR. On March 19 the Committees will begin meeting at 8:30 a.m., and adjourn on March 21 at 3:30 p.m. The Committees will continue a review of groundfish limited entry proposals, identifying areas within the proposals where more detail may be needed, and developing recommendations on possible changes. An analysis of alternative landing requirements also will be reviewed.

For more information contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, 2000 S.W. First Avenue, Portland, OR 97201; telephone: (503) 326-6352.

Dated: March 1, 1990.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90-5109 Filed 3-6-90; 8:45 am]

BILLING CODE 3510-22-M

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's Groundfish Management Team (GMT) will hold a public meeting on March 12-14, 1990, at the Southwest Fisheries Science Center, National Marine Fisheries Service, 3150 Paradise Drive, Tiburon, CA. The GMT will begin its meeting at 1 p.m., on March 12 and adjourn at noon on March 14. The GMT will review progress of the 1990 groundfish fisheries and make preliminary projections of the annual harvest. The GMT also will discuss a proposed definition of overfishing, and prepare recommendations to the Pacific Council on west coast groundfish fisheries management.

For more information contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, 2000 S.W. First Avenue, Portland, OR 97201; telephone: (503) 326-6352.

Dated: March 1, 1990.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90-5108 Filed 3-6-90; 8:45 am]

BILLING CODE 3510-22-M

COMMISSION OF FINE ARTS

Meeting

The Commission of Fine Arts' next meeting is scheduled for March 15, 1990 at 10 a.m. in the Commission's offices in the Pension Building, suite 312, Judiciary Square, 5th and F Streets NW., Washington, DC 20001 to discuss various projects affecting the appearance of Washington, DC, including buildings, memorials, parks, etc.; also matters of design referred by other agencies of the government. Handicapped persons should call the Commission offices (202-504-2200) for details concerning access to meetings.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call the above number.

Dated in Washington, DC February 27, 1990.

Charles H. Atherton,

Secretary.

[FR Doc. 90-5157 Filed 3-6-90; 8:45 am]

BILLING CODE 6330-01-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Negotiated Limits and Guaranteed Access Levels for Certain Cotton Textile Products Produced or Manufactured in Guatemala

February 28, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit and guaranteed access level.

EFFECTIVE DATE: March 5, 1990.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566-5810. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority. Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

A Memorandum of Understanding (MOU) dated November 9, 1989 between the Governments of the United States and Guatemala establishes an import limit and a guaranteed access level for cotton textile products in Categories 347/348, produced or manufactured in Guatemala and exported during the period March 1, 1990 through December 31, 1990.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989).

Requirements for participation in the Special Access Program are available in **Federal Register** notices 51 FR 21208, published on June 11, 1986; 52 FR 26057, published on July 10, 1987; 54 FR 50425, published on December 6, 1989; and 55 FR 3079, published on January 30, 1990.

The letter to the Comissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the MOU, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

February 28, 1990.

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229.

Dear Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Memorandum of Understanding (MOU) dated November 9, 1989 between the Governments of the United States and Guatemala; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on March 5, 1990, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Categories 347/348, produced or manufactured in Guatemala and exported during the period March 1, 1990 through December 31, 1990, in excess of 670,850 dozen.

Imports charged to this category limit for the period July 1, 1989 and through February 28, 1990 shall be charged against the level of restraing to the extent of any unfilled balance. In the event the limit established for that period has been exhausted by previous entries, such goods shall be subject to the level set forth in this directive.

Additionally, pursuant to the MOU dated November 9, 1989 and the terms of the Special Access Program, as set forth in 51 FR 21208 (June 11, 1986), 52 FR 26057 (July 10, 1987) and 54 FR 50425 (December 6, 1989), effective on March 5, 1990, a guaranteed access level of 1,000,000 dozen is being established for properly certified textile products assembled in Guatemala from fabric formed and cut in the United States in cotton textile products in Categories 347/348 which are re-exported to the United States from Guatemala during the period March 1, 1990 through December 31, 1990.

Any shipment for entry under the Special Access Program which is not accompanied by a valid and correct certification and Export Declaration in accordance with the provisions of the certification requirements established in the directive of January 24, 1990 shall be denied entry unless the Government of Guatemala authorizes the entry and any charges to the appropriate specific limit. Any shipment which is declared for entry under the Special Access Program but found not to qualify shall be denied entry into the United States.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90-5079 Filed 3-6-90; 8:45 am]

BILLING CODE 3510-DR-M

COPYRIGHT ROYALTY TRIBUNAL

[Docket No. 90-2-88CD]

Commencement of 1988 Cable Distribution Proceeding

AGENCY: Copyright Royalty Tribunal.

ACTION: Notice commencing 1988 cable distribution proceeding.

SUMMARY: The Copyright Royalty Tribunal announces that a controversy exists concerning the distribution of the royalties paid by cable operators in Phase II for the calendar year 1988. No

controversies exist in Phase I. The Tribunal also announces a partial distribution of the 1988 cable copyright royalty fund.

EFFECTIVE DATE: The 1988 cable distribution controversy is declared effective March 8, 1990. A partial distribution of the 1988 cable copyright fund will be made March 8, 1990.

FOR FURTHER INFORMATION CONTACT: Robert Cassler, General Counsel, Copyright Royalty Tribunal, 1111 20th Street, NW., Suite 450, Washington, DC 20036, 202-653-5175.

SUPPLEMENTARY INFORMATION: On January 10, 1990, the Tribunal requested comments from the claimants to the 1988 cable copyright royalty fund whether any controversies existed concerning the distribution of the fund. 55 FR 893. Comments were due February 15, 1990.

In a joint comment filed by representatives of all the Phase I claimants, the Tribunal was informed that a complete settlement has been reached in Phase I based on the percentage allocations which were adopted by the Tribunal in the 1983 cable royalty distribution proceeding. Accordingly, no controversies exist in Phase I.

Concerning Phase II, the Tribunal was informed that controversies exist in these Phase II categories: Program Suppliers, Noncommercial Television, Music, Devotional Claimants and Noncommercial Radio. Accordingly, the Tribunal declares, effective March 8, 1990, that controversies exist in Phase II of the 1988 cable royalty distribution proceeding.

The procedural schedule for the hearing of these controversies will be announced at a later date.

The parties have further informed the Tribunal that, with the exception of the Devotional Claimants category, a full distribution of the cable royalties can be made. The claimants have represented that for those categories in which controversies continue to exist, the parties themselves will make any necessary reimbursements to each other, including interest. In the Devotional Claimants category, the parties have asked the Tribunal to withhold any distribution for one month, in which time the parties hope to either settle their differences or work out a method of partial distribution.

Accordingly, the Tribunal announces a full distribution of all Phase I categories, except the Devotional Claimants category in which all monies will be withheld, for March 8, 1990.

Dated: March 2, 1990.

J.C.Argetsinger,

Chairman.

[FR Doc. 90-5203 Filed 3-6-90; 8:45 am]

BILLING CODE 1410-09-M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Corps of Engineers Recreation Study Regional Workshops

AGENCY: U.S. Army Corps of Engineers.

ACTION: Notice.

SUMMARY: Six regional workshops will be held around the country to inform and solicit feedback regarding options for operation and maintenance of recreation areas at Corps of Engineers lake projects.

ADDRESSES: Office of the Chief of Engineers, ATTN: CECW-ZR, 20 Massachusetts Avenue NW., Washington, DC 20314-1000.

FOR FURTHER INFORMATION CONTACT: Mr. David Wahus, (202) 272-0107.

SUPPLEMENTARY INFORMATION: The U.S. Army Corps of Engineers is conducting a national study concerning the operation and maintenance of recreation at Corps managed water resources projects. The objective of the study is to identify programs and strategies that will allow the Corps to maintain and enhance recreation opportunities while reducing Federal expenditures for recreation.

Six regional workshops will be held to inform and solicit feedback from the public and representatives of various private and public interest groups on options for the operation and maintenance of recreation areas at Corps water resource projects. The workshops are scheduled for:

28 March 1990—Execulodge Portland Airport Hotel, Portland, Oregon
4 April 1990—Arlington Hilton Hotel, Arlington, Texas
12 April 1990—Peter Kiewit Conference Center, Omaha, Nebraska
17 April 1990—The Westin William Penn, Pittsburgh, Pennsylvania
23 April 1990—Holiday Inn Conference Center, Moline, Illinois
28 April 1990—Colony Square Hotel, Atlanta, Georgia

The workshops will convene at 8:30 a.m. and adjourn at 4:15 p.m. A facilitated, small group session format will be followed to promote discussion and critical review. The objective is to obtain the unconstrained views and perspectives of workshop participants.

In the evening following each workshop, a more general, open forum will be held from 7 to 9 p.m. Study objectives will be presented and the effort to date, including the results of the day's workshop, will be summarized. Those wishing to comment may do so.

The workshops and evening open forums are open to the public.

Approved:

Albert J. Genetti, Jr.,

Colonel, Corps of Engineers, Chief of Staff.

[FR Doc. 90-5181 Filed 3-6-90; 8:45 am]

BILLING CODE 3710-92-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before April 6, 1990.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests for copies of the proposed informaton collection requests should be addressed to George P. Sotos, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: George P. Sotos (202) 732-2174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OBM) provide interested Federal agencies and the public and early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Acting Director, Office of Information Resources Management, publishes this notice containing proposed informaton collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from George Sotos at the address specified above.

Dated: March 1, 1990.

George P. Sotos,

Acting Director, for Office of Information Resources Management.

Office of Postescondary Education

Type of Review: Extension.
Title: Fiscal Operations Report for the Income Contingent Direct Loan Demonstration Project.
Frequency: Annually.
Affected Public: State or local governments; Non-profit institutions.
Reporting Burden:
Responses: 10.
Burden Hours: 90.
Recordkeeping Burden:
Recordkeepers: 10.
Burden Hours: 2.
Abstract: Postsecondary institutions that have participated in the Income Contingent Direct Loan Program submit this report to the Department. The Department uses the information to monitor assets and liabilities of the fund and to ensure that funds have been properly managed.

[FR Doc. 90-5083 Filed 3-7-90; 8:45 am]

BILLING CODE 4000-01-M

Privacy Act of 1974

AGENCY: Department of Education.

ACTION: Notice of an amended system of records.

SUMMARY: The Department of Education publishes this notice of an amended system of records to be known as 18-11-0026, Debarment and Suspension Proceedings Under Executive Order 12549 and the Drug-Free Workplace Act. The purpose of this amendment is to notify the public that the scope of the system of records is expanded to include individuals debarred or suspended for violation of the Drug-Free Workplace Act.

DATES: The Department filed a report on the amended system of records with the Chairman of the House Committee on Government Operations, the Chairman of the Senate Committee on Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on March 2, 1990. The Department has requested that OMB grant a waiver of the usual requirement that a system of records not be put into effect until 60 days after the report is sent to OMB and Congress.

FOR FURTHER INFORMATION CONTACT: Mary Jane Kane, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 3636, GSA Regional Office Building No. 3) Washington, DC 20202-4700. Telephone: (202) 732-7400.

SUPPLEMENTARY INFORMATION: The Privacy Act of 1974 (see 5 U.S.C. 552a(e)(4)) requires the Department to publish in the **Federal Register** this notice of an amended system of records. The Department's regulations implementing the Privacy Act of 1974 are contained in the Code of Federal Regulations (CFR) at 34 CFR part 5b.

On November 28, 1988, the Department published a notice of a system of records, Debarment and Suspension Proceedings Under Executive Order 12549, Debarment and Suspension. The system of records, which became effective on December 28, 1988, allows the Department to provide to the General Services Administration, Federal agencies, and participants in nonprocurement programs, information on persons debarred or suspended under 34 CFR part 85, Governmentwide Debarment and Suspension (Nonprocurement). A technical amendment to this system of records was published in the **Federal Register** at 55 FR 2131 on January 22, 1990, to reflect the fact that records regarding debarment and suspension actions are maintained by two officials of the Department. One of these officials conducts debarment and suspension proceedings under Title IV of the Higher Education Act of 1965, as amended. The other official conducts all other debarment and suspension proceedings for the Department.

On January 31, 1989, an amendment to part 85 was published in the **Federal Register**, adding a new subpart F to implement the Drug-Free Workplace Act (sections 5151-5160 of the Anti-Drug Abuse Act of 1988), and adding violation of any requirement of subpart F to the causes for debarment (see 34 CFR 85.305(c)(5)). The Department anticipates that some cases may be against students receiving Pell grants.

Dated: March 2, 1990.

Thomas E. Anfinson,

Deputy Under Secretary for Management.

The Deputy Under Secretary for Management amends the notice of a system of records by revising language under the following headings to read as follows:

18-11-0026

SYSTEM NAME:

Debarment or Suspension Proceedings Under Executive Order 12549 and the Drug-Free Workplace Act. OM/OC/GCS.

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Principals undergoing debarment or suspension proceedings and principals that have been debarred or suspended. Principals are officers, directors, owners, partners, key employees, or other persons with primary management or supervisory responsibilities, or persons who have a critical influence on or substantive control over a covered transaction, whether or not employed by a participant. A participant is any person who submits a proposal for, enters into, or reasonably may be expected to enter into a covered transaction. A covered transaction is described in the Department's regulations at 34 CFR 85.110(a)(1).

Individuals receiving grants subject to requirements under the Drug-Free Workplace Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains documents including written referrals, communications between the Department and the respondent, intra-agency and interagency communications regarding proposed or completed debarments or suspensions, and a record of any findings from debarment or suspension proceedings against individuals under Executive Order 12549 and the Drug-Free Workplace Act.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 12549, Debarment and Suspension and Sections 5151-5160 of the Drug-Free Workplace Act.

PURPOSES:

Information contained in this system of records is used to protect the Federal Government from the actions prohibited under the Department's debarment and suspension and Drug-Free Workplace regulations, make decisions regarding debarments and suspensions, and ensure that other Federal agencies give

effect to debarment or suspension decisions rendered by this Department.

* * * * *

[FR Doc. 90-5270 Filed 3-6-90; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Inventory of Commercial Activities

AGENCY: Department of Energy (DOE).

ACTION: Notice of DOE commercial activities scheduled for review in accordance with the OMB Circular A-76.

SUMMARY: Pursuant to the requirements of the revised Circular A-76 (dated August 1983), and Executive Order 12615 (dated November 1987), DOE developed and published an inventory of its commercial activites in 54 FR 40943, dated October 4, 1989, of the **Federal Register**. The information contained in this Notice modifies the Department's inventory by advancing the utility/general maintenance study to begin in April 1990 instead of September 1992, and delaying the guard study from December 1989 to September 1990. The Department will publish from time to time other additions, changes and deletions to its inventory of commercial activities.

Organization	Location	Commerical activity	Review start date
Assistant Secretary for Management and Administration.	Germantown, MD/Washington, DC.	Utility/General Maintenance.	4/90
Albuquerque Operations Office.	Albuquerque, NM.	Guard Services.	9/90

FOR FURTHER INFORMATION, CONTACT: Douglas G. Stichum, Chief, Management Systems Development and Evaluation, Deaprtment of Energy (MA-433.1), Room 4B-194, Forrestal Building, 1000 Independence Ave., SW., Washington, DC 20585, (202) 586-6812.

Issued in Washington, DC February 28, 1990.

Lea J. Uhre,

Deputy Assistant Secretary for Procurement and Human Resource Management.

[FR Doc. 90-5210 Filed 3-6-90; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. CP88-187-002 et al.]

Algonquin Gas Transmission Co. et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Algonquin Gas Transmission Company

[Docket No. CP88-187-002]

February 23, 1990.

Take notice that on February 12, 1990, Algonquin Gas Transmission Company (Algonquin), 1284 Soldiers Field Road, Boston, Massachusetts 02135, filed in Docket No. CP88-187-002 an amendment to its pending application pursuant to section 7 of the Natural Gas Act for the certificate of public convenience and necessity authorizing the firm transportation by Algonquin up to 62,817 MMBtu per day for Northeast Energy Associates Limited Partnership (Northeast Energy) from points of receipt at Lambertville and Centerville, New Jersey to Northeast Energy's cogeneration facility at Bellingham, Massachusetts (the Northeast Energy Project) and to construct, abandon and operate certain pipeline and appurtenant facilities needed to render the service, so as to amend the original proposed facilities necessary to render the above described service, originally proposed facilities necessary to render the above described service, the service as set forth more fully in Algonquin's amendment which is on file with the Commission and available for public inspection.

This amended application supercedes in part, Algonquin's pending application at CP88-187-001. The service to Northeast Energy will be performed pursuant to Rate Schedule X-35 which will be contained in Algonquin's FERC Gas Tariff Original Volume No. 2.

Algonquin states that the instant amendment is filed to reflect changes to facilities to provide service proposed in Docket No. CP88-187-001. Such facilities are different than those proposed in the earlier amendment in that docket because of changes to facilities which will precede construction of facilities related to the service proposed therein. The proposed facilities now include a 5,500 horsepower compressor and approximately 1.6 miles less of pipeline.

To supply the Bellingham facility with natural gas, Northeast Energy has secured commitments from Canadian and domestic suppliers in conjunction with the Niagara and APEC Settlements. Domestic source supplies will be delivered into Algonquin's system at Lambertville, New Jersey by Texas Eastern Transmission Corporation as a component of its Rate Schedule FTS-5 service authorized June 7, 1989, in Docket No. CP87-5-002, *et al.* Canadian source supply will be delivered to Algonquin at Centerville, New Jersey by Transcontinental Gas Pipe Line Corporation as a component of the Niagara Import Point Projects settlement currently pending authorization.

The cost of facilities required to render the new firm transportation service is estimated to be $49,336,000 which is about the same as the cost of the facilities proposed in the CP88-187-001.

Comment date: March 5, 1990, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

2. Mississippi River Transmission Corporation

[Docket No. CP90-820-000]

February 23, 1990.

Take notice that on February 20, 1990, Mississippi River Transmission Corporation (MRT), 9900 Clayton Road, St. Louis, Missouri 63124, filed in Docket No. CP90-820-000 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 provide an interruptible transportation service for Ford Motor Company (Ford) under the blanket certificate issued in Docket No. CP89-1121-000, pursuant to section 7(c) 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.

MRT states that pursuant to a transportation agreement dated November 20, 1989, it proposes to receive up to 10 billion Btu of natural gas per day from specified points located in Louisiana, Texas, Arkansas and Illinois and redeliver the gas at specified points located in Missouri, Texas, Louisiana, Arkansas, and Illinois. MRT estimates that the peak day, average day and annual volumes would be 10 billion Btu, 4.11 billion Btu, and 1,500 billion Btu respectively. It is indicated that on January 5, 1990, MRT initiated a 120-day transportation service for Ford under § 284.223(a), as reported in Docket No. ST90-1668-000.

MRT further states that no facilities need be constructed to implement the service. MRT states that the primary term expires on November 30, 1990, but that the service would continue on a month-to-month basis until terminated on thirty days written notice by either

MRT or Ford. MRT proposes to charge rates and abide by the terms and conditions of its Rate Schedule ITS.

Comment date: April 9, 1990, in accordance with Standard Paragraph G at the end of this notice.

3. Texas Gas Transmission Corporation

[Docket No. CP90-782-000]

February 23, 1990.

Take notice that on February 15, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP90-782-000 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 for Tenngasco Corporation (Tenngasco) under its blanket certificate issued in Docket No. CP88-686-000 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.

Texas Gas further states that the maximum daily, average daily and annual quantities that it would transport for Tenngasco would be 60,000 MMBtu equivalent of natural gas, 20,000 MMBtu equivalent of natural gas and 7,300,000 MMBtu equivalent of natural gas, respectively.

Texas Gas indicates that in a filing made with the Commission in Docket No. ST90-1431, it reported that transportation service for Tenngasco commenced on January 1, 1990, under the 120-day automatic authorization provisions of § 284.223(a).

Comment date: April 9, 1990, in accordance with Standard Paragraph G at the end of this notice.

4. Mississippi River Transmission Corporation

[Docket No. CP90-819-000]

February 23, 1990.

Take notice that on February 20, 1989, Mississippi River Transmission Corporation (MRT), 9900 Clayton Road, St. Louis, Missouri 63124, filed in Docket No. CP90-819-000 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 under its blanket certificate issued in Docket No. CP89-1121-000 pursuant to section 7 of the Natural Gas Act for Spectrulite Consortium (Spectrulite), all as more fully set forth in the request on file with the Commission and open to public inspection.

MRT proposes to transport natural gas for Spectrulite, an end user, on an interruptible basis, pursuant to a transportation agreement dated December 11, 1989. MRT explains that service commenced January 1, 1990, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST90-1659-000. MRT further explains that the peak day quantity would be 4,600 MMBtu, the average day quantity would be 4,600 MMBtu and that the annual Quantity would be 1,679,000 MMBtu. MRT explains that it would receive natural gas for the account of Spectrulite at receipt points located in Texas, Louisiana, Arkansas and Illinois and would redeliver the gas to a delivery point in Illinois.

Comment date: April 9, 1990, in accordance with Standard Paragraph G at the end of this notice.

5. Mississippi River Transmission Corporation

[Docket No. CP90-821-000]

February 23, 1990.

Take notice that on February 20, 1990, Mississippi River Transmission Corporation (MRT), 9900 Clayton Road, St. Louis, Missouri 63124, filed a request with the Commission in Docket No. CP90-821-000, pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA), for authorization to transport natural gas on behalf of Shell Oil Company (Shell), an end-user, under the blanket certificate issued in Docket No. CP89-1121-000 pursuant to section 7 of the NGA, all as more fully set forth in the request which is open to public inspection.

MRT proposes an interruptible natural gas transportation service of up to 52,500 MMBtu equivalent on peak days, 12,877 MMBtu equivalent on average days, and 4,700,000 MMBtu equivalent annually for Shell. MRT would receive gas at various Arkansas, Illinois, Louisiana, and Texas receipt points and deliver the gas for Shell's account a Madison County, Illinois, delivery point. MRT states it commenced transporting natural gas for Shell on January 1, 1990, under § 284.223(a) of the Regulations, as reported in Docket No. ST90-1660.

Comment date: April 9, 1990, in accordance with Standard Paragraph G at the end of this notice.

6. Chevron U.S.A. Inc.

[Docket No. CI89-302-001]

February 23, 1990.

Take notice that on February 21, 1990, Chevron U.S.A. Inc. (Chevron) of P.O. Box 3725, Houston, Texas 77253-3725, filed an application pursuant to section 7(c) of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for extension for an unlimited term of its blanket certificate with pregranted abandonment previously issued by the Commission in Docket No. CI89-302-000 for a term expiring March 31, 1990, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Comment date: March 9, 1990, in accordance with Standard Paragraph J at the end of this notice.

7. Northern Natural Gas Company, Division of Enron Corp.

[Docket No. CP90-824-000]

February 23, 1990.

Take notice that on February 21, 1990, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP90-824-000 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 BridgeGas U.S.A. (BridgeGas), a marketer, under the blanket certificate issued in Docket No. CP86-435-000, 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.

Northern states that pursuant to a transportation agreement numbered 74732, under its Rate Schedule IT-1, it proposes to transport up to 250,000 MMBtu per day equivalent of natural gas for BridgeGas. Northern states that it would transport the gas from receipt points shown in Appendix "A" of the transportation agreement and would deliver the gas to delivery points also shown in Appendix "A" of the agreement.

Northern advises that service under § 284.223(a) commenced December 17, 1989, as reported in Docket No. ST90-1461 (filed January 16, 1990). Northern further advises that it would transport 187,500 MMBtu on an average day and 91,250,000 MMBtu annually.

Comment date: April 9, 1990, in accordance with Standard Paragraph G at the end of this notice.

8. Mississippi River Transmission Corporation

[Docket No. CP90-816-000]

February 23, 1990.

Take notice that on February 20, 1990, Mississippi River Transmission Corporation (MRT), 9900 Clayton Road, St. Louis, Missouri 63124, filed in Docket No. CP90-816-000 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 the City of Red Bud, Illinois (Red Bud), a local distributor, under the blanket certificate issued in Docket No. CP89-1121-000, 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.

MRT states that pursuant to a transportation service agreement dated November 21, 1989, under its Rate Schedule ITS, it proposes to transport up to 2,250 MMBtu per day equivalent of natural gas for Red Bud. MRT states that it would transport the gas from receipt points located in Texas, Louisiana, Arkansas and Illinois, and would deliver the gas to a delivery point located in Illinois.

MRT advises that service under § 284.223(a) commenced January 5, 1990, as reported in Docket No. ST90-1658-000 (filed January 30, 1990). MRT further advises that it would transport 520 MMBtu on an average day and 190,000 MMBtu annually.

Comment date: April 9, 1990, in accordance with Standard Paragraph G at the end of this notice.

9. United Gas Pipe Line Company

[Docket No. CP90-828-000]

February 23, 1990.

Take notice that on February 21, 1990, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP90-828-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of Shell Gas Trading Company (Shell), a marketer of natural gas, under United's 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 application which is on file with the Commission and open to public inspection.

United requests authorization to transport, on an interruptible basis, up to a maximum of 61,800 MMBtu of natural gas per day for Shell from receipt points located in Louisiana and Texas to delivery points located in Louisiana. United anticipates transporting 61,800 MMBtu of natural gas on an average day and annual volume of 22,557,000 MMBtu.

United states that the transportation of natural gas for Shell commenced January 1, 1990, as reported in Docket No. ST90-1754-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to United's in Docket No. CP88-6-000.

Comment date: April 9, 1990, in accordance with Standard paragraph G at the end of this notice.

10. Natural Gas Pipeline Company of America

[Docket No. CP90-807-000]

February 23, 1990.

Take notice that on February 20, 1990, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP90-807-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of Amoco Production Company (Amoco), a producer of natural gas, under Natural's blanket certificate issued in Docket No. CP86-582-000, 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.

Natural requests authorization to transport, on a firm basis, up to a maximum of 75,000 MMBtu of natural gas per day for Amoco from a receipt point located in Oklahoma to a delivery point located in Texas. Natural anticipates transporting 75,000 MMBtu of natural gas on an average day and an annual volume of 27,375,000 MMBtu.

Natural states that the transportation of natural gas for Amoco commenced January 1, 1990, as reported in Docket No. ST90-1729-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to Natural in Docket No. CP86-582-000.

Comment date: April 9, 1990, in accordance with Standard Paragraph G at the end of this notice.

11. United Gas Pipe Line Company

[Docket No. CP90-797-000]

February 23, 1990.

Take notice that on February 16, 1990, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP90-797-000 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 Victoria Gas Corporation (Victoria), a 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 the maximum daily, average daily and annual quantities that it would transport on behalf of Victoria would be 103,000 MMBtu equivalent, 103,000 MMBtu equivalent and 37,595,000 MMBtu equivalent of natural gas, respectively. United indicates that in Docket No. ST90-1726, filed with the Commission on February 1, 1990, it reported that transportation service for Victoria begun under the 120-day automatic authorization provisions of § 284.223(a) on January 11, 1990.

Comment date: April 9, 1990, in accordance with Standard Paragraph G at the end of this notice.

12. Mississippi River Transmission Corporation

[Docket No. CP90-818-000]

February 23, 1990.

Take notice that on February 20, 1990, Mississippi River Transmission Corporation (MRT), 9900 Clayton Road, St. Louis, Missouri 63124, filed in Docket No. CP90-818-000 a request pursuant to § 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) and the Natural Gas Policy Act (18 CFR 284.223) for authorization to transport natural gas for Georgia Pacific Corporation (Georgia Pacific), an end-user of natural gas, under MRT's blanket certificate issued in Docket No. CP89-1121-000 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.

MRT proposes to transport, on an interruptible basis, up to 15,000 MMBtu of natural gas equivalent per day for Georgia Pacific pursuant to a transportation agreement dated December 11, 1989, between MRT and Georgia Pacific. MRT would receive the gas at various existing receipt points in Texas, Louisiana, Arkansas and Illinois and deliver equivalent volumes, less fuel used, at an existing delivery point in Arkansas.

MRT states that the estimated daily and annual volumes are 3,000 MMBtu and 1,095,000 MMBtu respectively. Service under § 284.223(a) commenced on January 1, 1990, as reported in Docket No. ST90-1667-000, it is stated.

Comment date: April 9, 1990, in accordance with Standard Paragraph G at the end of this notice.

13. United Gas Pipe Line Company

[Docket No. CP90-690-000]

February 23, 1990.

Take notice that on February 2, 1990, United gas Pipe Line Company (United),

P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP90-690-000, a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authorization to provide interruptible transportation service on behalf of Laser Marketing Corporation, a marketer of natural gas, under United's blanket certificate issued in Docket No. CP88-6-000, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

United states that the interruptible gas transportation agreement, dated October 1, 1989, as amended on December 14, 1989, proposes to transport a maximum daily quantity of 618,000 MMBtu, an average day quantity of 618,000 MMBtu, and an annual quantity of 225,570,000. It is indicated that United would receive the gas at various points in the States of Texas, Louisiana, and Mississippi. The delivery points would be at various points in the State of Texas, Louisiana, Florida, Alabama, and Mississippi and that service commenced on December 26, 1989, as reported in Docket No. ST90-1479-000, pursuant to § 284.223(a) of the Commission's Regulations.

United further states that existing facilities would be used to provide this transportation service.

Comment date: April 9, 1990, in accordance with Standard Paragraph G at the end of this notice.

14. Panhandle Eastern Pipe Line Company

[Docket No. CP90-825-000]

February 23, 1990.

Take notice that on February 21, 1990, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77152-1642, filed in Docket No. CP90-825-000 an application 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 General Motors Corporation (General Motors), an end user 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 to public inspection.

Panhandle proposes to transport, on an interruptible basis, up to 7,000 Dt. equivalent of natural gas per day for General Motors. Panhandle states that construction of facilities would not be required to provide the proposed service.

Panhandle further states that the maximum day, average day, and annual transportation volumes would be approximately 7,000 Dt. equivalent, 2,740 Dt. equivalent and 1,003,750 Dt. equivalent respectively.

Panhandle advises that service under § 284.223(a) commenced January 1, 1989, as reported in Docket No. ST90-1699.

Comment date: April 9, 1990, in accordance with Standard Paragraph G at the end of this notice.

15. United Gas Pipe Line Company

[Docket No. CP90-775-000]

February 23, 1990.

Take notice that on February 14, 1990, United Gas Pipe Line Company (United), Post Office Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP90-775-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authorization to transport natural gas for Equitable Resources Marketing Company (Equitable), a marketer, under United's 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 which is on file with the Commission and open to public inspection.

United proposes to transport on an interruptible basis up to 5,150 MMBtu of natural gas on a peak day, 5,150 MMBtu on an average day, and 1,879,750 MMBtu on an annual basis for Equitable. United states that it would perform the transportation service for Equitable under United's Rate Schedule ITS. United indicates that it would receive the gas at various points in Texas, Louisiana and offshore Louisiana, for delivery to various points in Texas, offshore Texas, Louisiana and Mississippi.

It is explained that the service commenced December 20, 1989, under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST90-1740. United indicates that no new facilities would be necessary to provide the subject service.

Comment date: April 9, 1990, in accordance with Standard Paragraph G at the end of this notice.

16. ANR Pipeline Company

[Docket No. CP90-809-000]

February 23, 1990.

Take notice that on February 20, 1990, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP90-809-000 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 provide a transportation service for Entrade Corporation (Entrade) under ANR's blanket certificate issued in Docket No. CP88-532-000 on July 25, 1989, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission.

ANR states that the transportation service would be performed pursuant to a transportation service agreement, dated August 28, 1989, wherein ANR proposes to transport natural gas on an interruptible basis for Entrade, a maximum daily and average day quantity of 10,000 Dt., and an annual quantity of 3,650,000 Dt. ANR states that it would receive the gas at ANR's existing points of receipt located in the States of Louisiana, Kansas, Texas, Oklahoma, and the offshore Louisiana and offshore Texas gathering areas and redeliver the gas for the account of Entrade at existing interconnections located in the State of Iowa.

ANR further states that it commenced service for Entrade on January 1, 1990, as reported in Docket No. ST90-1583-000, pursuant to § 284.223(a) of the Commission's Regulations.

Comment date: April 9, 1990, in accordance with Standard Paragraph G at the end of this notice.

17. Mississippi River Transmission Corporation

[Docket No. CP90-814-000]

February 23, 1990.

Take notice that on February 20, 1990, Mississippi River Transmission Corporation (MRT), 9900 Clayton Rd, St. Louis, Missouri 63124, filed in Docket No. CP90-814-000 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 ASARCO, Inc. (ASARCO), an enduser of natural gas, under its blanket authorization issued in Docket No. CP89-1121-000 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.

MRT would perform the proposed interruptible transportation service for ASARCO, pursuant to an interruptible transportation service agreement dated December 28, 1989. The transportation agreement is effective for a primary term ending December 28, 1990, and shall continue month to month thereafter unless terminated by either party on thirty days written notice. MRT proposes to transport 2,652 MMBtu on a peak and average day; and on an annual

basis approximately 968,000 MMBtu of natural gas for ASARCO. MRT proposes to transport the subject gas from receipt points located in Arkansas, Illinois, Louisiana, and Texas. MRT proposes to deliver the gas to ASARCO at the interconnection with American Smelting and Refining Company, located in the SW¼, Section 2, T33N-R3E, Iron County, Missouri.

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. MRT commenced such self-implementing service on January 9, 1990, as reported in Docket No. ST90-1569-000.

Comment date: April 9, 1990, in accordance with Standard Paragraph G at the end of this notice.

18. Eaton Rapids Gas Storage

[Docket No. CP90-769-000]

February 23, 1990.

Take notice that on February 13, 1990, Eaton Rapids Gas Storage System (Eaton Rapids), 500 Renaissance Center, Detroit Michigan 48243, filed an application pursuant to section 7(c) of the Natural Gas Act and § 284.224 of the Commission's Regulations (18 CFR 284.224) requesting blanket certificate authorization to engage in the sale, transportation (including storage) and assignment of natural gas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Eaton Rapids, a joint venture formed by ANR Eaton Company and SEMCO Gas Storage Company, states that it is an intrastate natural gas storage company in the State of Michigan which is authorized to provide natural gas services subject to the regulation of the Michigan Public Service Commission (MPSC). Eaton Rapids further states that it is a "Hinshaw Pipeline" and is exempt from the Commission's jurisdiction under section 1(c) of the Natural Gas Act. Eaton Rapids advises that it has not yet commenced operations and, accordingly, asserts that during the twelve-month period beginning on November 1, 1988, and ending October 31, 1989, no natural gas volumes were received into its system from any source.

Eaton Rapids advises that it has received authority from the MPSC to acquire, develop and operate an existing underground natural gas storage facility (Eaton Rapids 36 Gas Storage Field) located approximately 15 miles south of the City of Lansing, Michigan in Ingham County, Michigan. The instant authorization is being sought primarily because Eaton Rapids desires the ability to utilize the facility to provide storage service for companies located outside as well as inside the State of Michigan. Eaton Rapids states that the services performed under the requested blanket authority would be subject to the same rates, terms and conditions approved by the MPSC for like services provided to local distribution companies, end-users and public utilities located within Michigan.

Comment date: March 16, 1990 in accordance with Standard Paragraph F at the end of the notice.

19. Mississippi River Transmission Corporation

[Docket No. CP90-815-000]

February 23, 1990.

Take notice that on February 20, 1990, Mississippi River Transmission Corporation (MRT), 9900 Clayton Rd, St. Louis, Missouri 63124, filed in Docket No. CP90-815-000 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 Continental Natural Gas, Inc. (Continental), a marketer of natural gas, under its blanket authorization issued in Docket No. CP89-1121-000 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.

MRT would perform the proposed interruptible transportation service for Continental, pursuant to an interruptible transportation service agreement dated November 21, 1989. The transportation agreement is effective for a primary term ending December 31, 1989, and shall continue month to month thereafter unless terminated by either party on thirty days written notice. MRT proposes to transport 100,000 MMBtu on a peak and average day; and on an annual basis approximately 36,500,000 MMBtu of natural gas for Continental. MRT proposes to transport the subject gas from receipt points located in Arkansas, Illnois, Louisiana, Oklahoma and Texas. MRT proposes to deliver the gas to Continental at various existing points located in Arkansas, Illinois, Louisiana, Missouri and Texas.

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. MRT commenced such self-implementing service on January 1, 1990, as reported in Docket No. ST90-1665-000.

Comment date: April 9, 1990, in accordance with Standard Paragraph G at the end of this notice.

20. Jackson Pipeline Company

[Docket No. CP90-768-000]

February 23, 1990.

Take notice that on February 13, 1990, Jackson Pipeline Company (Jackson), Fairlane Plaza South, 330 Town Center Drive, Dearborn, Michigan 48126, filed an application pursuant to section 7(c) of the Natural Gas Act and § 284.224 of the Commission's Regulations (18 CFR 284.224) requesting blanket certificate authorization to engage in the sale, transportation (including storage) and assignment of natural gas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Jackson, a general partnership formed by CMSC Jackson Pipeline Company and ANR Jackson Company under Michigan law, states that it is an intrastate pipeline in the State of Michigan which is authorized to provide natural gas services subject to the regulation of the Michigan Public Service Commission (MPSC). Jackson further states that it is a "Hinshaw Pipeline" and is exempt from the Commission's jurisdiction under section 1(c) of the Natural Gas Act. Jackson advises that it has not yet commenced operations and, accordingly, asserts that during the twelve-month period beginning on November 1, 1988, and ending October 31, 1989, no natural gas volumes were received into its system from any source.

Jackson states that it has received authority from the MPS to construct, own and operate pipeline facilities consisting of approximately 25.1 miles of 16-inch pipeline extending from a point of connection with the facilities of Consumer Power Company (Consumers) in Jackson County, Michigan to the proposed gas storage facilities of the Eaton Rapids Gas Storage System in Ingham County, Michigan plus 5.0 miles of 16-inch pipeline extending northward from the interconnection with Consumers to a point of connection with Panhandle Eastern Pipeline Company also located in Jackson County, Michigan. Pursuant to § 284.123(b)(1)(ii) of the Commission Regulations, Jackson further states that the services performed under the requested blanket authority would be subject to its currently effective transportation rates, as authorized by the MPSC.

Comment date: March 16, 1990 in accordance with Standard Paragraph F at the end of the notice.

21. Trunkline Gas Company

[Docket No. CP90-788-000]

February 26, 1990.

Take notice that on February 15, 1990, Trunkline Gas Company (Trunkline) filed in Docket No. CP90-788-000, 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. CP86-586-000 for NGC Transportation, Inc. (NGC), a marketer, all as more fully set forth in the request on file with the Commission and open to public inspection.

Trunkline requests authorization to transport, on an interruptible basis, up to a maximum of 20,000 Dt. per day of natural gas for NGC from various existing points of receipt in the States of Illinois, Louisiana, Tennessee, and Texas, from the Panhandle receipt point at Douglas County, Illinois, and from the areas of Offshore Louisiana and Offshore Texas. Trunkline will then transport and redeliver subject gas, less fuel and unaccounted for line loss, to Illinois Power (Bourbon) in Douglas County, Illinois.

Trunkline indicates that service commenced January 1, 1990, as reported in Docket No. ST90-1628, and anticipates transporting 20,000 Dt. on a peak day, 2,000 Dt. on an average day and 730,000 Dt. on an annual basis.

Comment date: April 12, 1990, in accordance with Standard Paragraph G at the end of this notice.

22. Northern Natural Gas Company, Division of Enron Corp.

[Docket No. CP90-832-000]

February 26, 1990.

Take notice that on February 23, 1990, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP90-832-000 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 Kimball Resources, Inc. (Kimball), a marketer, under the blanket certificate issued in Docket No. CP89-435-000, 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.

Northern states that pursuant to a transportation agreement dated December 13, 1989, under its Rate Schedule IT-1, it proposes to transport up to 30,000 MMBtu per day equivalent of natural gas for Kimball. Northern states that it would transport the gas from receipt points shown in Appendix "A" of the transportation agreement and would deliver the gas to delivery points also shown in Appendix "A" of the agreement. Northern also states that the proposed service may involve the compression of gas at its Fort Buford Compressor Station for delivery to Northern Border Pipeline Company.

Northern advises that service under § 284.223(a) commenced December 13, 1989, as reported in Docket No. ST90-1408 (filed January 11, 1990). Northern further advises that it would transport 22,500 MMBtu on an average day and 10,950,000 MMBtu annually.

Comment date: April 12, 1990, in accordance with Standard Paragraph G at the end of this notice.

23. Stingray Pipeline Company

[Docket No. CP90-802-000]

February 26, 1990.

Take notice that on February 16, 1990, Stingray Pipeline Company (Stingray), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP90-802-000 a request pursuant to § 157.205 of the Commission's Regulations (18 CFR 157.205) for authorization to transport material gas on behalf of Equitable Resources Marketing (Equitable), under Stingray's blanket certificate issued in Docket No. CP88-824-000 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.

Stingray states that it would transport, on an interruptible basis, up to 211,150 MMBtu equivalent of natural gas on a peak day, 211,150 MMBtu equivalent on an average day and 77,069,750 MMBtu equivalent on an annual basis. It is stated that Stringray would receive the gas for Equitable's account at receipt points on Stingray's system in offshore Louisiana and would deliver equivalent volumes of gas in Louisiana. It is further stated that the transportation service would be effected using existing facilities and would require no construction of additional facilities. It is explained that the transportation service commenced January 29, 1990, under the automatic authorization provision of § 284.223 of the Commission's Regulations, as reported in Docket No. ST90-1635.

Comment date: April 12, 1990, in accordance with Standard Paragraph G at the end of this notice.

24. Mississippi River Transmission Corporation

[Docket No. CP90-823-000]

February 26, 1990.

Take notice that on February 20, 1990, Mississippi River Transmission Corporation (MRT), 9900 Clayton Road, St. Louis, Missouri 63124, filed in Docket No. CP90-823-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of Amoco Petroleum Addition Company (Amoco), under MRT's blanket certificate issued in Docket No. CP89-1121-000, 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.

MRT requests authorization to transport, on an interruptible basis, up to a maximum of 6,120 MMBtu of natural gas per day for Amoco from receipt points located in Texas, Louisiana, Arkansas and Illinois to a delivery point located in Illinois. MRT anticipates transporting, on an average day 6,120 MMBtu and an annual volume of 2,233,800 MMBtu.

MRT states that the transportation of natural gas for Amoco commenced January 9, 1990, as reported in Docket No. ST90-1661-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to MRT Docket No. CP89-1121-000.

Comment date: April 12, 1990, in accordance with Standard Paragraph G at the end of this notice.

25. Southern Natural Gas Company

[Docket No. CP90-826-000

February 26, 1990.

Take notice that on February 20, 1990, Southern Natural Gas Company (Southern) filed in Docket No. CP90-826-000 a request pursuant to § 157.205 and 284.223 of the Commission's Regulations for authorization to transport gas on an interruptible basis for Marathon Oil Company (Marathon) 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 states that it would perform the proposed transportation service for Marathon Oil Company (Marathon), a producer, pursuant to a service agreement date November 22, 1989, under Southern's Rate Schedule IT. It is stated that the service agreement provides for a maximum quantity to

180,000 MMBtu of gas on a peak day but Marathon currently has requested approximately 2,000 MMBtu of gas on an average day, and accordingly, 730,000 MMBtu of gas on an annual basis. Southern further states that it proposes to receive the gas at a receipt point in Eugene Island Block 57, offshore Louisiana, for delivery to its interconnection with United Gas Pipe Line Company in the same block. Southern asserts that no new facilities are required to implement the proposed service.

It is stated that Southern commenced transportation of natural gas for Marathon on December 23, 1989, as reported in Docket No. ST90-1453-000 pursuant to the 120-day self-implementing provision of § 284.223 of the Commission's Regulations.

Comment date: April 12, 1990, in accordance with Standard Paragraph G at the end of this notice.

26. Texas Gas Transmission Corporation

[Docket No. CP90-783-000]

February 26, 1990.

Take notice that on February 15, 1990, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street Owensboro, Kentucky 42301, filed in Docket No. CP90-783-000 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 natural gas transportation service for Coastal Gas Marketing Company (Coastal), a marketer of natural gas, under Texas Gas' blanket certificate issued in Docket No. CP88-686-000, 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.

Pursuant to a gas transportation agreement dated January 2, 1990, Texas Gas requests authorization to transport up to 200,000 MMBtu of natural gas per day for Coastal under its IT Rate Schedule. Texas Gas states that the agreement provides for it to receive the gas at three (3) existing points of receipt located in the West Cameron Area, offshore Louisiana and to redeliver the gas to an existing point of delivery also located in the West Cameron Area, offshore Louisiana. Coastal estimates that its average day and annual transportation quantities would be 50,000 and 18,250,000 MMBtu respectively. Texas Gas advises that the service commenced January 9, 1990, as reported in Docket No. ST90-1747-000, under § 284.223(a) of the Commission's Regulations.

Comment date: April 12, 1990, in accordance with Standard Paragraph G at the end of this notice.

27. Northwest Pipeline Corporation

[Docket No. CP90-811-000]

February 26, 1990.

Take notice that on February 20, 1990, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP90-811-000 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 an interruptible basis for Basic Incorporated (Basic) under the blanket certificate issued in Docket No. CP86-578-000 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.

Northwest states that pursuant to a transportation agreement dated February 24, 1988, as amended December 1, 1989, it proposes to transport 2,500 MMBtu per day for Basic under Rate Schedule TI-1, effective on a year to year basic, subject to termination upon 30 days written notice by either party.

Northwest also states that the maximum day, average day and annual transportation volumes would be approximately 2,500 MMBtu, 750 MMBtu and 275,000 MMBtu, respectively. Northwest will transport the subject gas through its transmission system from any transportation receipt point on its system to any transportation delivery point on its system.

Northwest further states it commenced their service on January 17, 1990, as reported in Docket No. ST90-1867-000.

Comment date: April 12, 1990, in accordance with Standard Paragraph G at the end of this notice.

28. United Gas Pipe Line Company

[Docket No. CP90-798-000]

February 26, 1990.

Take notice that on February 16, 1990, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP90-798-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide an interruptible natural gas transportation service on behalf of Phoenix Gas Pipeline Company (Phoenix), an intrastate pipeline, under United's 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 application which is on file with the Commission and open to public inspection.

Pursuant to a gas transportation agreement dated December 6, 1989, United proposes to transport up to 103,000 MMBtu of natural gas per day for Phoenix. United states that such gas would be transported from various existing receipt points located along its system to various existing delivery points also located along its system. Phoenix has informed United that it expects to have the full 103,000 MMBtu transported on an average day and, based thereon, estimates that the annual transportation quantity would be 37,595,000 MMBtu. United advises that the transportation service commenced on January 9, 1990, as reported in Docket No. ST90-1547-000, pursuant to § 284.223(a) of the Commission's Regulations.

Comment date: April 12, 1990, in accordance with Standard Paragraph G at the end of this notice.

29. El Paso Natural Gas Company

[Docket No. CP90-830-000]

February 26, 1990.

Take notice that on February 23, 1990, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP90-830-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of ARCO Natural Gas Marketing, Inc. (ARCO), a shipper of natural gas, under its blanket certificate issued in Docket No. CP88-433-000, 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.

El Paso requests authorization to transport, on an interruptible basis, 61,800 MMBtu on a peak and average day for ARCO from any point of receipt on El Paso's system for delivery to five specific points located in Midland, Pecos and Winkler Counties, Texas. The transportation agreement dated June 26, 1989, and has a primary term of one year and shall continue in effect month-to-month thereafter until terminated by either party upon at least 14 days written notice. El Paso anticipates transporting an annual volume of 22,557,000 MMBtu based upon average day volumes.

El Paso states that the transportation of natural gas for ARCO commenced December 23, 1989, as reported in Docket No. ST90-1472-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations.

Comment date: April 12, 1990, in accordance with Standard Paragraph G at the end of this notice.

30. Mississippi River Transmission Corporation

[Docket No. CP90-817-000]

February 26, 1990.

Take notice that on February 20, 1990, Mississippi River Transmission Corporation (MRT), 9900 Clayton Road, St. Louis, Missouri 63124, filed in Docket No. CP90-817-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authorization to transport natural gas for Ladd Gas Marketing, Inc. (Ladd), a shipper, under MRT's blanket certificate issued in Docket No. CP89-1121-000 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.

MRT proposes to transport on an interruptible basis up to 20,000 MMBtu of natural gas on a peak day, 20,000 MMBtu on an average day, and 7,300,000 MMBtu on an annual basis for Ladd. MRT states that it would perform the transportation service for Ladd under MRT's Rate Schedule ITS. MRT indicates that it would receive the gas at various points in Texas, Louisiana, Arkansas, and Illinois, for delivery to various points in Missouri.

It is explained that the service commenced January 10, 1990, under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST90-1664. MRT indicates that no new facilities would be necessary to provide the subject service.

Comment date: April 12, 1990, in accordance with Standard Paragraph G at the end of this notice.

31. Paiute Pipeline Company

[Docket No. CP90-835-000]

February 27, 1990.

Take notice that on February 26, 1990, Paiute Pipeline Company (Paiute), P.O. Box 94197, Las Vegas, Nevada 89193-4197, filed in Docket No. CP90-835-000 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 Harrah's Club d/b/a Harrah's Lake Tahoe Resort Casino (Harrah's Tahoe), an end-user, under the blanket certificate issued in Docket No. CP87-309-000, 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.

Paiute states that pursuant to a transportation agreement dated October 9, 1989, under its Rate Schedule IT-1, it proposes to transport up to 480 MMBtu per day equivalent of natural gas for Harrah's Tahoe. Paiute states that it would transport the gas through its system from the existing interconnection between the facilities of Paiute and Northwest Pipeline Corporation at the Idaho-Nevada border, and would redeliver the gas to Southwest Gas Corporation-Northern Nevada, a local distribution company, for the account of Harrah's Tahoe at the Stateline City Gate No. 1 delivery point located in Douglas County, Nevada.

Paiute advises that service under § 284.223(a) commenced December 13, 1989, as reported in Docket No. ST90-1097 (filed December 18, 1989). Paiute estimates that it would transport 245 MMBtu on an average day and 175,200 MMBtu annually.

Comment date: April 13, 1990, in accordance with Standard Paragraph G at the end of this notice.

32. Mississippi River Transmission Corporation

[Docket No. CP90-813-000]

February 27, 1990.

Take notice that on February 20, 1990, Mississippi River Transmission Corporation (MRT), 9900 Clayton Road, St. Louis, Missouri, 63124, filed, in Docket No. CP90-813-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the acquisition and conversion of abandoned field production or exploratory wells to storage field wells, and the construction and operation of minor facilities in MRT's East and West Unionville Storage Fields located in Lincoln Parish, Louisiana, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

In the application, MRT requests blanket certificate authorization for a ten year period to acquire abandoned production wells which have been and may be drilled by others within the existing surface boundaries of its East and West Unionville Storage Fields. MRT states that in recent years producers have increased drilling activities in the area of its Unionville Storage Fields in efforts to find commercially producible quantities of natural gas in formations underlying the storage reservoirs in these fields. MRT believes that certain of the wells which have been and may be drilled and ultimately abandoned by producers and which are located in certain areas of the storage fields would be useful as observation or injection/withdrawal wells. MRT further believes that the acquisition of such wells may be necessary to protect the integrity of its storage field and that they could be acquired and converted for use in storage operations at costs less than would be incurred to drill new wells.

MRT has requested authorization which would permit it to acquire such wells as it may determine would be useful in conducting its storage operations at the time the wells are abandoned by producers. MRT states that the costs related to the acquisition, conversion, and attachment to its existing field gathering system of specific wells cannot be known at this time; however, since abandoned producer wells capable of conversion to storage field purposes can likely be acquired for an amount approaching salvage value, it is therefore estimated that total costs to be incurred pursuant to the requested authorization will not exceed five million dollars. MRT also states that it will not acquire more than fifteen wells in total pursuant to the requested authorization, and that it will file with the Commission annual reports similar to those described in § 157.215(b)(1) of the Commission's Regulations regarding underground storage testing and development.

MRT also requests that if this application is not approved by April 1, 1990, the Commission grant it an extension of the authority to acquire abandoned wells in its East and West Unionville Storage Fields authorized in Docket No. CP85-193-000. MRT states that this authority is scheduled to expire on April 10, 1990 and it requests an extension to the later of April 10, 1990 or the date the Commission issues a final order in this proceeding. MRT represents that it may acquire and convert only one more abandoned well pursuant to the authority of that certificate.

Comment date: March 20, 1990 in accordance with Standard Paragraph F at the end of the notice.

33. El Paso Natural Gas Company

[Docket No. CP90-822-000]

February 27, 1990

Take notice that on February 21, 1990, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP90-822-000 a request pursuant to § 157.205 of the Commission's Regulations for permission and approval to abandon by removal certain sales tap facilities used for the direct sale of natural gas located in Pinal County, Arizona under El Paso's

blanket certificate issued in Docket No. CP82-435-000, 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.

El Paso proposes to abandon by removal a one-inch tap and valve assembly, with appurtenances, located on El Paso's existing 10¾-inch Tucson-Phoenix Line and 10¾-inch Tucson-Phoenix Loop Line at the Sacaton City Gate Meter Station located in Pinal County, Arizona utilized for the direct sale of natural gas to the U.S. Department of Interior, Bureau of Indian Affairs, Pima Agency (Pima).

El Paso states that Pima advised El Paso that direct sale service at the Sacaton City Gate Meter Station was no longer required due to a new contract with Southwest Gas Corporation (Southwest) and requested El Paso to remove its tap and valve assembly. El Paso states that by letter dated February 23, 1989, El Paso and Prima agreed to the termination of their Natural Gas Purchase and Sales Agreement dated July 7, 1950, as amended.

Comment date: April 13, 1990, in accordance with Standard Paragraph G at the end of this notice.

34. United Gas Pipe Line Company

[Docket No. CP90-827-000]

February 27, 1990

Take notice that on February 21, 1990, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP90-827-000 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 to Total Minatome Corporation (Total Minatome), a producer 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 for Total Minatome from various points of receipt located in Louisiana to various points of delivery located in Louisiana, Texas and Mississippi.

United further states that the maximum daily, average daily and annual quantities that it would transport on behalf of Total Minatome would be 103,000 MMBtu equivalent, 103,000 MMBtu equivalent and 37,595,000 MMBtu equivalent of natural gas, respectively.

United indicates that in Docket No. ST90-1725 filed with the Commission on February 1, 1990, it reported that transportation service for Total Minatome had begun under the 120-day automatic authorization provisions of § 284.223(a).

Comment date: April 13, 1990, in accordance with Standard Paragraph G at the end of this notice.

35. Great Lakes Gas Transmission

[Docket No. CP78-527-006]

February 27, 1990.

Take notice that on February 26, 1990, Great Lakes Gas Transmission Company (Great Lakes), 2100 Buhl Building, Detroit, Michigan 48226, filed in Docket No. CP78-527-006, an application pursuant to section 7(c) of the Natural Gas Act, for authority to amend a certificate of public convenience issued in Docket No. CP78-527, 8 FERC ¶ 61,059 (1979) so as to facilitate the assignment from Mississippi River Transmission Corporation (MRT) to Panhandle Eastern Pipe Line Company (Panhandle) of storage capacity in ANR Storage Company's (ANR Storage) facilities and storage-related transportation services, effective April 1, 1990, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Great Lakes alleges that it has an existing Gas Transportation and Exchange Agreement with ANR Pipeline Company (ANRPL), dated May 30, 1978, which is filed as Rate Schedule T-8, in Great Lakes' FERC Gas Tariff, Original Volume No. 2, pursuant to which Great Lakes transports gas to and from ANR Storage's storage facilities near Kalkaska, Michigan, for ANRPL. Great Lakes contends that it does not have a transportation agreement with MRT. It is asserted that ANRPL does have a transportation agreement with Great Lakes and pursuant to that agreement, transports gas for MRT, and others, to and from ANR Storage's storage facilities, pursuant to Rate Schedule T-8. Great Lakes alleges that, as a result of an order issued in *ANR Pipeline Company, et al.*, 50 FERC ¶ 61,176 (1990), the Commission determined that an agreement to Great Lakes' certificate was required in order to effectuate a similar assignment of storage and storage-related transportation services in ANR Storage from MRT to Panhandle. It is stated that ANRPL requested that Great Lakes file this application in order that the assignment by MRT of its storage and storage-related transportation services in ANR Storage be transferred to Panhandle.[1] Great Lakes requests that its certificate be amended to the extent that the Commission deems is necessary to implement the assignment of storage services from MRT to Panhandle.

Comment date: March 5, 1990, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

36. Williams Natural Gas Company

[Docket No. CP90-829-000]

February 28, 1990.

Take notice that on February 22, 1990, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP90-829-000 a request pursuant to §§ 157.205 and 157.216(b) of the Commission's Regulations under the Natural Gas Act for permission and approval to abandon by sale approximately 1.5 miles of 4-inch and 8-inch lateral pipeline and appurtenant facilities and to abandon by reclaim measuring and regulating facilities, all in Lyon County, Kansas, and the transportation of gas through said facilities under the authorization issued in Docket No. CP82-479-000 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.

WNG states that WNG and The Kansas Power & Light Company (KPL Gas Service) have agreed the pipeline is more appropriately a part of the KPL Gas Service distribution system and the measuring and regulating facilities will be replaced by a single facility. The reclaim cost is estimated to be $2,000, the salvage value $5,000, and the sale price $5,000.

Comment date: April 13, 1990, in accordance Standard Paragraph G at the end of this notice.

37. Trunkline Gas Company

[Docket No. CP90-845-000]

February 28, 1990.

Take notice that on February 26, 1990, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP90-845-000 a request pursuant to § 157.205 of the Commission's Regulations under the

[1] Related applications requesting authorization for the assignment of ANR Storage capacity and the assignment of storage-related transportation services were filed on May 26, 1989, by ANR Storage in Docket No. CP78-432-009; by ANR Pipeline in Docket No. CP78-545-006; by Panhandle and Trunkline Gas Company in Docket No. CP89-1522-000; by Michigan Consolidated Gas Company, Interstate Storage Division in Docket No. CP89-1523-000; and by MRT in Docket No. CP89-1524-000.

Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transporation service for Access Energy Corporation (Access), a marketer, under the blanket certificate issued in Docket No. CP86-586-000, 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.

Trunkline states that pursuant to a transportation agreement dated December 12, 1989, under its Rate Schedule PT, it proposes to transport up to 20,000 dekatherms (dt) per day equivalent of natural gas for Access. Trunkline states that it would transport the gas from receipt points in the states of Illinois, Louisiana, Tennessee, and Texas, from the Panhandle receipt at Douglas County, Illinois, and from the areas of offshore Louisiana and offshore Texas, as shown in Exhibit "A" of the transportation agreement and would deliver the gas, less fuel and unaccounted for line loss, to Central Illinois Public Service Company at Hoopeston in Vermilion County, Illinois.

Trunkline advises that service under § 284.223(a) commenced January 1, 1990, as reported in Docket No. ST90-1687. Trunkline further advises that it would transport 10,000 dt on an average day and 3,200,000 dt annually.

Comment date: April 13, 1990, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, 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.

Standard Paragraph

J. Any person desiring to be heard or make any protest with reference to said filings should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

FR Doc. 90-5100 Filed 3-6-90; 8:45 am]

BILLING CODE 6717-01-M

Natural Gas Data Collection System; Tariff Retrieval System Software Availability

[Docket No. RM87-17-000]

Issued February 28, 1990.

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Notice of tariff retrieval system software availability.

SUMMARY: The software used by the Commission staff to retrieve tariff sheets filed on electronic media in accordance with Order Nos. 493 (53 FR 15,025 (Apr. 27, 1988)), and 493-A (53 FR 30,027 (Aug. 10, 1988)), is now available to the public for test purposes.

DATES: The Tariff Retrieval System Software and instructions for users are available on February 28, 1990.

ADDRESSES: Requests for copies of the diskette containing the software and sample tariff sheets should be directed to: Reference and Information Center, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Room 2200, Washington, DC 20426, (202) 357-8118.

FOR FURTHER INFORMATION CONTACT: Albert Rogers, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Room 6007, Washington, DC 20426, (202) 357-8762.

SUPPLEMENTARY INFORMATION: The Commission staff is issuing one component of the FERC Automated System for Tariff Retrieval (FASTR) software for test purposes. FASTR is an IBM PC compatible system used to load, edit and retrieve tariff sheets filed on electronic media in accordance with Order No. 493. Only the retrieve option is issued with this notice.

The software issued today allows users to retrieve tariff sheets that have been loaded in the Commission's tariff database format. The retrieval option is designed to provide quick access to tariff sheets, rapid searching for desired sheets or text, copying in ASCII format and print capability. Tariff sheets which have been copied from the Commission's resident tariff database can easily be added to the system. The Commission staff is issuing the software for testing and invites all users to comment on problems and suggested revisions or enhancements. Comments should be forwarded in writing to Albert Rogers at the address indicated in the previous section of this notice.

This notice is available through the Commission Issuance Posting System (CIPS), an electronic bulletin board service that provides access to formal documents issued by the Commission.

CIPS is available at no charge to the user and may be accessed on a 24-hour basis using a personal computer with a modem by dialing (202) 357-8997. To access CIPS, set your communications software to use 300, 1200 or 2400 baud, full duplex, no parity, eight data bits and one stop bit. The notice consists of one file under Docket No. RM87-17-000 and will be available through CIPS for 30 days from the date of issuance.

The software will not be available through CIPS. However, the tariff software and a sample tariff sheet database file are available on a single 5.25" (1.2MB) or 3.5" (1.44MB) double-sided, high density diskette. The diskette is available from the Commission's copy contractor, LaDorn Systems Corp., located in Room 2200, 825 North Capitol Street NE., Washington, DC 20426. There is a copy fee of $5.00 for the 5.25" diskette and $6.00 for the #3.5" diskette.

Lois D. Cashell,

Secretary.

[FR Doc. 90-5092 Filed 3-6-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-135-005]

Arkia Energy Resources; Correction to Filing

February 28, 1990

Take notice that on February 21, 1990, Arkla Energy Resources (AER) filed Second Substitute Original Sheet No. 4D and Second Substitute Original Sheet No. 185.5 to its FERC Gas Tariff, to be effective June 1, 1989.

AER states that these tariff sheets are submitted to correct tariff sheets it filed on January 2, 1990 in compliance with the Commission's December 20, 1989 order. AER states that these tariff sheets reflect corrections relating to the application of the 50-50 cost sharing ratio under the Commission's Order No. 500. AER states that these sheets also reflect the removal from AER's computation of certain costs relating to AER's filing in Docket No. RP88-45-000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1989)). All such protests should be filed on or before March 7, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-5093 Filed 3-6-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-83-000]

CNG Transmission Corp. Proposed Changes in FERC Gas Tariff

February 28, 1990

On February 26, 1990, CNG Transmission Corporation ("CNG") tendered for filing, as part of its FERC Gas Tariff Original Volume No. 1, the following tariff sheets:

First Revised Sheet No. 50, Superseding Original Sheet No. 50
Second Revised Sheet No. 54, Superseding First Revised Sheet No. 54
First Revised Sheet No. 54-A, Superseding Original Sheet No. 54-A
First Revised Sheet No. 84, Superseding Original Sheet No. 84
Second Revised Sheet No. 88, Superseding First Revised Sheet No. 88

CNG states that the tariff sheets are being issued (1) to permit CNG's RQ customers to receive standby service on less than all converted quantities; (2) to clarify that the amount of standby service to be received by each RQ and CD customer shall be the amount specified in the executed service agreement; and (3) to remove the provisions that limit the availability of standby service to customers executing amended service agreements pursuant to the Stipulation and Agreement filed in Docket No. RP85-169.

CNG has requested that the Commission permit this filing to become effective as of April 1, 1990.

CNG states that copies of the filing were served upon all of its Volume I customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Commission, 825 North Capitol Street, NE., Washington, DC. 20426, in accordance with Rules 211 and 214 of the Commission's Rules and Practices and Procedures (18 CFR 385.211 and 385.214). All such motions or protests shall be filed on or before March 7, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-5094 Filed 3-6-90; 8:45 am]

BILLING CODE 6717-01-M

CNG Transmission Corp., Proposed Changes in FERC Gas Tariff

[Docket No. TM90-5-22-000]

February 28, 1990.

Take notice that CNG Transmission Corporation ("CNG"), on February 23, 1990, pursuant to section 4 of the Natural Gas Act, the Stipulation and Agreement approved by the Commission on October 6, 1989, in Docket Nos. RP88-217, *et al.* and § 12.9 of the General Terms and Conditions of CNG's tariff, filed the following revised tariff sheets to Original Volume No. 1 of its FERC Gas Tariff:

Substitute Fourth Revised Sheet No. 44
Fifth Revised Sheet No. 48
Sixth Revised Sheet No. 48
Substitute Original Sheet No. 49A
Substitute First Revised Sheet No. 49A
Second Revised Sheet No. 49A

The tariff sheets are proposed to become effective on various dates as indicated on each tariff sheet.

The purpose of the filing is to flow through changes in take-or-pay costs allocated to CNG by its pipeline suppliers.

Copies of the filing were served upon CNG's sales customers as well as interested state commissions.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. (18 CFR 385.214 and 385.211). All motions or protests should be filed on or before March 7, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-5095 Filed 3-6-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP88-35-004, TQ90-4-51-001, and TQ90-6-51-000]

Great Lakes Gas Transmission Co., Proposed Changes in FERC Gas Tariff Purchased Gas Adjustment Clause Provisions

February 28, 1990.

Take notice that Great Lakes Gas Transmission Company ("Great Lakes") on February 23, 1990 tendered for filing the following to its FERC Gas Tariff.

Item 1

First Revised Volume No. 1
Substitute Third Revised Substitute Twenty-Fifth Revised Sheet No. 57(i)
Substitute Third Revised Substitute. Twenty-Fifth Revised Sheet No. 57(ii)

Item 2

First Revised Volume No. 1
Substitute Fourth Revised Substitute Twenty-Fifth Revised Sheet No. 57(i)
Substitute Fourth Revised Substitute Twenty-Fifth Revised Sheet No. 57(ii)
Substitute Third Revised Substitute Eleventh Revised Sheet No. 57(v)

Item 3

First Revised Volume No. 1
Fifth Revised Substitute First Revised Twenty-Fifth Revised Sheet No. 57(i)
Fifth Revised Substitute First Revised Twenty-Fifth Revised Sheet No. 57(ii)
Fourth Revised Substitute First Revised Eleventh Revised Sheet No. 57(v)

Great Lakes states that the tariff sheets in Item 1 reflect the appropriate cost of purchased gas for tariff sheets originally filed on December 22, 1989 for the "unbundling" of service for Peoples Natural Gas Company.

Great Lakes states that the tariff sheets in Item 2 reflect the appropriate current purchased gas cost adjustment for its quarterly PGA for the period February 1, 1990 through April 30, 1990.

Great Lakes states that the tariff sheets in Item 3 reflect the current PGA rates for the months of February through April, 1990. The tariff sheets were filed as an out-of-cycle PGA to reflect the latest estimated gas cost as provided to Great Lakes by its sole supplier of natural gas, TransCanada PipeLines Limited ("TransCanada"). These pricing arrangements are the result of contract renegotiation between each of Great Lakes' resale customers and the supplier.

Great Lakes states that it has requested a waiver of the notice requirements to permit the above tariff sheets to become effective February 1, 1990, in order to implement the gas pricing agreements between Great Lakes' resale customers and TransCanada on a timely basis.

Any person desiring to be heard or to protest said filing should file a Motion to Intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC, 20426, in accordance with the Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before March 7, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,
Secretary.

[FR Doc. 90-5096 Filed 3-6-90; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. RP89-183-006]

Williams Natural Gas Co., Proposed Changes in FERC Gas Tariff

February 28, 1990

Take notice that on February 21, 1990, Williams Natural Gas Company (WNG) tendered for filing the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

First Revised Third Revised Sheet No. 18
First Revised Second Revised Sheet No. 45
Second Revised Second Revised Sheet No. 47
Second Revised Third Revised Sheet No. 70

The proposed effective date of these tariff sheets is December 1, 1989.

WNG states that these tariff sheets are being filed in compliance with the Commission's orders issued February 1, 1990 and February 6, 1990 in Docket Nos. RP89-183-001 and RP89-183-003, 004, and 005 respectively.

WNG states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street N.E., Washington, DC 20426, in accordance with §§ 385.211 and 285.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such protests should be filed on or before March 7, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 90-5097 Filed 3-6-90; 8:45 am]
BILLING CODE 6717-01-M

Office of Civilian Radioactive Waste Management

Payments-Equal-To-Taxes Provisions of the Nuclear Waste Policy Act of 1982, as Amended; Proposal and Request for Public Comment

AGENCY: Department of Energy.

ACTION: Proposed Notice of Interpretation and Procedures.

SUMMARY: The Department of Energy (DOE), Office of Civilian Radioactive Waste Management, is publishing for comment its proposed interpretation and procedures for certain of the payments-equal-to-taxes (PETT) provisions of the Nuclear Waste Policy Act of 1982, as amended [42 U.S.C. 10101 note] (the Act). The Act provides that DOE will make these payments to eligible States, units of local government, and Indian Tribes for activities related to siting, development, and operation of a high-level radioactive waste and spent-fuel repository, and any monitored retrievable storage facility. The jurisdictions are eligible for payments equivalent to the amount they would receive if authorized to tax the Federal site characterization activities at such site. Following its review of the comments received, DOE will publish a final notice setting forth DOE's interpretation of certain PETT provisions of the Act applicable during the current site characterization phase of the nuclear waste repository program, in addition to a general description of the procedures DOE anticipates utilizing to implement the PETT provisions.

DATES: Comments must be received on or before May 7, 1990.

ADDRESSES: Written comments (3 copies) should be sent to Allen Benson, Office of Civilian Radioactive Waste Management, RW-123, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. Copies of comments received will be available for examining and may be photocopied for a fee at DOE's public reading room at 1000 Independence Avenue SW., room 1E-190, Washington, DC.

Copies of documents referred to in this notice (unless otherwise indicated) are available for public review at DOE Headquarters reading room, 1000 Independence Avenue SW., room 1E-

190, Washington, DC 20585, (202) 586-6020; Nevada Operations Office reading room, 2753 S. Highland, Las Vegas, NV 89109, (702) 295-1274; and the Richland Operations Office reading room, 825 Jadwin Avenue, Richland, WA 99352, (509) 376-6583.

FOR FURTHER INFORMATION CONTACT:

Allen Benson, Office of Civilian Radioactive Waste Management, RW-123, U.S. Department of Energy, Washington, DC 20585, (202) 586-9305

Robert Mussler, Esq., Office of General Counsel, GC-11, U.S. Department of Energy, Washington, DC 20585, (202) 586-6947.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Department of Energy, Office of Civilian Radioactive Waste Management, today gives notice of its proposed interpretation of certain of the PETT provisions of the Act, and notice of its proposed general procedures for administering DOE responsibilities under those provisions. Although the implementation of PETT necessarily will involve uncertainties arising from the application of particular tax requirements to site-specific DOE activities, DOE invites public comment on its proposed interpretation of some key statutory provisions and on the general administrative procedures that DOE intends to use when it makes the PETT payments during the current site characterization phase of the nuclear waste repository program. Interested persons are asked specifically to provide written comments on this proposal, including suggestions for modification. DOE will respond to and consider all relevant comments and, as appropriate, DOE may meet with the commenters to discuss issues raised by those comments. Based on these comments and discussions, DOE may modify the interpretation and general procedures by a further notice in the **Federal Register**. DOE's final interpretation and general procedures will be set forth in a final notice. DOE intends to utilize the final interpretation in developing proposed PETT payments which will then be subject to further modification in light of relevant facts and circumstances brought to DOE's attention in particular cases.

II. Background

The Nuclear Waste Policy Act of 1982 (the 1982 Act), Public Law 97-425, assigned to the Secretary the responsibility for managing the disposal of spent nuclear fuel and high-level radioactive waste, and established the Office of Civilian Radioactive Waste Management for that purpose. On December 22, 1987, the Nuclear Waste Policy Amendments Act of 1987 (the Amendments Act) was signed into law as part of the Omnibus Budget Reconciliation Act of 1987 (Public Law. 100-203). (The 1982 Act was also identically amended by Public Law 100-202, December 22, 1987, 101 Stat. 1329-121.)

Section 116(c)(3) of the 1982 Act [42 USC 10136(c)(3)], before it was amended by the Amendments Act, authorized PETT to those States and units of general local governments in which a candidate site for a repository was approved under section 112(c) of the 1982 Act. Specifically, that language provided, in part:

> The Secretary shall also grant to each State and unit of general local government in which a site for a repository is approved under section 112(c) an amount each fiscal year equal to the amount such State and unit of general local government, respectively, would receive were they authorized to tax site characterization activities at such site, and the development and operation of such repository, as such State and unit of general local government tax the other real property and industrial activities occurring within such State and unit of general local government.

Section 118(b)(4) of the 1982 Act authorized similar payments to affected Indian Tribes where a candidate site was approved.

The Amendments Act revised section 116(c)(3) to provide that only the State of Nevada and affected units of local government would henceforward be eligible for PETT. Section 116(c)(3)(A) now provides:

> In addition to financial assistance provided under paragraphs (1) and (2), the Secretary shall grant to the State of Nevada and any affected unit of local government an amount each fiscal year equal to the amount such State or affected unit of local government, respectively, would receive if authorized to tax site characterization activities at such site, and the development and operation of such respository, as such State or affected unit of local government taxes the non-Federal real property and industrial activities occurring within such State or affected unit of local government.

Section 118(b)(4) of the 1982 Act, applicable to Indian Tribes, was not changed. Additionally, although not addressed in this notice, the Amendments Act added a new section 149, which extended PETT provisions to States, affected Indian Tribes, and affected units of local government in the case of a monitored retrievable storage facility.

DOE has determined the DOE Order 2100.12, "Payments for Special Burdens and in Lieu of Taxes," is not applicable to the implementation of PETT under the 1982 Act, as amended. That order focuses on the development of payments by taking into consideration any benefits, as well as any burdens, to the community resulting from the presence of the DOE facility. The 1982 Act does not provide for any reduction of the putative tax burden on the basis of other benefits to the community.

Numerous meetings and exchanges of correspondence have occurred between DOE and the States, local governments, and Indian Tribes concerning PETT. Beginning in 1986, DOE met quarterly with the then potentially affected jurisdictions to discuss programmatic issues including PETT. In addition, meetings with interested persons specifically to discuss PETT issues took place in Salt Lake City, Utah, in May 1987 and in Las Vegas, Nevada, in November 1987. The Attorneys General for the States of Nevada and Washington have issued interpretive opinions on PETT. In preparing this notice, DOE has given careful consideration to information generated by all these sources.

III. Discussion of Interpretation and Procedures

A. Site

One question arising from section 116(c)(3) is what is intended to constitute a "site" for purposes of the PETT provisions. The meaning of this term is determined by analyzing several provisions of the Act. Section 116(c)(3) specifies that PETT is authorized for "site characterization activities *at such site*" (emphasis added). By the words "*at* such site," the Act limits PETT to on-site activities, and excludes activities conducted elsewhere.

In addition, the phrase "at such site" is preceded by a reference to the site approved by the President under section 112(c). Section 112(c) addresses "candidate sites" recommended to the President for approval. Thus, sections 116(c)(3) and 112(c) appear to make no distinction between the "candidate site" and the "site" which is to be the basis for PETT.

Section 2(4) of the Act defines a "candidate site" as an area recommended to and approved by the President pursuant to section 112(c) for site characterization. DOE identified three potential candidate sites in final Environmental Assessments, issued in May 1986, that accompanied the Department's recommendation to the President. More specifically, Figure 3-5 of the Hanford Environmental Assessment (DOE-RW-0070), Figure 3-2

of the Deaf Smith Environmental Assessment (DOE/RW-0069), and Figure 3-1 of the Yucca Mountain Environmental Assessment (DOE/RW-0073) identify the three candidate sites. This recommendation was approved by the President. For purposes of satisfying its PETT responsibilities, DOE proposes to interpret "site" to mean the areas of land identified as "candidate sites" by DOE In Chapter 3 of the final Environmental Assessments issued in May 1986. In the process of arriving at this proposed interpretation of "site," DOE considered other interpretations, including:

(1) A definition postulated earlier by DOE that would have defined "site" as the area of land encompassed by a boundary that is 5 kilometers from the nearest point of the planned underground facility of a repository. This definition incorporates that area DOE would be required to control pursuant to Nuclear Regulatory Commission regulations for licensing a repository. However, the area of land defined by the boundary from the repository is not the same as the "candidate site" being subject to characterization activities. Thus, after further consideration, DOE has decided on the proposal contained in this notice which conforms to the statutory language.

(2) A definition of the PETT provisions issued by the Attorney General of the State of Nevada on January 2, 1987, stated, in part, that "* * * without Federal intervention, their [DOE's] off-site property and activities would have been subjected to taxation under Nevada law"; and further stated that the term "at such site" was not "in any way" a limitation on the concept of full tax equivalency, nor did it limit the location of the situs for purposes of PETT eligibility "within the state of property, transactions or uses which would otherwise be subject to taxation* * * * " The opinion also stated that the real and personal property and activities of the United States, as managed and controlled by DOE, are of "an interstate and intercounty nature" and thus, under Nevada law, require valuation "as a collective unit" for the purposes of section 116(c)(3) of the Act. It added that no constitutional impediments would prevent the valuation of interstate or intercounty activities and property as a collective unit if the portion referrable to Nevada and local taxing units were apportioned in a "reasonable" manner. It was the Nevada Attoreny General's opinion that, "* * * it is not critical that the repository site have well-defined boundaries." This opinion of the Nevada Attorney General is based on a flawed premise that Nevada law would govern the taxable unit. State taxation of federal activities occurs only at the forbearance of the sovereign, *i.e.*, after a waiver of the sovereign immunity. It is then necessary to determine the scope of that waiver.

(3) An opinion issued by the Attorney General of the State of Washington on October 21, 1987, stated that PETT payments were not predicated on a geographical "controlled area"; that the DOE's interpretation of the PETT provisions as such was to narrow and ignored congressional intent that there be a more expansive application; and that a narrow interpretation was inconsistent with the rest of the Act in general and with section 113 in particular. DOE's inquiry focused first on the language of the statute itself and found that it ambiguously expressed the intent of Congress (see Chevron U.S.A., Inc. v. NRDC, 467 US 837). The proposed interpretation is not considered either expansive or narrow, but, rather reflects the clear meaning of the text of the relevant statutory language. After further consideration, DOE has decided that the proposal contained in this notice is both more consistent with the statutory language and reflects more accurately the actual status of the program: namely, site characterization.

(4) Assertions made by various interested persons that facilities which may be used on a regular basis in the immediate vicinity of the site, and which directly support the conduct of activities at the site, should be considered for PETT purposes, and that to limit PETT on a geographical basis would create an incentive for DOE to shift activities off-site in order to avoid payment of PETT. The inclusion of off-site activities in the determination of the PETT payment would contravene the expressed requirement that PETT payments are to be made only for activities "*at* such site."

B. PETT Eligibility

The existence of a "site" does not in itself create an entitlement to PETT. A right to PETT arises when DOE conducts activities at the site for which the States, affected Indian Tribes and affected units of local government would otherwise be authorized to impose taxes. Moreover, the Act authorizes DOE to make payment only in an amount that is equal to that which private entities would be required to pay in taxes. Taxes refers to any existing authorities to levy taxes on real property and industrial (commercial if on an Indian reservation) activities. Thus, PETT is (1) contingent upon the taxing jurisdiction having the requisite taxing authority; and (2) limited in amount by the equivalency provision.

Accordingly, the general requirements for a jurisdiction to be eligible to receive PETT payments for site characterization activities are interpreted by DOE as follows:

(1) The jurisdiction must have within its boundaries a repository candidate site;

(2) The jurisdiction must be a State, affected Indian Tribe, or affected unit of local government;

(3) The jurisdiction must have the requisite taxing authority; and

(4) The jurisdiction must levy taxes applicable to non-Federal activities that are similar to the site characterization activities conducted by DOE.

Government contractor activities are presently taxed as private activities by the appropriate jurisdictions and therefore are not within the scope of this notice.

C. PETT Commencement and Termination

Both the 1982 Act and the Amendments Act authorize payments to be made for site characterization and certain specified subsequent activities. Section 2(21) of the Act defines "site characterization" as:

(A) siting research activities with respect to a test and evaluation facility at a candidate site; and

(B) activities, whether in the laboratory or in the field, undertaken to establish the geologic condition and the ranges of the parameters of a candidate site relevant to the location of a repository, including borings, surface excavations, excavations of exploratory shafts, limited subsurface lateral excavations and borings, and in situ testing needed to evaluate the suitability of a candidate site for the location of a repository, but not including preliminary borings and geophysical testing needed to assess whether site characterization should be undertaken.

For the Texas, Nevada, and Washington sites previously described, DOE proposes to use May 28, 1986, the date of the President's approval of those sites as candidates for site characterization, as the commencement date for PETT eligibility. Additionally, DOE intends to treat the date of the enactment of the Amendments Act (December 22, 1987), in which Congress repealed DOE's authority to conduct site characterization at the Washington and Texas sites, as the termination date of site characterization activities at the Washington and Texas sites and, thus, of eligibility for PETT. None of the possible bases for PETT, i.e., the development and operation of a repository, specified in the 1982 Act and

the Amendments Act for activities subsequent to site charaterization are applicable to the Washington and Texas sites. No such development and operation activities were undertaken at the Washington and Texas sites. In view of the designation in the Amendments Act of Nevada as the single site henceforth to be characterized, that site's eligibility for PETT continues.

D. Computation of Payments

Under the Supremacy Clause of the Constitution of the United States, States, local jurisdictions and Indian Tribes cannot tax Federal activities without a clear waiver of sovereign immunity.

The Act's PETT provisions do not provide any right in the States to tax the relevant site characterization activities, but rather require DOE to "grant" to affected jurisdictions payments equivalent to the amounts they would receive if DOE's activities were not tax-exempt. Accordingly, DOE has the statutory responsibility to determine the amount of payments to be granted. Computation of these payments involves applying the tax structure of the eligible jurisdiction to the activities and property at a site, and also ensuring that the computed amounts are comparable with the tax liabilities of similarly situated private-sector taxpayers, as required by the Act.

DOE proposes to be guided by the following considerations in the computation of PETT:

(1) DOE's *Accounting Directives* (2200.xx Series), as supplemented by generally accepted accounting principles, will guide the record-keeping for PETT (copies of these documents will be available for examining in Washington, DC, by contacting the Director, Office of Financial Policy, MA-31, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; at the Nevada Operations Office, by contacting the Director, Financial Management Division, Nevada Operations Office, 2753 S. Highland, Las Vegas, NV 89109; and at the Richland Operations Office, by contacting the Director, Financial Resources Division, Richland Operations Office, 825 Jadwin Avenue, Richland, WA 99352);

(2) To be eligible for PETT, a jurisdiction's tax must be constitutionally valid; and

(3) Since the tax structures and practices of eligible jurisdictions will be applied in the computation of PETT, it is necessary to identify for each relevant tax:

(a) Types of property and value measurements used to determine a taxable basis;

(b) Rates and/or classes of rates applicable to the taxable basis;

(c) Exemptions; and

(d) Scope of applicability.

DOE anticipates that taxes levied against land, other real property, and industrial (commercial if on an Indian reservation) activities by eligible jurisdictions for general purposes, and under a general taxing authority, will be relevant for consideration for the payments under PETT. In addition, site characterization activities that might qualify for PETT include:

(1) On-site activities and improvements carried out beginning May 28, 1986;

(2) Acquisitions of real and personal property, or interests therein, including buildings, equipment, and materials;

(3) Activities related to site characterization carried out prior to May 28, 1986, but only to the extent that the residual value of those activities is treated as an improvement to real estate for purposes of assessment valuation; and

(4) DOE will consider on a case-by-case basis any other basis for a PETT payment proposed by an eligible jurisdiction.

DOE will construe these elements together in its interpretation of PETT.

E. Payment Process

When DOE determines that a PETT payment is appropriate, it will compute the appropriate amount to be paid. DOE will consult with officials of eligible jurisdictions with respect to the specific taxes relevant to site characterization activities and the procedures for determining taxable amounts and payment schedules. DOE will work with representatives of eligible jurisdictions to tailor procedural agreements. In general DOE proposes to follow procedures described below:

(1) DOE may seek advice on tax issues from outside experts, whenever it deems doing so appropriate or necessary;

(2) When it is necessary to determine the value of real property in order to ascertain a tax basis, DOE will secure the services of at least two professional appraisers who have been certified by a nationally recognized real estate appraisal organization;

(3) DOE will obtain sufficiently detailed information to facilitate its conformance with local tax policy, practices and procedures; and

(4) A record of the discussions between DOE and eligible jurisdictions will be maintained sufficient to establish the positions of all parties. These discussions will address:

(a) Reporting procedures for DOE and eligible jurisdictions;

(b) Specific PETT application procedures;

(c) Channels and methods of communication;

(d) Individuals and offices responsible for PETT within eligible jurisdictions;

(e) Processes for making estimated PETT payments; and

(f) Disbursement mechanisms.

When the computation of DOE's PETT responsibility has been completed, the following process will occur:

(1) A payment and a letter explaining the calculations upon which the payment is based will be sent to the eligible jurisdiction;

(2) A review and comment process will be initiated, providing an opportunity for the eligible jurisdictions to seek clarification and to present alternate calculations if they so choose; and

(3) At the conclusion of the review and comment process, the payment to the eligible jurisdictions will be finalized.

The PETT disbursement mechanisms will be tailored, to the maximum extent possible, to accommodate the payment procedures of the eligible jurisdictions. Significant differences exist in the frequency with which taxes are paid. Some taxes must be paid monthly while others, such as property and franchise taxes, are paid on an annual basis. DOE intends to take into consideration the specific tax provisions and practices concerning payment of each eligible jurisdiction in determining PETT disbursement procedures. Late payments, for initial and subsequent payments, shall include interest in accordance with the taxing jurisdictions' applicable requirements.

F. Accounting for PETT

Two essential elements in the computation of PETT are: (1) the basis for property valuation and (2) the valuation of activities engaged in by DOE. The accounting and reporting approach for determining the valuation basis of PETT would include the following considerations:

(1) Application of DOE's *Accounting Directives* (2200.xx Series), as supplemented by generally accepted accounting principles; and

(2) Identification of necessary site-specific accounting activities.

DOE recognizes that Federal entities do not normally keep books and records in a manner that would facilitate computation of taxes. However, to facilitate the calculation of PETT payments, DOE intends to establish and

maintain records in a manner which supports these calculations.

IV. Federalism Impacts

Executive Order 12612, 52 FR 41685 (October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, and on the distribution of power and responsibilities among various levels of government. If there are sufficient substantial direct effects EO 12612 requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a rule or a policy of action.

This Interpretation and Procedures, when finalized, will directly affect at most a few States. The amounts of payments, when authorized, and the effect of this Interpretation and Procedures on those amounts will not be substantial in comparison to the total budget for any jurisdiction. Consequently, DOE has concluded that there are not sufficient substantial direct effects to require preparation of a federalism assessment.

Issued in Washington, DC February 28, 1990.

Samuel Rousso,

Acting Director, Office of Civilian Radioactive Waste Management.

[FR Doc. 90-5209 Filed 3-6-90; 8:45 am]

BILLING CODE 6450-01-M

Office of Conservation and Renewable Energy

Metals Initiative Research: Steel, Aluminum, Copper and Other Metals

AGENCY: Office of Conservation and Renewable Energy.

ACTION: Notice of program interest.

SUMMARY: The Steel and Aluminum Energy Conservation and Technology Competitiveness Act of 1988, Public Law 100-680, has the followig purposes: (1) To increase the energy efficiency and enhance the competitiveness of the American steel, aluminum, and copper industries by undertaking programs of scientific research and development; and (2) to continue steel research and development efforts begun under the Department of Energy program known as the Steel Initiative. Pursuant to the Act, (DOE) has issued a Management Plan and a Research Plan, which are the primary reference and guidance documents for program implementation. This announcement seeks proposals for research and development of advanced technologies for the primary metals industries, which are responsive to the requirements of this program, hereafter known as the Metals Initiative (MI).

DOE's Office of Industrial Programs (OIP) is interested in receiving research and development proposals relating to the primary metals industries. Research projects ranging from laboratory to pilot-scale, that have the potential for contributing to improved technology competitiveness and energy conservation in the above industries, are desired.

Technologies of particular interest are those that would improve the competitiveness of the U.S. metals industries through reduction, elimination, or replacement of entire unit operations. However, proposals relating to any technology that can provide significant benefits to industry will be recognized.

Proposals for projects to be funded by the program must respond to the following requirements, as stated in the MI Management Plan dated May, 1989: (1) The proposed research and development is consistent with the purposes of the Act; (2) The initial phase of the proposed effort may be laboratory, bench-scale, or pilot-scale research. The final phase will ordinarily be pilot-scale research; (3) A critical review of existing and emerging technologies, patents, on-going research, and practices, on a worldwide basis, that are and/or could be competitive with the proposed new technology. The hurdles that must be overcome to ensure commercial viability must be identified; (4)(a) An initial economic evaluation indicating the potential for a significant reduction in manufacturing costs and/or a significant improvement in product value due to an improvement in product characteristics; and (b) an estimate of the economic benefit to the domestic metals industry; (5) An estimate of the potential energy savings attributable to the implementation of the proposed technology expected to result from the R&D; (6) A Statement of Work for achieving the stated project objective, including project schedule, work breakdown structure, spending plan, milestones, and decision points; (7) Identification and qualifications of the principal research personnel and equipment involved in the effort; (8) Non-Federal cost sharing commitment. There is a statutory requirement that non-Federal cost sharing must equal at least 30 percent of the total cost of any project; (9) An estimate of the total R&D costs required to reach the stage of technology development at which Federal funding will no longer be required; and (10) A plan for commercialization, including timing, given successful accomplishment of R&D objectives.

Unsolicited proposals submitted in response to this notice will be handled according to the procedures described in the DOE publication "Guide for the Submission of Unsolicited Proposals." The proposed research and development work will be initially reviewed by DOE personnel and, if deemed appropriate, will be referred to additional reviewers for detailed evaluation. The principal elements that will be considered in the detailed evaluation are:

1. Overall scientific, technical and/or socioeconomic merit of the proposed activity;
2. The scientific and technical competence of the proposer and supporting institution(s), and the adequacy of necessary facilities;
3. The relevance of the proposed research project to the purposes of the Act;
4. The appropriateness of proposed costs, including cost-sharing.

This notice does not commit the Government to make an award. A decision to award will be determined through evaluation of proposals received and the availability of funds.

Industrial concerns or partnerships, including partnerships among industry and National Laboratories, universities, and/or non-profit organizations, are encouraged to submit proposals.

Additional information may be requested by DOE during review of submitted proposals. Standard Form (SF) 424 and DOE Form 1600.5, "Assurance of Compliance", must be executed prior to any award.

ADDRESS: Each unsolicited proposal submitted must be physically separate from any other proposals submitted. Five (5) copies of each proposal, including the signed original, must be submitted to: U.S. Department of Energy, Office of Industrial Programs, CE-142, room 5F-034, 1000 Independence Avenue SW., Washington, DC 20585. Attention: Dr. Peter Salmon-Cox, Acting Director, Division of Improved Energy Productivity.

Questions relating to this solicitation should be directed to Dr. Salmon-Cox at (202) 586-2380. Proposers should become familiar with the Metals Initiative Management Plan and Research Plan, which may be obtained from Dr. Salmon-Cox.

DOE reserves the right to support or not support any or all proposals. DOE assumes no responsibility for any costs associated with proposal preparation. Detailed information concerning assistance policy and procedures is contained in the Department of Energy Assistance Regulations, 10 CFR part 600, copies of which are available from the Superintendent of Documents, U.S.

Government Printing Office, Washington, DC 20402.

DATES: This notice is effective until December 31, 1990.

Issued in Washington, DC on February 28, 1990.

J. Michael Davis, P.E.,

Assistant Secretary, Conservation and Renewable Energy.

[FR Doc. 90-5211 Filed 3-6-90; 8:45 am]

BILLING CODE 6450-01-M

Office of Energy Research

Fusion Policy Advisory Committee; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Fusion Policy Advisory Committee.

Date & Time: March 22, 1990—8:30 a.m.-5 p.m.; March 23, 1990—8:30 a.m.-12 Noon.

Place: Department of Energy, 1000 Independence Avenue SW., Room 1E-245, Washington, DC 20585, (202) 586-5444.

Contact: William L. Woodard, Department of Energy, Office of Energy Research, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-5767.

Purpose of the Committee: To review the conduct of the Department of Energy's magnetic and inertial confinement fusion programs and to recommend to the Department a policy for the development of fusion energy for civilian applications.

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.

March 22, 1990

8:30 a.m.—Discussion of the Scope of the Committee's Study.
9:30 a.m.—Review of the Magnetic Fusion Energy Program.
12 Noon—Lunch.
1 p.m.—Review of the Magnetic Fusion Energy Program (Continued).
2 p.m.—Review of the Inertial Confinement Fusion Program.
4:50 p.m.—Public Comment (10 minute rule).
5 p.m.—Adjourn.

March 23, 1990

8:30 a.m.—Discussion by the Committee.
11:30 a.m.—Public Comment (10 minute rule).
12 Noon—Adjourn.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee 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 the meeting and reasonable provisions will be made to include the presentation on the agenda.

Transcripts: The transcript of the meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal Holidays.

Issued at Washington, DC, on

J. Robert Franklin,

Deputy Advisory Committee, Management Officer.

[FR Doc. 90-5240 Filed 3-6-90; 8:45 am]

BILLING CODE 5450-01-M

Office of Hearing and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Energy.

ACTION: Notice of proposed implementation of special refund procedures.

The Office of Hearings and Appeals of the Department of Energy announces proposed procedures for the disbursement of $5,377,587 (plus accrued interest) that Thomas P. Reidy, Inc. remitted to the DOE pursuant to a consent order. The funds will be distributed in accordance with the DOE's special refund procedures, 10 CFR part 205, subpart V.

DATES AND ADDRESSES: Comments must be filed in duplicate within 30 days of the date of publication in the **Federal Register** and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585 All comments should conspicuously display a reference to Case Number KEF-0137.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director; Richard A. Cronin, Jr., Staff Attorney; Office of Hearings and Appeals; 1000 Independence Avenue, SW.; Washington, DC 20585; (202 586-2860 (Durgan; (202) 586-4921 (Cronin).

SUPPLEMENTARY INFORMATION:

In accordance with § 205.282(b) of the procedural regulations of the Department of Energy (DOE), 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision and Order sets forth the procedures that the DOE has tentatively formulated to distribute monies that have been remitted by Thomas P. Reidy, Inc. to the DOE to settle possible pricing and allocation violations with respect to its sale of refined petroleum products. The DOE is currently holding $5,377,587 in an interest-bearing escrow account pandng distribution.

Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized. Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of the publication of this notice in the **Federal Register**, and should be sent to the address set forth at the beginning of this notice. All comments received will be available for public inspection between the hours of 1 p.m. and 5 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in room 1E-234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: February 28, 1990.

George B. Breznay,

Director, Office of Hearing and Appeals.

PROPOSED DECISION AND ORDER OF THE DEPARTMENT OF ENERGY

Implementation of Special Refund Procedures

February 28, 1990.

Name of Case: Thomas P. Reidy, Inc.

Date of Filing: June 27, 1989.

Case Number: KEF-0137.

On June 27, 1989, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) filed with the Office of Hearings and Appeals (OHA) a Petition for the Implementation of Special Refund Procedures to distribute funds received from Thomas P. Reidy, Inc. (Reidy) under the terms of a consent order between the DOE and Reidy. In accordance with the provisions of the procedural regulations at 10 CFR part 205, subpart V (subpart V), the ERA requests in its petition that the OHA establish special procedures to make refunds in order to remedy the effects of alleged regulatory violations which were settled by the Reidy consent order.

I. Background

Reidy was a bulk reseller and independent wholesale marketer of refined petroleum products during the period of federal price controls. The firm was therefore subject to the Mandatory Petroleum Price and Allocation Regulations set forth in 10 CFR parts 210, 211 and 212, and predecessor regulations in 6 CFR part 150. During the course of controls, the ERA conducted an extensive audit of Reidy's operations and alleged in several administrative proceedings that Reidy had violated

certain applicable DOE price and allocation regulations in its sales of refined petroleum products. On April 1, 1988, the OHA issued a Remedial Order which found that Reidy had violated the DOE price regulations pertaining to resellers and retailers. *Thomas P. Reidy, Inc.*, 17 DOE ¶ 83,009 (1988) (*Reidy*). Subsequently, settlement discussions were held and on January 13, 1989, the ERA and Reidy entered into a consent order (No. 720H06015Z) that resolved all regulatory issues pertaining to Reidy's refined petroleum product operations during the period from January 1, 1973 through January 27, 1981 (the consent order period). This consent order was adopted as final on March 14, 1989. *See* 54 FR 10575 (March 14, 1989).

Pursuant to the consent order Reidy remitted $5,200,000 to the DOE for distribution through subpart V. It was also required to assign to the consent order fund a refund of $177,587 which had been approved for Reidy by this Office in another proceeding but was held in escrow pending resolution of the Reidy enforcement proceeding.[1] These funds are being held in an interest-bearing escrow account maintained at the Department of the Treasury pending a determination regarding their proper distribution.

II. Jurisdiction and Authority

The subpart V regulations set forth general guidelines which may be used by the OHA in formulating and implementing a plan of distribution of funds received as a result of an enforcement proceeding. The DOE policy is to use the subpart V process to distribute such funds. For a more detailed discussion of subpart V and the authority of OHA to fashion procedures to distribute refunds, see *Office of Enforcement*, 9 DOE ¶ 82,508 (1981); *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (*Vickers*).

We have considered the ERA's petition that we implement a subpart V proceeding with respect to the Reidy consent order fund and have determined that such a proceeding is appropriate. This Proposed Decision and Order sets forth the OHA's tentative plan to distribute this fund. Comments are solicited.

III. Proposed Refund Procedures

We propose to implement a two-stage refund process by which purchasers of Reidy refined products during the consent order period may submit Applications for Refund in this initial stage. From our experience with subpart V proceedings, we expect that potential applicants generally will fall into the following categories: (i) End-users; (ii) regulated entities, such as public utilities, and cooperatives; and (iii) refiners, resellers and retailers (hereinafter collectively referred to as "resellers").

A. Claims Based Upon Alleged Overcharges

In order to receive a refund, each claimant will be required to submit a schedule of its monthly purchases of Reidy refined petroleum products during the consent order period. If the product was not directly purchased from Reidy, the claimant must establish that the product originated with Reidy.

We propose, however, to exclude from refund consideration certain sales of refined petroleum products made by Reidy during the consent order period. In *Reidy*, the OHA found that Reidy had made voluntary refunds to Torco Oil Company (Torco) to make restitution for overcharges in its January 1974 sale to Torco of No. 6 low sulphur residual fuel oil and in its December 1973 sale to Torco of No. 6 high sulphur fuel oil. *Reidy*, 17 DOE at 86,107. Reidy also made a voluntary refund to four subsidiaries of Tenneco, Inc. (Tenneco) to make restitution for overcharges in Reidy's sale to them of No. 2 fuel oil in November 1973.[2] *Id.* Since restitution has already been made to these firms, we propose that Torco's purchases of No. 6 low sulphur residual fuel oil in January 1974 and its purchases of No. 6 high sulphur fuel oil in December 1973 will not be eligible for a refund from the consent order fund. Similarly, the four Tenneco subsidiaries' purchases of No. 2 fuel oil from Reidy in November 1973 will also not be eligible for a refund.

Additionally, a reseller claimant, except one who chooses to utilize the injury presumptions set forth below, will be required to make a detailed showing that it was injured by Reidy's alleged overcharges. This showing will generally consist of two distinct elements. First, a reseller claimant will be required to show that it had "banks" of unrecouped increased product costs in excess of the refund claimed.[3] Second, because a showing of banked costs alone is not sufficient to establish injury, a claimant must provide evidence that market conditions precluded it from increasing its prices to pass through the additional costs associated with the alleged overcharges. *See Vickers Energy Corp./Hutchens Oil Co.*, 11 DOE ¶ 85,070 at 88,105 (1983). Such a showing could consist of a demonstration that a firm suffered a competitive disadvantage as a result of its purchases from Reidy. *See National Helium Co./Atlantic Richfield Co.*, 11 DOE ¶ 85,257 (1984), *aff'd sub nom. Atlantic Richfield Co. v. DOE*, 618 F. Supp. 1199 (D. Del. 1985).

1. *Presumptions for Claims Based on Alleged Overcharges.* Our experience also indicates that the use of certain presumptions permits claimants to participate in the refund process without incurring inordinate expense and ensures that refund claims are evaluated in the most efficient manner possible. *See., e.g., Marathon Petroleum Co.*, 14 DOE ¶ 85,269 (1986) (*Marathon*). Presumptions in refund cases are specifically authorized by the applicable DOE procedural regulations at 10 CFR 205.282 (e). Accordingly, we propose to adopt the presumptions set forth below.

First, we will adopt a presumption that the alleged overcharges were dispersed equally in all of Reidy's sales of refined petrolem products during the consent order period. In accordance with this presumption, refunds are made on a pro-rata or volumetric basis.[4] In the

[1] Reidy was required by the terms of the consent order to assign the refund granted to it in *Gulf Oil Corp./Thomas P. Reidy, Inc.*, 15 DOE ¶ 85,154 (1986). *See Gulf Oil Corp./Thomas P. Reidy, Inc.*, 18 DOE ¶ 86,056 (1989)

[2] Those subsidiaries are: Walker Manufacturing Company, Packaging Corporation of America, J.I. Case Company, and Tenneco Chemicals Company.

[3] Claimants who have previously relied upon their banked costs in order to obtain refunds in other special refund proceedings should subtract those refunds from the cumulative banked costs submitted in this proceeding. *See Husky Oil Co./Metro Oil Products, Inc.*, 16 DOE ¶ 85,090 at 88,179 (1987). Additionally, a claimant may not received a refund for any month in which it has a negative cumultative bank (for that product) or for any preceding month. *See Standard Oil (Indiana)/Suburban Propane Gas Corp.*, 13 DOE ¶ 85,030 at 88,082 (1985). If a claimant no longer has records showing its banked costs, the OHA may use its discretion to allow approximations of those banks prepared by the applicant. *See, e.g., Gulf Oil Corp./Sturdy Oil Co.*, 15 DOE ¶ 85,187 (1986).

[4] Because we realize that the impact on an individual claimant may have been greater than the volumetric refund amount, we will allow any purchaser to file a refund application based upon a claim that it suffered a disproportionate share of Reidy's alleged overcharges. *See, e.g., Standard Oil Co. (Indiana)/Army) and Air Force Exchange Service*, 12 DOE ¶ 85,015 (1984). Such an application will be granted only if an applicant makes a persuasive showing that: (i) It was "overcharged" by a specific amount, (ii) it sustained a disproportionate share of Reidy's alleged overcharges, and (iii) that it was injured by those overcharges. *See MCO Holdings, Inc., MGPC, Inc./Little America Refining Co.*, 19 DOE ¶ 85,560 (1989); *Marathon Petroleum Co./Red Diamond Oil Co.*, 19 DOE ¶ 85,543 (1989); *Getty Oil Co./Atchison, Topeka & Santa Fe Railroad Co.*, 18 DOE ¶ 85,107 (1988). To the extent that a claimant makes this showing, it will receive a refund above the volumetric refund level. In computing the appropriate refund amount, we will prorate the alleged overcharge amounts by the ratio of the

Continued

absence of better information, a volumetric refund is appropriate because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices.

Under the volumetric approach, a claimant's "allocable share" of the consent order fund is equal to the number of gallons purchased from the consent order firm during the applicable consent order period times the per gallon refund amount. In the present case, the per gallon refund amount is $0.002706. We derived this figure by dividing the consent order funds ($5,377,587) by 1,987,605,140 gallons, the approximate number of gallons of covered refined products which Reidy sold from June 13, 1973, the date that Reidy became subject to the Federal price controls under the Cost of Living Council Freeze Regulations (38 F.R. 15765) (June 15, 1973), through the date of decontrol of the relevant product.[5] A firm that establishes its entitlement to a refund will receive all or a portion of its allocable share plus a pro-rata share of the accrued interest.[6]

Residual Fuel	June 1, 1976.
No. 1 and No. 2 Heating Oil Diesel Fuel and Kerosene.	July 1, 1976.
Butane and Natural Gasoline.	January 1, 1980.
Motor Gasoline and Propane.	January 28, 1981.

In addition to the volumetric presumption, we also propose to adopt a number of presumptions regarding injury for claimants in each category listed below.

a. *End-users.* In accordance with prior subpart V proceedings, we propose to adopt the presumption that an end-user or ultimate consumer of Reidy petroleum products whose business is unrelated to the petroleum industry was injured by the alleged overcharges settled by the consent order. *See, e.g., Texas Oil and Gas Corp.*, 12 DOE ¶ 85,069 at 88,209 (1984) (*TOGCO*). Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period, and were not required to keep records which justified selling price increases by reference to cost increases. Consequently, analysis of the impact of the alleged overcharges on the final prices of goods and services produced by members of this group would be beyond the scope of the refund proceeding. *Id.* We therefore propose that the end-users of Reidy refined petroleum products need only document their purchase volumes from Reidy during the consent order period to make a sufficient showing that they were injured by the alleged overcharges.

b. *Refiners, Resellers, and Retailers Seeking Refunds of $5,000 or Less.* We propose to adopt a presumption that a firm which resold Reidy products and requests a refund of $5,000 or less was injured by the alleged regulatory violations. Under this small claims presumption, a reseller seeking a small refund will not be required to submit evidence of injury beyond documentation of the volume of Reidy covered products it purchased during the consent order period. *See TOGCO* at 88,210. As we have noted in numerous prior proceedings, there may be considerable expense involved in gathering the types of data necessary to support a detailed claim of injury; in some cases, the expense might possibly exceed the expected refund. Consequently, failure to allow simplified application procedures for small claims could therefore deprive injured parties of their opportunity to obtain a refund. Furthermore, use of the small claims presumption is desirable in that it allows the OHA to process the large number of routine refund claims expected in an efficient manner.[7]

c. *Medium-Range Refiner, Reseller and Retailer Claimants.* In lieu of making a detailed showing of injury, a reseller claimant whose allocable share exceeds $5,000 or 40 percent of its allocable share up to $50,000, whichever is larger.[8] The use of this medium-range presumption of injury reflects our conviction that these larger claimants were likely to have experienced some injury as a result of the alleged overcharges. In some prior special refund proceedings, we have performed detailed economic analysis in order to determine product-specific levels of injury. *See, e.g., Getty Oil Co.*, 15 DOE ¶ 85,064 (1986). However, in *Gulf Oil Corp.*, 16 DOE ¶ 85,381 at 88,737 (1987), we determined that based upon the available data, it was more accurate and efficient to adopt a single presumptive level of injury of 40 percent for all medium-range claimants, regardless of the refined product that they purchased, based upon the results of our analyses in prior proceedings. We believe that approach generally to be sound, and we therefore propose to adopt a 40 percent presumptive level of injury for all medium-range claimants in this proceeding. Consequently, an applicant in this group will only be required to provide documentation of its purchase volumes of Reidy refined petroleum products during the consent order period in order to be eligible to receive a refund of 40 percent of its total allocable share, up to $50,000, or $5,000, whichever is greater.[9]

d. *Regulated Firms and Cooperatives.* We further propose that, in order to receive a full volumetric refund, a claimant whose prices for goods and services are regulated by a governmental agency, e.g., a public utility, or by terms of a cooperative agreement, needs only to submit documentation of purchases used by itself or, in the case of a cooperative, sold to its members. However, a regulated firm or a cooperative whose allocable share is greater than $5,000 will also be required to certify that it will pass any refund received through to its customers or member-customers, provide us with a full explanation of how it plans to accomplish the restitution, and certify that it will notify the appropriate regulatory body or membership group of the receipt of the refund. This requirement is based upon the presumption that, with respect to a regulated firm, any overcharges would

Reidy consent order amount as compared to the aggregate overcharge amount alleged by the ERA. *Amtel, Inc./Whitco, Inc.*, 19 DOE ¶ 85,319 (1989)(*Amtel/Whitco*).

[5] In calculating this gallonage figure, we have subtracted from Reidy's total gallonage sold the 6,992,612 gallons that Reidy sold to Torco and the four Tenneco subsidiaries which we have excluded from refund consideration. Although the Reidy consent order period begins January 1, 1973, refund applications may only be based upon purchases of refined products between June 13, 1973 and the day preceding the relevant decontrol date for each product as summarized below:

[6] As in previous cases, we propose to establish a minimum refund amount of $15.00. We have found through our experience that the cost of processing claims in which refunds for amounts less than $15.00 are sought outweighs the benefits of restitution in those instances. *See Exxon Corp.*, 17 DOE ¶ 85,590 at 89,150 (1988) (*Exxon*).

[7] In order to qualify for a refund under the small claims presumption, a refiner, reseller, or retailer must have purchased less than 1,847,746 gallons of Reidy refined petroleum products during the consent order period.

[8] That is, claimants who purchased between 1,847,746 gallons and 46,193,644 gallons of Reidy refined petroleum products during the consent order period (medium-range claimants) may elect to utilize this presumption. Claimants who purchased more than 46,193,644 gallons may elect to limit their claim to $50,000.

[9] A claimant who attempts to make a detailed showing of injury in order to obtain 100 percent of its allocable share but, instead, provides evidence that leads us to conclude that it passed through all of the alleged overcharges or is eligible for a refund of less than the applicable presumption-level refund may not then be eligible for a presumption-based refund. Instead, such a claimant may receive a refund which reflects the level of injury established in its Applicaton. No refund will be approved if its submission indicates that it was not injured as a result of its purchases from Reidy. *See Exxon*, 17 DOE at 89,150 n. 10.

have been routinely passed through to its customers. Similarly, any refunds received would be passed through to its customers. With respect to a cooperative, in general, the cooperative agreement which controls its business operations would ensure that the alleged overcharges, and similarly refunds, would be passed through to its members-customers. Accordingly, these firms will not be required to make a detailed demonstration of injury.[10]

e. *Spot Purchasers.* We propose to adopt a rebuttable presumption that a reseller that made only spot purchases from Reidy did not suffer injury as a result of those purchases. As we have previously stated, spot purchasers generally had considerable discretion as to the timing and market in which they made their purchases, and therefore would not have made spot market purchases from a firm at increased prices unless they were able to pass through the full amount of the firms' selling price to their own customers. *See, e.g., Vickers,* 8 DOE at 85,396–97. Accordingly, a spot purchaser claimant must submit specific and detailed evidence to rebut the spot purchaser presumption and to establish the extent to which it was injured as a result of its spot purchases from Reidy.[11]

B. Allocation Claims

We may also receive claims based upon Reidy's alleged failure to furnish petroleum products that it was obliged to supply under the DOE allocation regulations that became effective in January 1974. *See* 10 CFR part 211. Any such applications will be evaluated with reference to the standards set forth in subpart V implementation cases such as *Office of Special Counsel,* 10 DOE ¶ 85,048 at 88,220 (1982), and refund application cases such as *Mobil Oil Corp./Reynolds Industries, Inc.,* 17 DOE ¶ 85,608 (1988); *Marathon Petroleum Co./Research Fuels, Inc.,* 19 DOE ¶ 85,575 (1989), *action for review pending,* No. CA3–89–2983G (N.D. Tex. filed Nov. 22, 1989) (*Marathon/RFI*). These standards generally require an allocation claimant to demonstrate the existence of a supplier/purchaser relationship with the consent order firm and the likelihood that the consent order firm failed to furnish petroleum products that it was obliged to supply to the claimant under 10 CFR part 211. In addition, the claimant should provide evidence that it had contemporaneously notified the DOE or otherwise sought redress from the alleged allocation violation. Finally, the claimant must establish that it was injured and document the extent of the injury.

In our evaluation of whether allocation claims meet these standards, we will consider various factors. For example, we will seek to obtain as much information as possible about the agency's treatment of complaints made to it by the claimant. We will also look at any affirmative defenses that Reidy may have had to the alleged allocation violation. *See Marathon/RFI.* In assessing an allocation claimant's injury, we will evaluate the effect of the alleged allocation violation on its entire business operations with particular reference to the amount of product that it received from suppliers other than Reidy. In determining the amount of an allocation refund, we will utilize any information that may be available regarding the portion of the Reidy consent order amount that the agency attributed to allocation violations in general and to the specific allocation violation alleged by the claimants. Finally, since the Reidy consent order reflects a negotiated compromise of the issues involved in the enforcement proceedings against Reidy and the consent order amount is less than Reidy's potential liability in those proceedings, we will pro rate those allocation refunds that would otherwise be disproportionately large in relation to the consent order fund. *Cf. Amtel/Whitco.*

C. Distribution of Funds Remaining after First Stage

We propose that any funds that remain after all first stage claims have been decided be distributed in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C. 4501–07. PODRA requires that the Secretary of Energy determine annually the amount of oil overcharge funds that will not be required to refund monies to injured parties in subpart V proceedings and make those funds available to state governments for use in four energy conservation programs. The Secretary has delegated these responsibilities to the OHA, and any funds in the Reidy consent order escrow account that the OHA determines will not be needed to effect direct restitution to injured customers will be distributed in accordance with the provisions of PODRA.

IV. Application for Refund

Applications for refund should not be filed at this time. Detailed procedures for filing Applications will be provided in a final Decision and Order. Before disposing of any of the funds received as a result of the Reidy consent order, we intend to publicize the distribution process in order to solicit comments on all aspects of the foregoing Proposed Decision and Order from interested parties. All comments must be filed within 30 days of the publication of this Proposed Decision in the **Federal Register.**

It Is Therefore Ordered That:

The payments remitted to the Department of Energy by Thomas P. Reidy, Inc. pursuant to Consent Order No. 720H06015Z, finalized on March 14, 1989, will be distributed in accordance with the foregoing Decision.

[FR Doc. 90–5212 Filed 3–6–90; 8:45 am]

BILLING CODE 6450–01–M

[10] A cooperative's purchases of Reidy products which were resold to non-members will be treated in a manner consistent with purchases made by other resellers. *See Total Petroleum, Inc./Farmers Petroleum Cooperative, Inc.,* 19 DOE ¶ 85,215 (1989).

[11] In prior proceedings we have stated that refunds will be approved for spot purchasers who demonstrate that (i) they made the spot purchases for the purpose of ensuring a supply for their base period customers rather than in anticipation of financial advantage as a result of those purchases, and (ii) they were forced by market conditions to resell the product at a loss that was not subsequently recouped through the draw down of banked costs. *See Quaker State Oil Refining Corp./Certified Gasoline Co.,* 14 DOE ¶ 85,465 (1986).

Western Area Power Administration

Proposed Power Rate Adjustment—Pick-Sloan Missouri Basin Program

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Proposed Power Rate Adjustment—Pick-Sloan Missouri Basin Program.

SUMMARY: The fiscal year (FY) 1989 power repayment study (PRS) for the Pick-Sloan Missouri Basin Program (P-SMBP) indicated a need for an increase of 1.69 Mills/kWh above the existing yield of 8.86 Mills/kWh.

The proposed increase of 1.69 Mills/kWh reflects changes in the future projections of operation and maintenance expenses, integrated projects expense, power investments, and decreased revenue in several miscellaneous categories between the FY 1987 PRS and FY 1989 PRS. In addition to the above impacts, the P-SMBP has experienced decreased revenues from surplus energy sales and increased purchased power expenses, due to sustained drought conditions. This has reduced the revenue available for repayment over the past few years and thus increased overall interest expense between the FY 1987 PRS and the FY 1989 PRS.

The proposed rate adjustment is to become effective on the first full billing

period beginning on or after October 1, 1990.

Eastern Division

The Eastern Division proposed rate adjustment would increase the capacity charge for firm power service by $0.50/kW-month and increase the energy charge by 0.69 Mills/kWh.

There is no change proposed to the existing 3.38 Mills/kWh additional charge for energy in excess of 60-percent monthly load factor because the regional cost of energy has remained relatively stable over the past several years, and is expected to increase only slightly in the near future. The proposed rate adjustment would also increase the peaking capacity charge by $3.00/kW-season and any energy associated with peaking power deliveries by 0.69 Mills/kWh. The table below summarizes the proposed changes in rates.

P-SMBP—EASTERN DIVISION

[Proposed Rate Changes]

Class of power	Present rate	Proposed rate
Firm Power Service:		
Firm capacity (kW)	$1.85/kW-month	$2.35/kW-month.
Firm energy (kWh)	5.06 Mills/kWh	5.75 Mills/kWh.
Additional charge for firm energy in excess of 60-percent monthly load factor	3.38 Mills/kWh	3.38 Mills-kWh.
Firm Peaking Power Service:		
Peaking capacity (kW)	$11.10/kW-season	$14.10.kW-season.
Peaking energy (kWh)	5.06 Mills/kWh	5.75 Mills/kWh.

Western Division

A separate rate adjustment will be processed by the Loveland Area Office which will include the P-SMBP Western Division revenue requirement shown below:

Existing Revenue Requirement	$20,604,320
Rate Adjustment (2,036 GWh @1.69 Mills/kWh)	3,440,840
New P-SMBP Western Division Revenue Requirement	24,045,160

This revenue requirement will be combined with the revenue requirement for the Fryingpan-Arkansas Project and a blended rate will be designed. This combined rate has been designated as the Loveland Area Projects rate.

A brochure explaining the need for a rate increase will be distributed to all P-SMBP customers and other interested parties shortly after publication of this Notice. Public Information and Public Comment forums will be held in accordance with procedures for public participation in general rate adjustments (10 CFR 903). Following completion of the consultation and comment period and review of public comments, Western will develop the proposed rates and submit them to the Deputy Secretary. It is anticipated that the rates will be placed in effect in October 1990.

FOR FURTHER INFORMATION CONTACT: Data, studies, reports, and other documents used in developing the proposed rates are available for inspection and/or copying in the Billings Area Office. Written comments and requests for information may also be submitted to the following address throughout the entire consultation and comment period: Mr. James D. Davies, Area Manager, Billings Area Office, Western Area Power Administration, P.O. Box 35800, Billings, MT 59107-5800, Telephone: (406) 657-6532.

DATES: The consultation and comment period will begin with the publication of this notice in the **Federal Register** and will end 90 days thereafter.

Public information forums, during which Western will explain the need for the increase and answer questions, will be held at the following places and times:

- March 28, 1990-8 a.m.-Radisson Northern Hotel, Billings, MT
- March 28, 1990-2 p.m.-Holiday Inn, Northglenn, CO
- March 29, 1990-8 a.m.-Howard Johnson's Lodge, Sioux Falls, SD
- March 29, 1990-1:30 p.m.-Holiday Inn, Fargo, ND

Public comment forums, during which comments for the record concerning the proposed rate increase will be accepted, will be conducted at the following places and times:

- April 19, 1990-10 a.m.-Downtown Holiday Inn, Sioux Falls, SD
- April 20, 1990-10 a.m.-Holiday Inn, Northglenn, CO

Persons planning to speak at either of the March or April forums should send their names and organization affiliation to the address noted above 1 week before each meeting so that a speaker list can be prepared.

SUPPLEMENTARY INFORMATION: Power rates for the P-SMBP are established pursuant to the Department of Energy Organization Act, 42 U.S.C. 7101, *et seq.*; the Reclamation Act, 43 U.S.C. 372, *et seq.*, as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. 485h(c); and the Flood Control Act of 1944, 58 Stat. 887; and other acts specifically applicable to the project system involved.

Delegation Order No. 0204-108 became effective on December 14, 1983 (48 FR 55664). The order contains several provisions including delegating to the Administrator, on a nonexclusive basis, the authority to develop power and transmission rates, and delegating to the Deputy Secretary of the Department of Energy (DOE), on a nonexclusive basis, the authority to confirm, approve, and place in effect on an interim basis power and transmission rates. The delegation order was amended on May 30, 1986 (51 FR 19744), to delegate to the Under Secretary of DOE the authority previously delegated to the Deputy Secretary. This authority was subsequently reassigned to the Deputy Secretary by Secretary of Energy Notice SEN-10B-90 dated February 8, 1990, which was published in the **Federal Register** on February 21, 1990, (55 FR 6044). Existing DOE procedures for public participation in power and transmission rate adjustments (10 CFR part 903) were established September 4, 1985 (50 FR 37835, September 18, 1985). Power rate adjustments for P-SMBP are conducted consistent with 10 CFR part 903.

Environmental Compliance

Western conducts an environmental evaluation of proposed rate adjustments in compliance with the National Environmental Policy Act of 1969 (NEPA), Council on Environmental Quality Regulations (40 CFR parts 1500-1508) and DOE guidelines published in the **Federal Register** on December 15, 1987 (52 FR 47662).

Section D of DOE guidelines indicates that the level of documentation for NEPA compliance is based on a comparison of the proposed rate adjustment and the rate of inflation since the last adjustment. Western will evaluate the proposed rate adjustment and prepare the appropriate documentation of NEPA compliance.

Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 601, *et seq.*, to publish a proposed rule, Western is further required to prepare and make available for public comment an initial regulatory flexibility analysis to describe the impact of the proposed rule on small entities. In this instance, the rate adjustment for P-SMBP relates to nonregulatory services provided by Western at a particular rate. Under 5 U.S.C. 601(2), rates or services of particular applicability are not considered rules within the meaning of the Act. Since the rate for P-SMBP power is of limited applicability and is being set in accordance with specific regulations and legislation under particular circumstances, Western believes that no flexibility analysis is required.

Paperwork Reduction Act of 1980

The Paperwork Reduction Act of 1980, 44 U.S.C. 3501-3520, requires that certain information collection requirements be approved by the Office of Management and Budget (OMB) before information is demanded of the public. OMB has issued a final rule on the Paperwork Burdens on the Public (48 FR 13666) dated March 31, 1983. Ample opportunity is provided pursuant to this **Federal Register** notice for the interested public to participate in the development of the P-SMBP rate. There is no requirement that members of the public participating in the development of the P-SMBP rate supply information about themselves to the Government. It follows that the P-SMBP rates are exempt from the Paperwork Reduction Act.

Determination Under Executive Order 12291

The DOE has determined that this is not a major rule because it does not meet the criteria of section 1(b) of Executive Order 12291, 46 FR 13193 (February 19, 1981). Western has an exemption from sections 3, 4, and 7 of Executive Order 12291.

Issued at Golden, Colorado, February 27, 1990.

William H. Clagett,

Administrator.

[FR Doc. 90-5213 Filed 3-6-90; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

(FRL-3730-2)

Region 6; Approvals of PSD Permits

Notice is hereby given that the Environmental Protection Agency (EPA), Region 6, has issued Prevention of Significant Deterioration (PSD) permits to the following:

1. PSD-TX-761—CCPC Chemical, Inc.: This permit, issued on July 19, 1989, authorizes the expansion of the existing olefins plant located at No. 1 CCPC Boulevard, Corpus Christi, Nueces County, Texas.

2. PSD-TX-762—Fina Oil & Chemical Company: This permit, issued on August 31, 1989, authorizes the construction of a fluid catalytic cracker complex with associated operating equipment at the existing refinery located on Highway 366 at 32nd Street, Port Arthur, Jefferson County, Texas.

3. PSD-TX-731M-1—Exxon Chemical Company: PSD-TX-731M-1 modifies PSD-TX-731 to authorize the removal of the reference to the ISO correction equation contained in Special Provision No. 3 and modify the language of Special Provision No. 5 to reflect the controllers actually installed. This modified permit was issued on September 26, 1989.

4. PSD-TX-725M-1—Celanese Engineering Resins, Inc.: PSD-TX-725M-1 modifies PSD-TX-725 to authorize the removal of references to the ISO correction equation contained in Special Provision No. 3 and modify the language of Special Provisions 4 and 5 to reflect the controller actually installed. This modified permit was issued on September 29, 1989.

5. PSD-TX-413M-2—Koch Refining Company: PSD-TX-413M-2 modifies PSD-TX-423M-1 to authorize the correction of the permit by identifying II-7 as a common stack for Emission Points No. II-1 through II-6. This modified permit was issued on September 26, 1989.

6. PSD-TX-726—Southwestern Public Service Company: This permit, issued on October 10, 1989, authorizes the construction of a coal-fired circulating fluidized bed boiler and associated coal, limestone and ash handling systems at the existing natural gas-fired power plant located on North Lakeside Drive, approximately three miles north of Amarillo, Potter County, Texas.

7. PSD-TX-760—Formosa Plastics Corporation: This permit, issued on November 13, 1989, authorizes the construction of seven new chemical process units at the existing plant located at 101 Formosa Drive, Point Comfort, Calhoun County, Texas.

8. PSD-TX-634M-3—Koch Refining Company: PSD-TX-634M-3 modifies PSD-TX-634M-2 to authorize: (1) The increase of the existing fluid catalytic cracking unit (FCCU) capacity from 45,000 barrels per day (BPD) to 55,000 BPD; (2) the replacement of charge heater BA-101 with a larger heater, BA-101R1, and correct the duty of the second charge heater (BA-105) to reflect the actual fired duty instead of the absorbed duty; (3) the incorporation of special provisions into the permit limiting the duty of the CO boiler to 280 MMBtu/hr and the FCCU feed rate to 55,000 BPD; (4) the modification of Special Provision No. 4. D to copy EPA on all test reports required by that provision; (5) the modification of Special Provision No. 6 to specify that the monitor will comply with the quality assurance/quality control provisions of 40 CFR 60, Appendix F, and that the monitor will be used to demonstrate continuous compliance with the emission limits in the permit; and (6) the addition of the requirement for the submittal of quarterly compliance reports, operating time of the emission unit during the reporting period, and to define noncomplying emissions specifying both the magnitude and averaging time. This modified permit was issued on November 15, 1989.

9. PSD-TX-226M-5—Formosa Plastics Corporation: PSD-TX-226M-5 modifies PSD-TX-226M-4 to authorize the construction of a fourth ethylene dichloride cracker to be used as a backup to the existing three crackers. This modified permit was issued on March 16, 1989.

10. PSD-TX-500M-2—Shell Western E&P, Inc.: PSD-TX-500M-2 modifies PSD-TX-500M-1 to authorize the addition of an electric driven 3000 horsepower compressor to increase natural gas throughput from the permitted rate of 140 MMSCFD to 180 MMSCFD. This modified permit was issued on November 17, 1989.

11. PSD-TX-702M-2—Mobil Producing Texas & New Mexico, Inc.. PSD-TX-702M-2 modifies PSD-TX-702M-1 to authorize the re-injection of a portion of the hydrogen sulfide removed from the gas processed in the amine unit into the producing formation. This

modified permit was issued on November 28, 1989.

12. PSD-TX-716M-3—Encogen Partners, Ltd.: PSD-TX-716M-3 modifies PSD-TX-716 to authorize: (1) An increase in the operating schedule for the duct burners from 8.18% to 31.9% combined annual capacity factor; (2) an increase of the allowable hours of operation of the diesel electric generator from 12 to 60 hours per year; and (3) the installation of a fire water pump engine, to be limited to 12 hours per year operation. PSD-TX-716M-1 and PSD-TX-716M-2 were combined into PSD-TX-716M-3. This modified permit was issued on December 6, 1989.

13. PSD-TX-753—E.I. duPont de Nemours and Company: This permit, issued on December 8, 1989, authorizes the construction of a spent sulfuric acid regeneration unit to be located on Highway 347, approximately two miles southeast of Beaumont, Jefferson County, Texas.

14. PSD-TX-739M-2—Teneska III Texas Partners: PSD-TX-739M-2 modifies PSD-TX-739M-1 to authorize the removal of the references to the ISO correction equation contained in Special Provision No. 3 and the modification of the language in Special Provisions No. 11 and No. 16 to reflect the controllers actually installed.

These permits have been issued under EPA's Prevention of Significant Deterioration of Air Quality Regulations at 40 CFR 52.21, as amended August 7, 1980. The time period established by the Consolidated Permit Regulations at 40 CFR 124.19 for petitioning the Administrator to review any condition of these permit decisions has expired. Such a petition to the Administrator is, under 5 U.S.C. 704, a prerequisite to the seeking of judicial review of the final agency action. Documents relevant to the above actions are available for public inspection during normal business hours at the Air, Pesticides and Toxics Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, telephone (214) 655-7229.

Under section 307(b)(1) of the Clean Air Act, judicial review of the approval of these actions is available, if at all, only by the filing of a petition for review in the United States Fifth Circuit Court of Appeals, within 60 days of March 7, 1990. Under section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

This notice will have no effect on the National Ambient Air Quality Standards.

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

Dated: February 23, 1990.

Robert E. Layton Jr., P.E.,

Regional Administrator.

[FR Doc. 90-5163 Filed 3-6-90; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3730-4]

Availability for Testing Manual

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Availability of Document entitled "Draft-Ecological Evaluation of Proposed Discharge of Dredged Material Into Ocean Waters."

SUMMARY: This action announces the availability of the draft revised testing manual entitled "Draft-Ecological Evaluation of Proposed Discharges of Dredged Material into Ocean Waters" for public review. Copies of the draft manual can be requested by writing to the address listed below under "ADDRESSES." A public meeting will be held in Washington DC to discuss the draft manual.

DATES: A public meeting will be held April 2, 1990, in Washington DC., to discuss the draft revised testing manual "Draft-Ecological Evaluation of Proposed Discharge of Dredged Material Into Ocean Waters."

ADDRESSES: A copy of "Draft-Ecological Evaluation of Proposed Discharge of Dredged Material Into Ocean Waters" and/or the initial mixing model disk can be obtained by calling or writing to Ms Billie Skinner, U.S. Corps of Engineers, Waterways Experiment Station, EP-D, 3909 Halls Ferry Road, Vicksburg, Mississippi, 39180-6199. Telephone number (601) 634-3701.

A public meeting to discuss the draft manual will be held April 2, 1990, in Washington, DC., at the Environmental Protection Agency Auditorium, Waterside Mall, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: David Redford, Mail Code WH-556-F, Marine Permits and Monitoring Branch, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (phone (202) 475-7179); or David Mathis, Office of Environmental Policy, CECW-PO, U.S. Army Corps of Engineers, 20 Massachusetts Ave. NW., Washington, DC 20314, (phone (202) 272-8843.).

SUPPLEMENTARY INFORMATION: Proposed operations involving the dumping of dredged materials into ocean waters must be evaluated to determine the potential environmental impacts of such activities. This is done as part of the permitting process under Title I of the Marine Protection, Research, and Sanctuaries Act (Pub. L. 92-532 (MPRSA)). In accordance with section 103 of the MPSRA, the Corps of Engineers (CE) is the permitting authority, with the determination to issue a permit being subject to review by the Environmental Protection Agency (EPA). The MPRSA provides that CE is to use environmental criteria developed by EPA under section 102 of the Act in making its permit decisions. The criteria developed by EPA under section 102 of the MPRSA are printed at 40 CFR parts 220-228.

In order to regulate and limit adverse ecological effects of ocean dumping of dredged material, the regulations emphasize valuative techniques such as toxicity and bioaccumulation bioassays, which provide relatively direct estimates of the potential for environmental impact.

In 1977, EPA and CE published a document entitled "Ecological Evaluation of Proposed Discharge of Dredged Materials Into Ocean Waters" (The "Green Book"). This technical testing manual provided guidance for implementing the environmental evaluations required under the ocean dumping regulations to determine the acceptability of dredged materials for ocean dumping.

Since the 1977 testing manual was published, EPA and CE have gained a great deal of experience in testing dredged material for environmental effects. New tests have been developed which provide better environmental protection and are more reliable. Those new tests and the experience of both Agencies, have been used to develop a revised testing manual which is now available in draft form.

This draft revised testing manual, entitled "Draft-Ecological Evaluation of Proposed Discharge of Dredged Materials Into Ocean Waters," describes the procedures for ecological evaluation of dredged material required by the 1977 ocean dumping regulations. It contains tests to implement these procedures, definitions, sample collection and preservation procedures, evaluative procedures, calculations and supporting references. A mathematical model is used in conjunction with the manual to assist in determining initial mixing of dumped material in the water

column. The draft manual sets out a tiered approach to testing materials for their acceptability to be ocean disposed. This tiered approach is a scientifically valid, cost effective means of testing material and is highly reliant on toxicity and bioaccumulation bioassays. The bioassays described are similar to those of the 1977 testing manual but use different and more sensitive organisms. The bioassays also employ exposure conditions which are more scientifically defendable based on research and development activities which have transpired since the 1977 testing manual was prepared.

The draft revised testing manual and the computer disk with the initial mixing model are available to the public for review and can be obtained by calling or writing to the individual listed under "**ADDRESSES.**" This draft manual will be the basis for discussions at a public meeting. The public meeting will be held April 2, 1990, in Washington DC., at the Environmental Protection Agency Auditorium, Waterside Mall, 401 M Street SW., Washington, DC 20460. The meeting will begin at 9 a.m. and end at 5 p.m. The public meeting will consist of a presentation of the intent and content of the draft manual followed by an open discussion. Anyone planning to attend the public meeting, or who would like to make a presentation at the meeting, should register in advance by contacting David Redford at the address above under "**FOR FURTHER INFORMATION CONTACT.**"

The draft revised testing manual will be revised in approximately 6 months based on field testing and comments received, and a final document will be published. The final document will replace the 1977 manual for testing of dredged materials to determine their compliance with the 1977 ocean dumping regulations.

Although the draft revised testing manual is intended for use in determining the suitability of dredged material for disposal under section 103 of the MPRSA, EPA is considering the regulatory and technical applicability of the "Green Book" for evaluation of dredged material disposal under section 404 of the Clean Water Act whenever the aquatic environment is similar to that in ocean waters.

Robert Wayland

Acting Assistant Administrator, Officer of Water.

[FR Doc. 90-5162 Filed 3-6-90; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3730-3]

Open Meeting of International Environmental Technology Transfer Advisory Board

Under Public Law 93-463, notice is hereby given that a meeting of the International Environmental Technology Transfer Advisory Board (IETTAB) will be held on Thursday, April 5, 1990 in the conference room of the National Press Club, 14th and F Streets NW., Washington, DC. The meeting is open to the public and will run from 9 a.m. until approximately 5 p.m.

The purpose of the meeting is to deliberate on general principles and interim recommendations concerning the transfer of environmental technologies to developing countries.

A limited amount of time will be provided for brief presentations by members of the public to the Board. Members of the public interested in making presentations must contact the IETTAB Executive Secretary to arrange time on the agenda and must also submit written outlines of statements to the Executive Secretary by March 30, 1990. Public comments may also be made through written statements which will be distributed to Board members. Written statements must be received by the Executive Secretary by March 30, 1990.

Public seating is limited, and seats will be filled on a first-come basis. To confirm your intention to attend, please contact the Executive Secretary by March 30, 1990.

For more information contact: Mark Kasman, Executive Secretary, IETTAB, Office of International Activities (A-106), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 (202) 475-7424.

Dated: March 1, 1990.

Victor Gray,

Acting Assistant Administrator for International Activities.

[FR Doc. 90-5164 Filed 3-6-90; 8:45 am]

BILLING CODE 6560-50-M

[PP 7G3525/T591; FRL 3709-2]

Iprodione; Establishment of Temporary Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established a temporary tolerance for the combined residues of the fungicide iprodione and its isomer in or on the raw agricultural commodity field corn grain at 20 parts per million (ppm).

DATES: This temporary tolerance expires December 31, 1990.

FOR FURTHER INFORMATION CONTACT: By mail: Susan T. Lewis, Product Manager (PM) 21, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 227, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, 703)-557-1900.

SUPPLEMENTARY INFORMATION: Rhone-Poulenc Agricultural Co., P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709, has requested in pesticide petition (PP) 7G3525, the establishment of a temporary tolerance for the combined residues of the fungicide iprodione, 3-(3,5-dichlorophenyl)-N-(methylethyl)-2,4-dioxo-1-imidazolidinecarboximide, and its isomer, 3-(1-methylethyl)-N-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboximide, expressed as iprodione equivalents in or on the raw agricultural commodity field corn grain at 20 parts per million (ppm). This temporary tolerance will permit the marketing of the above raw agricultural commodity when treated in accordance with the provisions of the experimental use permit 359-EUP-70, which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (Pub. L. 95-396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that establishment of the temporary tolerance will protect the public health. Therefore, the temporary tolerance has been established on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. Rhone-Poulenc Agricultural Co. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

3. Rhone-Poulenc Agricultural Co. must ensure that residues in treated crops do not exceed the established tolerances as set forth above. If these tolerances are exceeded, the crops must be destroyed or used for research purposes only.

This tolerance expires December 31, 1990. Residues not in excess of this amount remaining in or on the raw agricultural commodity after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerance. This tolerance may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

Authority: 21 U.S.C. 346a(j).

Dated: February 14, 1990.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 90-5045 Filed 3-6-90; 8:45 am]

BILLING CODE 6560-50-D

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collecton Requirement Submitted to the Office of Management and Budget for Review

February 27, 1990.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. 3507.

Copies of this submission may be purchased from the Commission's duplicating contractor, International Transcription service, 2100 M Street, NW., Suite 140, Washington, DC 20037, or telephone (202) 857-3815. Persons wishing to comment on an information collection should contact Eyvette Flynn, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, telephone (202) 395-3785. Copies of these comments should also be sent to the Commission. For further information contact Doris Benz, Federal Communications Commission, telephone (202) 632-7513.

OMB No.: 3060-0061

Title: Annual Report of Cable Television Systems—Schedule A (Formerly Schedules 1 and 2).

Form No.: FCC 325.

Action: Revision.

Respondents: Business (including small business).

Frequency of Response: Annually.

Estimated Annual Burden: 12,000 Responses, 2 hours each (average).

Needs and Uses: Filing is required of cable television system operators. The form is preprinted by the Commission with the most current information available which is verified, corrected or amended by the respondent. The data is used to update the data base for use by the Commission and the public.

OMB No.: 3060-0084.

Title: Ownership Report for Noncommercial Education Broadcast Station.

Form No.: FCC 323-E

Action: Extension.

Respondents: Non-profit institutions.

Frequency of Response: On occasion.

Estimated Annual Burden: 565 Responses, 4 hours each (average).

Needs and Uses: Filing is required of licensees/permittees of noncommercial AM, FM and TV stations when original construction permit is granted, when changes occur in ownership interests, and with the station renewal application. The data is used to determine compliance with multiple ownership rules.

Federal communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 90-5086 Filed 3-6-90; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL RESERVE SYSTEM

The Chase Manhattan Corp.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writting on the question whether consummation of the proposal can "reasonably be expected to produced benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweight possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanies by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 26, 1990.

A Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *The Chase Manhattan Corporation,* New York, New York; to engage *de novo* through its subsidiary, Chase Securities, Inc., New York, New York, in providing management consulting advice to nonaffiliated bank and nonbank depository institutions pursuant to § 225.25(b)(11) of the Board's Regulation Y; and providing financial advisory services in connection with merger, acquisition/divestiture and financing transactions, valuation services, and rendering fairness opinions for nonaffiliated financial and nonfinancial institution pursuant to the conditions previously set forth by the Board. (*Signet Banking Corporation,* 73 *Fed. Res. Bull.* 59 (1987)).

Board of Governors of the Federal Reserve System, March 1, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-5114 Filed 3-6-90; 8:45 am]

BILLING CODE 6210-01-M

Guy Cameron Billups, Jr.; Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 21, 1990.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 100 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Guy Cameron Billups, Jr.*, Gulfport, Mississippi; to acquire an additional 40.06 percent of the voting shares of Community Bancshares, Inc., Independence, Louisiana, for a total of 47.43 percent and thereby indirectly acquire Community State Bank, Independence, Louisiana.

Board of Governors of the Federal Reserve System, March 1, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-5115 Filed 3-6-90; 8:45 am]

BILLING CODE 6210-01-M

Heritage Financial Corporation; Application To Engage de Novo in Permisssible Nonbanking Activities

The company listed in this notice has filed on application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreases or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 26, 1990.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Heritage Financial Corporation*, Ruston, Louisiana; to engage *de novo* through its subsidiary, First Louisiana Trust Company, Metairie, Louisiana, in trust services, investment management services and custody services pursuant to § 225.25(b)(3) of the Board's Regulation Y. These activities will be conducted in North Louisiana.

Board of Governors of the Federal Reserve System, March 1, 1990.

Jenifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-5116 Filed 3-6-90; 8:45 am]

BILLING CODE 6210-01-M

The Nippon Credit Bank, Ltd., et al.; Formations of Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an applicaton that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than March 26, 1990.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *The Nippon Credit Bank, Ltd.*, Tokyo, Japan; to become a bank holding company by acquiring 100 percent of the voting shares of Nippon Credit Trust Company, New York, New York.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 marquette Avenue, Minneapolis, Minnesota 55480:

1. *Cameron Bancorp, Inc.*, Cameron, Wisconsin; to become a bank holding company by acquiring 100 percent of the voting shares of Community Bank of Cameron, Cameron, Wisconsin.

2. *Keweenaw Financial Corporation*, Hancock, Michigan; to become a bank holding company by acquiring 100 percent of the voting shares of The Superior National Bank and Trust Company, Hancock, Michigan.

C. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Union Colony Bancorp*, Greeley, Colorado; to acquire 95 percent of the voting shares of Valley National Bank, Loveland, Colorado.

D. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Eastpark Bancshares, Inc.*, Dallas, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Eastpark National Bank, Dallas, Texas.

Board of Governors of the Federal Reserve System, March 1, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-5117 Filed 3-6-90; 8:45 am]

BILLING CODE 6210-01-M

Suntrust Banks, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulatory Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 26, 1990.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 100 Marietta Street, NW., Atlanta, Georgia 30303:

1. *SunTrust Banks, Inc.*, Atlanta, Georgia; to merge Albany First Federal Savings and Loan Association, Albany, Georgia, with and into its subsidiary, Trust Company Bank of South Georgia, N.A. Albany, Georgia, and thereby engage in operating a savings association pursuant to § 225.25b(9) of the Board's Regulation Y. These activities will be conducted throughout the State of Georgia.

Board of Governors of the Federal Reserve System, March 1, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-5118 Filed 3-6-90; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

[G-90-1]

Delegation of Authority to the Secretary of Defense

1. *Purpose.* This delegation authorizes the Secretary of Defense to audit and retain other than international freight and passenger transportation documents paid by Department of Defense overseas offices.

2. *Effective date.* This delegation continues the prior delegation which was effective June 16, 1983.

3. *Expiration date.* This document expires on December 31, 1992.

4. *Delegation.*

a. Pursuant to the authority vested in the Administrator of General Services by section 322 of the Transportation Act of 1940, as amended [31 U.S.C. 3726], authority is delegated to the Secretary of Defense to:

1. Continue the use of currently approved freight and passenger warrants, transportation orders, credit notes, and related transportation forms in overseas areas for the procurement of freight and passenger transportation and related services;

2. Continue the use of currently approved Military Airlift Command (MAC) forms for the procurement of MAC contract airlift services;

3. Audit and retain at Scott Air Force Base, Illinois, all payment vouchers and related transportation documents covering MAC contract airlift services, subject to test verifications and reviews by GSA; and

4. Audit and retain in overseas offices those transportation vouchers and related documents paid at such offices for other than international services, and non-English language documents for international services, subject to test verifications and reviews by GSA.

b. The Secretary of Defense may redelegate this authority to any officer, official, or employee of the Department of Defense.

c. This authority shall be exercised in accordance with the policies, procedures, and controls prescribed by the General Services Administration and shall be exercised in cooperation with the responsible officers, officials, and employees thereof.

Dated: February 23, 1989

Richard G. Austin,

Acting Administrator.

[FR Doc. 90-5154 Filed 3-6-90; 8:45 am]

BILLING CODE 6820-24-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

Fiscal Year 1990 Discretionary Funds Program; Availability of Funds and Request for Applications: Correction

AGENCY: Administration on Aging, HHS.

ACTION: Notice of correction to priority area 7.2.

SUMMARY: This notice corrects Priority Area 7.2, previously published in the **Federal Register**, February 9, 1990, as part of the Administration on Aging's Discretionary Funds Program for Fiscal Year 1990.

The opening paragraph to Priority Area 7.2 should be deleted. The intent of Priority Area 7.2 is to make but one award under Priority Area 7.2 to a national organization with capability in both training and Information and Referral, which will serve as a resource on I&R to State and Area Agencies on Aging and provide I&R training through the State and Area Agencies on Aging for those who provide information and referral services to older persons.

Dated: March 1, 1990.

Joyce T. Berry,

U.S. Commissioner on Aging-Designate, Administration on Aging.

[FR Doc. 90-5110 Filed 3-6-90; 8:45 am]

BILLING CODE 4130-01-M

Centers for Disease Control

Twenty-fourth National Immunization Conference; Meeting

The Center for Prevention Services (CPS) of the Centers for Disease Control (CDC) will convene a meeting of Federal, State, and local public health officials, as well as representatives from the private sector, who are involved in the organization and implementation of immunization activity.

Name: Twenty-fourth National Immunization Conference.

Time and Date: Registration 1 p.m.-6 p.m., May 21, 1990, 8:30 a.m.-5:30 p.m., May 22-24, 1990, 8:30 a.m.-12 noon, May 25, 1990.

Place: Holiday Inn-International Drive Resort, 6515 International Drive, Orlando, Florida 32819, (407) 351-3500.

Status: Open to the public, limited only by available space.

Matters to be Discussed: Current status of the epidemiology, prevention, and control of vaccine-preventable diseases.

Contact Person for More Information: Mr. Brent S. Shaw, Program Support Section, Division of Immunization, CPS, CDC, Atlanta, Georgia 30333, Mailstop E05, telephone: FTS 236-1836; Commercial (404) 639-1836.

Dated: February 28, 1990.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 90-5161 Filed 3-6-90; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 90N-0085]

Animal Drug Export; Interceptor® (Milbemycin Oxime)

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that CIBA-GEIGY Animal Health, CIBA-GEIGY Corp., has filed an application requesting approval for export to Canada of the animal drug Interceptor® (milbemycin oxime).

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of animal drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Beverly E. Bartolomeo, Center for Veterinary Medicine (HFV-142), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2855.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that CIBA-GEIGY Animal Health, CIBA-GEIGY Corp., P.O. Box 18300, Greensboro, NC 27419-8300 has filed an application requesting approval for export to Canada of the animal drug Interceptor® (milbemycin oxime). The product is intended for use as a canine anthelmintic.

The application was received and filed in the Center for Veterinary Medicine on February 28, 1990, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by March 17, 1990, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (section 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.44).

Dated: March 1, 1990.

Robert C. Livingston,

Acting Director, Office of New Animal Drug Evaluation Center for Veterinary Medicine.

[FR Doc. 90-5121 Filed 3-6-90; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Privacy Act of 1974; Computer Matching Program

AGENCY: Department of Health and Human Services (HHS), Health Care Financing Administration (HCFA).

ACTION: Clarification—computer match between HCFA and the Internal Revenue Service (IRS—notice published in the **Federal Register** on July 5, 1989.

SUMMARY: Pursuant to the Computer Matching and Privacy Protection Act of 1988, Public Law 100-503, October 18, 1988, and the Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs, the IRS published a notice in the **Federal Register** (54 FR 28149; July 5, 1989) announcing their intention to conduct a match with a number of Federal and State agencies including HCFA. These matches, in accordance with various provisions of section 6103 of the Internal Revenue Code (IRC) of 1986, provide these agencies with tax information from IRS records to assist them in administering the programs and activities as described.

The match with HCFA is pursuant to IRC 6103(1)(7). The IRS is required, upon written request, to disclose current information from returns with respect to unearned income to any Federal, State, or local agency administering certain federally approved programs to provide, among other things, medical assistance.

HCFA is publishing this notice to ensure that the public is aware that it is participating in this match to verify Medicaid eligibility.

The HHS Data Integrity Board has approved an Agreement between HCFA and the IRS on February 8, 1990, as required by the Computer Matching and Privacy Protection Act of 1988.

EFFECTIVE DATE: March 7, 1990.

FOR FURTHER INFORMATION CONTACT: Linda Fuller, Bureau of Quality Control, Health Care Financing Administration, Room 273 East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207, Telephone Number (301) 966-5933.

Dated: March 1, 1990.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

[FR Doc. 90-5191 Filed 3-6-90; 8:45 am]

BILLING CODE 4120-03-M

Health Resources and Services Administration

Filing of Annual Report of Federal Advisory Committee.

Notice is hereby given that pursuant to section 13 of Public Law 92-463, the Annual Report for the following Health Resources and Service Administration's Federal Advisory Committees have been filed with the Library of Congress:

Graduate Training in Family Medicine Review Committee, Residency Training Review Committee

Copies are available to the public for inspection at the Library of Congress Newspaper and Current Periodical Reading Room, room 1026, Thomas Jefferson Building, Second Street and Independence Avenue SE., Washington, DC., or weekdays between 9 a.m. and 4:30 p.m. at the Department of Health

and Human Services, Department Law Library, HHS North Building, room G-619, 330 Independence Avenue SW., Washington, DC., telephone (202) 245-6791. Copies may be obtained from: Ms. Sherry Whipple, Executive Secretary, Graduate Training in Family Medicine Review Committee and Residency Training Review Committee, room 4C-25, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Telephone (301) 443-6874.

Dated: March 1, 1990.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 90-5120 Filed 3-6-90; 8:45 am]

BILLING CODE 4160-15-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-010-90-4410-08; 1784-010]

Arizona Strip District Advisory Council, Meeting

AGENCY: Bureau of Land Management, Arizona Strip District, Interior.

ACTION: Notice of meeting.

SUMMARY: The Arizona Strip District Advisory Council will discuss the Draft Arizona Strip District Resource Management Plan and Environment Impact Statement and other resource management issues.

DATES: Meeting Thursday and Friday, April 5 and 6, 1990 at 8 a.m. in the Thunderbird Motor Lodge, 150 N. 1000 E., St. George, Utah.

FOR FURTHER INFORMATION CONTACT: G. William Lamb, District Manager, Arizona Strip District, 390 North 3050 East, St. George, Utah 84770 (Phone 801/673-3545).

SUPPLEMENTARY INFORMATION: The meeting is open to the public. The Council will consider both oral and written statements from the public at 8 a.m. Friday, April 6, 1990. People interested in commenting should contract BLM at 801/673-3545 at least 5 days in advance.

Dated: February 23, 1990.

G. William Lamb,

Arizona Strip District Manager.

[FR Doc. 90-5152 Filed 03-06-90; 8:45 am]

BILLING CODE 4310-32-M

[MT-930-00-4212-13; MTM 76985]

Conveyance and Order Providing for Opening of Public Land in Beaverhead and Madison Counties, MT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This order will open lands and certain minerals reconveyed to the United States in an exchange under the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1701 et seq. (FLPMA), to the operation of the public land laws and the mineral leasing laws. It also informs the public and interested state and local governmental officials of the issuance of the conveyance document.

The land that was acquired in the exchange is a thin strip of land located adjacent to the Big Hole River and provides 1½ miles of frontage on that Class I blue ribbon trout fishery. The land has high recreation value and valuable wildlife habitat. The public interest was well served through completion of this exchange.

EFFECTIVE DATE: 9 a.m., April 25, 1990.

FOR FURTHER INFORMATION CONTACT: James Binando, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406-255-2935.

SUPPLEMENTARY INFORMATION:

1. Notice is hereby given that pursuant to section 206 of FLPMA, the following described lands were transferred to McCullough Ranch, Inc.:

Principal Meridian, Montana

T. 3 S., R. 9 W.,
Sec. 12, SW¼NE¼, W½SE¼, E½SE¼ SW¼.
Containing 140 acres.

2. In exchange for the above selected land, the United States acquired the following described surface and mineral estate from McCullough Ranch, Inc.:

Principal Meridian, Montana

T. 3 S., R. 9 W.,
Sec. 14, W½W½SW¼, SW¼SW¼N E¼SW¼SW¼, W½SE¼SW¼SW¼;
Sec. 23, E½W½NE¼NW¼NW¼, W½W½E½W½NW¼, W½W½NW¼, NE¼NW¼NW¼SW¼, W½W½N W¼SW¼, W½NW¼SW¼SW¼ and that part of the SW¼SW¼SW¼ lying West of State Highway as said highway is described in Book 248, page 810, records of Madison County, Montana, and East of the Big Hole River.
Containing 125.625 acres, more or less.

3. The values of the Federal public land were appraised at $11,900 and the values of the private land were appraised at $9,100. A cash equalization payment in the amount of $2,800 was made to the United States.

4. At 9 a.m. on April 25, 1990, the lands described in paragraph 2 above that were conveyed to the United States will be opened only to the operation of the public land laws generally, and to applications and offers under the mineral leasing laws, subject to valid existing rights and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on April 25, 1990, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

Dated: February 26, 1990.

John A. Kwiatkowski,

Deputy State Director, Division of Lands and Renewable Resources.

[FR Doc. 90-5180 Filed 3-6-90; 8:45 am]

BILLING CODE 4310-DN-M

Geological Survey

Gold Ore Deposition at Goldfield, NV

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that a collaborative effort between the U.S. Geological Survey and Barranca Resources has been granted to determine geochemical controls for gold ore deposition at Goldfield, Nevada.

DATES: This action is effective as of January 24, 1990, for a duration of 6 months.

ADDRESSES: Copies of the Memorandum of Agreement are available for inspection upon request at the following location: U.S. Geological Survey, Branch of Western Mineral Resources, 345 Middlefield Road, Menlo Park, California 94025.

FOR FURTHER INFORMATION CONTACT: Dr. Roger Ashley of the U.S. Geological Survey, Branch of Western Mineral Resources, at the address given above; telephone 415/329-5416, (FTS) 459-5416.

Benjamin A. Morgan,

Chief Geologist.

[FR Doc. 90-5153 Filed 3-6-90; 8:45 am]

BILLING CODE 4310-31-M

Minerals Management Service

[DES 90-6]

Gulf of Mexico Region; Availability of the Draft Environmental Impact Statement and Intent To Hold Public Hearings Regarding Proposed Central, Western, and Eastern Gulf of Mexico Sales 131/135/137

The Minerals Management Service has prepared a draft Environmental Impact Statement (EIS) relating to the proposed 1991 Outer Continental Shelf (OCS) oil and gas lease sales in the Central, Western, and Eastern Gulf of Mexico (GOM). The proposed Central Gulf Sale 131 will offer for lease approximately 30.5 million acres, the Western Gulf Sale 135 will offer approximately 26.1 million acres, and the Eastern Gulf Sale will offer approximately 47.5 million acres. Single copies of the draft EIS can be obtained from the Minerals Management Service, Gulf of Mexico Region, Attention: Public Information Office, 1201 Elmwood Park Boulevard, room 114, New Orleans, Louisiana 70123.

Copies of the draft EIS will be available for review by the public in the following libraries: Austin Public Library, 402 West Ninth Street, Austin, Texas; Houston Public Library, 500 McKinney Street, Houston, Texas; Dallas Public Library, 1513 Young Street, Dallas, Texas; Brazoria County Library, 410 Brazoport Boulevard, Freeport, Texas; LaRatama Library, 505 Mesquite Street, Corpus Christi, Texas; Texas Southmost College Library, 1825 May Street, Brownsville, Texas; Rosenberg Library, 2310 Sealy Street, Galveston, Texas; Texas State Library, 1200 Brazos Street, Austin, Texas; Texas A & M University, Evans Library, Spence and Lubbock Streets, College Station, Texas; University of Texas, Lyndon B. Johnson School of Public Affairs Library, 2313 Red River Street, Austin, Texas; The University of Texas at Dallas Library, 2601 North Floyd Road, Richardson, Texas; Lamar University, Gray Library, Virginia Avenue, Beaumont, Texas; East Texas State University Library, 2600 Neal Street, Commerce, Texas; Stephen F. Austin State University, Steen Library, Wilson Drive, Nacogdoches, Texas; University of Texas, 21st and Speedway Streets, Austin, Texas; University of Texas Law School, Tarlton Law Library, 727 East 26th Street, Austin, Texas; Baylor University Library, 13125 Third Street, Waco, Texas; University of Texas at Arlington, 701 South Cooper Street, Arlington, Texas; University of Houston-University Park, 4800 Calhoun Boulevard, Houston, Texas; University of Texas at El Paso, Wiggins Road and University Avenue, El Paso, Texas; Abilene Christian University, Margaret and Herman Brown Library, 1600 Campus Court, Abilene, Texas; Texas Tech University Library, 18th and Boston Street, Lubbock, Texas; University of Texas at San Antonio, John Peace Boulevard, San Antonio, Texas; Tulane University, Howard Tilton Memorial Library, 7001 Freret Street, New Orleans, Louisiana; Louisiana Tech University, Prescott Memorial Library, Everet Street, Ruston, Louisiana; New Orleans Public Library, 219 Loyola Avenue, New Orleans, Louisiana; University of New Orleans Library, Lakeshore Drive, New Orleans, Louisiana; Louisiana State Library, 760 Riverside Road, Baton Rouge, Louisiana; Lafayette Public Library, 301 W. Congress Street, Lafayette, Louisiana; Calcasieu Parish Library, 411 Pujo Street, Lake Charles, Louisiana; McNeese State University, Luther E. Frazar Memorial Library, Ryan Street, Lake Charles, Louisiana; Nicholls State University, Nicholls State Library, Leighton Drive, Thibodaux, Louisiana; University of Southwestern Louisiana, Dupre Library, 302 East St. Mary Boulevard, Lafayette, Louisiana; LUMCOM, Library, Star Route 541, Chauvin, Louisiana; Harrison County Library, 14th and 21st Avenues, Gulfport, Mississippi; Gulf Coast Research Lab., Gunter Library, 703 East Beach Drive, Ocean Springs, Mississippi; Auburn University at Montgomery, Library, Taylor Road, Montgomery, Alabama; University of Alabama Libraries, 809 University Boulevard East, Tuscaloosa, Alabama; Mobile Public Library, 701 Government Street, Mobile, Alabama; Montgomery Public Library, 445 South Lawrence Street, Montgomery, Alabama; Gulf Shores Public Library, Municipal Complex, Route 3, Gulf Shores, Alabama; Dauphin Island Sea Lab, Marine Environmental Science Consortium, Library, Bienville Boulevard, Dauphin Island, Alabama; University of South Alabama, University Boulevard, Mobile Alabama; University of Florida Libraries, University Avenue, Gainesville, Florida; Florida A & M University, Coleman Memorial Library, Martin Luther King Boulevard, Tallahassee, Florida; Florida State University, Strozier Library, Call Street and Copeland Avenue, Tallahassee, Florida; Florida Atlantic University, Library, 20th Street, Boca Raton, Florida; University of Miami Library, 4600 Rickenbacker Causeway, Miami, Florida; University of Florida, Holland Law Center Library, Southwest 25th Street and 2nd Avenue, Gainesville, Florida; St. Petersburg Public Library, 3745 Ninth Avenue North, St. Petersburg, Florida; West Florida Regional Library, 200 West Gregory Street, Pensacola, Florida; Florida Northwest Regional Library System, 25 West Government Street, Panama City, Florida; Leon County Public Library, 127 North Monroe Street, Tallahassee, Florida; Lee County Library, 3355 Fowler Street, Fort Myers, Florida; Charlotte-Glades Regional Library System, 2280 NW Aaron Street, Port Charlotte, Florida; Tampa-Hillsborough County Public Library System, 800 North Ashley Street, Tampa, Florida; Key Largo Public Library, 99551 No. 3 Overseas Highway, Key Largo, Florida; Selby Public Library, 1001 Boulevard of the Arts, Sarasota, Florida; Collier County Public Library, 650 Central Avenue, Naples, Florida; Marathon Public Library, 3152 Overseas Highway, Marathon, Florida; Monroe County Public Library, 700 Fleming Street, Key West, Florida.

In accordance with 30 CFR 256, subpart B, the MMS will hold public hearings to receive comments and suggestions relating to the EIS. The dates and locations of the hearings will be announced at a later date. Comments concerning the draft EIS will be accepted until May 1, 1990, and should be addressed to the Regional Director, Minerals Management Service, Gulf of Mexico Region, 1201 Elmwood Park Boulevard, room 311, New Orleans, Louisiana 70123.

Dated: March 1, 1990.

Ed Cassidy,

Deputy Director, Minerals Management Service.

Approved:

Jonathan P. Deason,

Director, Office of Environmental Affairs.

[FR Doc. 90-5064 Filed 3-6-90; 8:45 am]

BILLING CODE 4320-MR-M

Information Collection Requirements for Subpart D, Drilling Operations

AGENCY: Minerals Management Service, Interior.

ACTION: Request for comments on the information collection requirements for subpart D, Drilling Operations, 30 CFR part 250.

SUMMARY: The Minerals Management Service (MMS), as part of its continuing effort to reduce the paperwork and respondent burden (required by the Paperwork Reduction Act of 1980, (Pub. L. 96-511, 44 U.S.C. 3501 *et seq.*)), provides the general public, industry,

and State and other Federal Agencies an opportunity to comment on current and proposed information collection requirements. The MMS will evaluate all comments and will revise reporting and recordkeeping requirements, as appropriate, to minimize respondent burdens. This notice specifically requests comments regarding the information collection and recordkeeping burdens imposed by MMS regulations on lessees who conduct drilling operations in the Outer Continental Shelf (OCS). Comments will be used in the preparation of an information collection package to be submitted to the Office of Management and Budget (OMB) for approval of collection and recordkeeping requirements.

DATES: Comments may be submitted on or before April 6, 1990.

ADDRESSES: Comments and suggestions on these collection and recordkeeping requirements should be submitted to Gerald D. Rhodes; Chief, Branch of Rules, Orders, and Standards; Offshore Rules and Operations Division; Mail Stop 646; Minerals Management Service; 381 Elden Street; Herndon, Virginia 22070–4817; with copies to the Bureau Clearance Officer; Mail Stop 632, Parkway Atrium; 381 Elden Street; Herndon, Virginia 22070–4817; and to the Office of Management and Budget, Paperwork Reduction Project (1010–0053), Washington, DC 20503; telephone number (202) 395–7340.

FOR FURTHER INFORMATION CONTACT: Copies of the current and proposed information collection requirements and supporting material may be obtained by contacting Gerald D. Rhodes; Chief, Branch of Rules, Orders, and Standards; telephone (703) 787–1600 or (FTS) 393–1600.

SUPPLEMENTARY INFORMATION:

I. Background

The MMS is preparing to revise the information collection for subpart D, Drilling Operations, 30 CFR part 250, due to a proposed rule that will require lessees to provide additional information in their hydrogen sulfide (H_2S) contingency plans. This revision obliges MMS to submit a request for approval of the new information collection to OMB. In order to obtain approval of the new information collection, MMS must submit an information collection package to OMB that contains a description of the information collection requirements, statements justifying the collection, and comments from individuals affected by the information collection. The requested comments on the information collection requirements for subpart D will be used to prepare the information collection package to be submitted to OMB.

The information collected under subpart D is used by MMS to ascertain the conditions of a drilling site for the purpose of mitigating hazards inherent in drilling operations and to determine whether the drilling operations are being conducted in a safe and environmentally sound manner. The public had an opportunity to comment on the present information collection and reporting requirements for subpart D during the restructuring and consolidation of the offshore operating regulations under 30 CFR part 250 (51 FR 9316). The comments received concerning subpart D were addressed in MMS's October 1987 request to OMB for approval of the information collection requirements for subpart D. This information collection request was approved by OMB through January 31, 1991.

II. Current Actions

The MMS will propose a new rule that will require lessees to provide additional information in their H_2S contingency plans. This information will address helicopter activities during H_2S emergencies, descriptions of portable sulphur dioxide (SO_2) monitors used in the event H_2S gas is burned, and monitoring procedures and personnel protection measures initiated when the SO_2 concentration in the atmosphere reaches 2 and 5 parts per million. The proposed rule also requires lessees to submit an analysis of the anticipated H_2S content of produced water discharged by means other than subsurface disposal. No additional changes are proposed for the present reporting and recordkeeping requirements in subpart D.

III. Request for Comments

The sections of subpart D that contain information collection requirements are listed below, along with MMS's estimates of the number of annual responses for the average lessee, the completion time per response, recordkeeping hours per lessee, and the total burden hours for each requirement. The total burden hours have been calculated by multiplying the completion time and recordkeeping hours by the number (74) of different lessees operating in all OCS Regions. The MMS requests the oil and gas and sulphur industry and other interested parties to comment on these information collection requirements, including comments regarding the clarity of the information requirements, the availability of required information, and the frequency of collection.

A. Section 250.51, General requirements—submit evidence of drilling unit capability, oceanographic and meteorological data, and shallow geologic hazards—three responses per lessee, 4.5 hours per response, 0 hours recordkeeping, 999 total burden hours.

B. Section 250.52, Welding and burning practices and procedures—submit procedures plan and recordkeeping of drawings showing safe welding areas—one response per lessee, 1.7 hours per response, 7.1 hours recordkeeping per lessee, 651 total burden hours.

C. Section 250.54, Well casing and cementing—submit casing programs for unexpected formation pressures and recordkeeping of driller's report—six responses per lessee, 3 hours per response, 30 hours of recordkeeping per lessee, 3,552 total burden hours.

D. Section 250.55, Pressure testing of casing—submit evaluation of casing pressure tests and recordkeeping of driller's report—six responses per lessee, 3 hours per response, 30 hours of recordkeeping per lessee, 3,552 total burden hours.

E. Section 250.57, Blowout preventer system tests, actuations, inspections, and maintenance—recordkeeping of driller's report—zero responses, 0 hours per response, 32 hours of recordkeeping per lessee, 2,368 total burden hours.

F. Section 250.59, Diverter systems—recordkeeping of driller's report—zero responses, 0 hours per response, 32 hours of recordkeeping per lessee, 2,368 total burden hours.

G. Section 250.60, Mud program—recordkeeping of driller's report—zero responses, 0 hours per response, 32 hours of recordkeeping per lessee, 2,368 total burden hours.

H. Section 250.62, Field drilling rules—application for field drilling rules—two responses per lessee, 7.9 hours per response, 0 hours recordkeeping, 1,169 total burden hours.

I. Section 250.64, Applications for permit to drill—submit public information copies of Form MMS–331C (this form and other reporting burdens have been approved under OMB No. 1010–0044)—16 responses per lessee, 0.5 hours per response, 0 hours recordkeeping, 592 total burden hours.

J. Section 250.65, Sundry notices and reports on wells—submit public information copies of Form MMS–331 (this form and other reporting burdens have been approved under OMB No. 1010–0045)—16 responses per lessee, 0.5 hours per response, 0 hours recordkeeping, 592 total burden hours.

K. Section 250.66, Well records—submit well records as requested, submit well logs, and recordkeeping of all well records (does not include reporting burden associated with Form MMS-330)—eight responses per lessee, 0.4 hours per response, 19.5 hours recordkeeping per lessee, 1,680 total burden hours.

L. Section 250.67, Hydrogen sulfide—submit request for classification of zones known to contain H_2S, submission of H_2S contingency plan, and submit analysis of the anticipated H_2S content of produced water—four responses per lessee, 4 hours per response, 0 hours recordkeeping, 1,184 total burden hours.

The total annual information collection burden on lessees for Subpart D is 21,075 hours. This is an increase of 645 hours over the 20,430 hours shown for the collection of information for Subpart D. This increase is due to the additional requirements for H_2S contingency plans in the proposed rule.

Comments submitted in response to this notice will be summarized and/or included in the information collection package submitted to OMB for approval of this information collection. These comments will also become a matter of public record.

Authority: Sec. 204, Public Law 95-372, 92 Stat 629 (43 U.S.C. 1334).

Dated: February 15, 1990.

William D. Bettenberg,

Associate Director for Offshore Minerals Management.

[FR Doc. 90-5150 Filed 3-6-90; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Availability of Plan of Operations and Environmental Assessment; Continuing Operation of William M. Rice Institute "B"-5 Well; Glickenhaus Energy Corp. et al.

Notice is hereby given in accordance with § 9.52(b) of title 36 of the Code of Federal Regulations that the National Park Service has received from Glickenhaus Energy Corporation a Plan of Operations for continuing operation of the William M. Rice Institute "B"-5 Well, located in the Turkey Creek Unit of Big Thicket National Preserve, Tyler County, Texas.

The Plan of Operations and Environmental Assessment are available for public review and comment for a period of 30 days from the publication date of this notice in the Office of the Superintendent, Big Thicket National Preserve, 3785 Milam, Beaumont, Texas; and the Southwest Regional Office, National Park Service, 1220 South St. Francis Drive, room 347, Santa Fe, New Mexico. Copies are available from the Southwest Regional Office, Post Office Box 728, Santa Fe, New Mexico 87504-0728, and will be sent upon request.

Dated: February 26, 1990.

John E. Cook,

Regional Director, Southwest Region.

[FR Doc. 90-5194 Filed 3-6-90; 8:45 am]

BILLING CODE 4310-70-M

Availability and Public Meeting; Draft General Management Plan/Environmental Assessment; Wilderness Suitability Study for El Malpais National Monument, Cibola County, NM

Pursuant to Public Law 100-225, section 501 (December 31, 1987), an act to establish the El Malpais National Monument, the National Park Service has prepared a Draft General Management Plan/Environmental Assessment/Wilderness Suitability Study.

The General Management Plan is needed to establish and guide the overall management, development, and use of the monument for approximately the next 15 years.

The primary focus is to protect and preserve the natural and cultural environments; to permit biological, geological, and other natural processes to continue with a minimum of human intervention; to provide opportunities for enjoyable visitor experiences as well as an understanding of the significance of monument resources; and to consult with native Americans on matters of access, development, interpretation, and protection of resources.

Copies of the Draft General Management Plan/Environmental Assessment/Wilderness Suitability Study are available, while supplies last, from El Malpais National Monument, P.O. Box 939, Grants, New Mexico 87020, telephone, 505-285-4641.

This General Management Plan was developed in coordination with planning for the El Malpais National Conservation Area, administered by the Bureau of Land Management. The plan for the Conservation Area will be available soon to the public from the Bureau of Land Management, Rio Puerco Resource Area, 435 Montano Road NE., Albuquerque, New Mexico 87107.

Reading copies of the documents will be available at the following location: New Mexico State University, Grants Branch Library, Grants, New Mexico.

Public meetings are scheduled for April 18 in Grants, New Mexico and April 19, in Albuquerque, New Mexico. Times and locations for these meetings will be available from El Malpais National Monument at the address and telephone number listed above.

Anyone wishing to comment on the draft plan should provide them at one of the public meetings, or submit written comments to El Malpais National Monument by May 8.

Dated February 27, 1990.

John E. Cook,

Regional Director, Southwest Region.

[FR Doc. 90-5195 Filed 3-6-90; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-435 (Final)]

Certain Steel Pails From Mexico

AGENCY: United States International Trade Commission.

ACTION: Revised hearing date for the subject investigation.

EFFECTIVE DATE: February 14, 1990.

FOR FURTHER INFORMATION CONTACT: Brian C. Walters (202-252-1198), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION: On November 27, 1989, the Commission instituted the subject investigation and established a schedule for its conduct (54 FR 50445, December 6, 1989). Subsequently, the Department of Commerce extended the date for its final determination in the investigation from January 22, 1990 until not later than March 23, 1990 (54 FR 50523, December 7, 1989). The Commission revised its schedule in the investigation to conform with Commerce's new schedule and issued the appropriate notice (54 FR 53380, December 28, 1989). In a letter to the Commission dated February 2, 1990, Counsel on behalf of the petitioners in the investigation requested that the hearing be postponed for two days so that their main witnesses could attend the hearing. Accordingly the Commission is postponing its hearing to

accommodate the petitioners' request. The Commission's hearing will now be held at the U.S. International Trade Commission Building on March 29, 1990, and the deadline for filing posthearing briefs is April 4, 1990.

For further information concerning this investigation see the Commission's notice of investigation cited above and the Commission's Rules of Practice and Procedure, part 207, subparts A and C (19 CFR part 207), and part 201, subparts A through E (19 CFR part 201), as amended.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR § 207.20).

Issued: February 26, 1990.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 90-5200 Filed 3-6-90; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-453 (Preliminary)]

Electromechanical Digital Counters From Brazil

AGENCY: United States International Trade Commission.

ACTION: Institution of a preliminary antidumping duty investigation and scheduling of a conference to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping duty investigation No. 731-TA-453 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Brazil of electromechanical digital counters,[1] provided for in subheading 9029.10.80 of the Harmonized Tariff Schedule of the United States (previously reported under item 711.98 of the former Tariff Schedules of the United States), that are alleged to be sold at less than fair value. As provided in section 733(a), the Commission must complete a preliminary antidumping duty investigation in 45 days, or in this case by April 13, 1990.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and B (19 CFR part 207), and part 201, subparts A through E (19 CFR part 201).

EFFECTIVE DATE: February 27, 1990.

FOR FURTHER INFORMATION CONTACT: Jonathan Seiger (202-252-1177), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instituted in response to a petition filed on February 27, 1990, by EMN Company, Chicago, IL.

Participation in the investigation.—Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Public service list.—Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with § 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each public document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the public service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Limited disclosure of business proprietary information under a protective order and business proprietary information service list.—Pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)), the Secretary will make available business proprietary information gathered in this preliminary investigation to authorized applicants under a protective order, provided that the application be made not later than seven (7) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive business proprietary information under a protective order. The Secretary will not accept any submission by parties containing business proprietary information without a certificate of service indicating that it has been served on all the parties that are authorized to receive such information under a protective order.

Conference.—The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on March 20, 1990, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Jonathan Seiger (202-252-1177) not later than March 15, 1990, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written submissions.—Any person may submit to the Commission on or before March 22, 1990, a written brief containing information and arguments pertinent to the subject matter of the investigation, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8). All written submissions except for business proprietary data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary of the Commission.

Any information for which business proprietary treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Business Proprietary Information." Business proprietary submissions and requests for business proprietary treatment must conform with the requirements of §§ 201.6 and 207.7 of the Commission's rules (19 CFR 201.6 and 207.7).

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[1] For purposes of this investigation, electromechanical digital counters are defined as devices or instruments for summing, either directly or through inference, and indicating a total number of units of any kind (items, events, pulses, length, etc.), whether or not resettable, wherein the units to be counted are detected by electrical means, and the count is displayed by rotating numbers on wheels.

Parties which obtain disclosure of business proprietary information pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)) may comment on such information in their written brief, and may also file additional written comments on such information no later than March 26, 1990. Such additional comments must be limited to comments on business proprietary information received in or after the written briefs.

Authority.—This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

By order of the Commission.

Issued: March 1, 1990.

Kenneth R. Mason,

Secretary.

[FR Doc. 90-5197 Filed 3-6-90; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-303]

Certain Polymer Geogrid Products and Processes Therefor, Prehearing Conference

Notice is hereby given that the prehearing conference in this matter will commence at 9 a.m. on March 26, 1990, in Courtroom C (room 217), U.S. International Trade Commission Building, 500 E St. SW., Washington, DC, and the hearing will commence immediately thereafter.

The Secretary shall publish this notice in the **Federal Register.**

Issued: February 26, 1990.

Janet D. Saxon,

Chief Administrative Law Judge.

[FR Doc. 90-5198 Filed 3-6-90; 8:45 am]

BILLING CODE 7020-02

[Investigation No. 337-TA-302]

In the Matter of Certain Self-Inflating Mattresses, Prehearing Conference

Notice is hereby given that the prehearing conference in this matter will commence at 9 a.m. on March 16, 1990, in Courtroom C (room 217), U.S. International Trade Commission Building, 500 E St. SW., Washington, DC, and the hearing will commence immediately thereafter.

The Secretary shall publish this notice in the **Federal Register.**

Issued: February 26, 1990.

Janet D. Saxon,

Chief Administrative Law Judge.

[FR Doc. 90-5199 Filed 3-6-90; 8:45 am]

BILLING CODE 7020-02-M

Tapered Roller Bearings and Parts Thereof, and Certain Housings Incorporating Tapered Rollers From Romania; Dismissal of Request for Institution of a Section 751(b) Review Investigation

AGENCY: United States Trade Commission.

ACTION: Dismissal of a request to institute a section 751(b) review investigation concerning the Commission's affirmative determination in investigation No. 731-TA-345 (Final), Tapered Roller Bearing and Parts Thereof, and Certain Housings Incorporating Tapered Rollers from Romania.

SUMMARY: The Commission determines, pursuant to section 751(b) of the Tariff Act of 1930 (19 U.S.C. 1675(b)) and rule 207.45 of the Commission's rules (19 CFR 207.45), that the request does not show changed circumstances sufficient to warrant institution of an investigation to review the Commission's affirmative determination in investigation No. 731-TA-345 (Final), regarding tapered roller bearings and parts thereof, and certain housings incorporating tapered rollers from Romania.[1]

FOR FURTHER INFORMATION CONTACT: Lisa Zanetti (202-252-1189), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 10436. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at 202-724-0002. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION: On June 11, 1987, the Commission published in the **Federal Register** its determination in investigation No. 731-TA-345 (Final), Tapered Roller Bearings and Parts Thereof, and Certain Housings Incorporating Tapered Rollers from Romania (52 FR 22399). The Commission determined that an industry in the United States was materially injured by reason of imports from Romania of tapered roller bearings and parts thereof, and certain housings incorporating tapered rollers, which had been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV). On June 19, 1987, the Department of Commerce issued an antidumping order, notice of which was published in the **Federal Register** (52 FR 23320).

On November 22, 1989, the Commission received a request to review its affirmative determination in investigation 731-TA-345 (Final) pursuant to section 751(b)(1) of the act (19 U.S.C. 1675(b)). The request was filed by counsel on behalf of UCF America Inc., Pennsauken, NJ, an importer of tapered roller bearings from Romania. The request changed circumstances sufficient to warrant a review of the Original decision.

On December 28, 1989, the Commission published a notice in the **Federal Register** requesting written comments on the question of whether the alleged changed circumstances were sufficient to warrant institution of a review investigation (52 FR 53380). Comments were received from counsel on behalf of The Timken Company (Timken) opposing the institution of a review investigation. Timken was the petitioner in the original investigation (No. 731-TA-345 (Final)). Comments were also received from counsel on behalf of United Automotive Company Limited (UACL), supporting the institution of a review investigation. Additional comments were received from counsel on behalf fo UCF America Inc., providing further information to support institution of a review investigation.

DECISION OF THE COMMISSION: After consideration of the request for review and responses to the notice inviting comments, the Commission has determined, pursuant to 19 U.S.C. 1675(b) of rule 207.45 of the Commission's rules (19 CFR 207.45), that the request does not show changed circumstances sufficient to warrant institution of an investigation to review the Commission's affirmative determination in investigation No. 731-TA-345 (Final), regarding tapered roller bearings and parts thereof, and certain housings incorporating tapered rollers from Romania.

The request for review asserts as a changed circumstance the decision of the Court of International Trade (CIT) in *Marsuda-Rodgers Int'l* v. *United States* in which the CIT found that the Commission had improperly cumulated TRBs from Hungary with those from Japan and Italy (13 CIT _____, Slip Op. 89-106 (1989)). The Commission is seeking to appeal the *Marsuda-Rodgers* decision. It is inappropriate for the Commission to revisit a matter currently in litigation through the use of section

[1] Tapered roller bearings, parts thereof, and certain housings incorporating tapered rollers are provided for in subheadings 8482.20.00, 8482.91.00, and 8482.99.30, subheading 8483.20.40, and heading 8708, respectively, of the Harmonized Tariff Schedule of the United States.

751(b). In any case, there appear to be differences between Hungarian and Romanian RTBs that are not insubstantial and may preclude the use of *Marsuda-Rodgers* as the basis for a determination involving TRBs from Romania.

With respect to the other allegations of changed circumstances presented in the petition requesting a section 751(b) review, the evidence presented is not convincing. While it is impossible to know for certain the outcome of romania's request for reinstatement of MFN status, currently political and economic indicators point to such reinstatement within the coming year, and quite possibly before a 751 review could be completed. Any improvement in the condition of the domestic industry producing TRBs since the original decision was made in consistent with the desired and anticipated result of imposition of an antidumping order, and the petition has not set forth a basis to believe that the curent condition of the domestic industry is attributable to anything other than the imposition of import relief. Finally, imports by Timken from its Brazilian subsidiary appear to be small and supplemental in nature.

By order of the Commission.

Issued: February 28, 1990.

Kenneth R. Mason,

Secretary.

[FR Doc. 90-5201 Filed 3-6-90; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 486]

Railroad Cost of Capital—1989

AGENCY: Interstate Commerce Commission.

ACTION: Extension of time to file comments in cost of capital proceeding.

SUMMARY: In the Federal Register of December 19, 1989 (54 FR 51955), the due date for the submission of comments from non-railroad parties was established to be March 9, 1990. IMC Fertilizer, Inc. has requested that the due date be extended to March 30, 1990. The petition shall be granted. Additional time is necessary to prepared the petitioner's comments.

The due date for te filing of rebuttal comments by the railroads is also extended, from March 23, 1990 to April 13, 1990. This latter extension will allow the railroads the same amount of time for rebuttal as that set same amount of time for rebuttal as that set forth in the original notice.

DATES: Comments from non-railroad parties are due March 30, 1990 and railroad rebuttal comments are due April 13, 1990.

ADDRESSES: Send an original and 15 copies of comments to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Ward L Ginn, Jr., (202) 275-7489. (TDD for the hearing impaired: (202) 275-1721).

Dated: March 1, 1990.

By the Commission, Edward J. Philbin, Chairman.

Noreta R. McGee,

Secretary.

[FR Doc. 90-5178 Filed 3-6-90; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-31 (Sub-No. 29)]

The Grand Trunk Western Railroad Co.—Abandonment—In Clark, Madison and Fayette Counties, OH; Findings

The Commission has found that the public convenience and necessity permit The Grand Trunk Western Railroad Company (GTW) to abandon service over a 27.13-mile line of railroad and 2.02 miles of rail siding between milepost 202.70 at Springfield and milepost 229.83 at Fayne (Washington Court House), in Clark, Madison and Fayette Counties, OH.

A certificate will be issued authorizing abandonment unless within 15 days after this publication the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and served on the applicant no later than March 19, 1990. The following notation must be typed in bold face on the lower left-hand corner of the envelope: "Rail Section, AB-OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

Decided: February 27, 1990.

By the Commission, Chairman Philbin, Vice Chairman Phillips, Commissioners Simmons, Lamboley, and Emmett.

Noreta R. McGee,

Secretary.

[FR Doc. 90-5177 Filed 3-6-90; 8:45 am]

BILLING CODE 7035-01-M

Indexing the Annual Operating Revenues of Railroads, Motor Carriers of Property and Motor Carriers of Passengers

AGENCY: Interstate Commerce Commission.

ACTION: Notice.

This notice sets forth the annual inflation adjusting index numbers which are used to adjust gross annual operating revenues of railroads, motor carriers of property and motor carriers of passengers for classification purposes. This indexing methodology will insure that regulated carriers are classified based on real business expansion and not from the effects of inflation. Classification is important because it determines the extent of reporting for each carrier.

The railroad's inflation factors are based on the annual average Railroad's Freight Price Index. For both motor carriers of property and motor carriers of passengers, the inflation factors are based on the annual average Producer Price Index for all commodities. The indexes are developed by the Bureau of Labor Statistics (BLS).

The base years for railroads, motor carriers of property, and passenger motor carriers are 1978, 1980, and 1988 respectively. The inflation index factors for 1987, 1988 and 1989 are presented as follows:

Railroads—Railroad freight index	Index	Deflator percent
1978	213.1	
1987	374.8	56.86
1988	392.1	54.35
1989	398.5	53.48

Motor carriers of property producer price index [1]	Index	Deflator percent
1980	89.8	
1987	102.8	87.35
1988	106.9	84.00
1989	112.2	80.04

[1] The indices and deflator percentages for motor carriers of property were adjusted to reflect changes by the BLS.

Motor carriers of passengers producer price index	Index	Deflator percent
1988	106.9	
1989	112.2	95.28

EFFECTIVE DATES: January 1, 1990.

FOR FURTHER INFORMATION CONTACT: William F. Moss III, (202) 275-7510.

Noreta R. McGee,

Secretary.

[FR Doc. 90-5176 Filed 3-6-90; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Antitrust Division

National Cooperative Research Act of 1984; Portland Cement Association

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the Portland Cement Association ("PCA") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission on January 31, 1990, disclosing that there have been changes in the membership of PCA. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

The following additional party has become a member of PCA: Miron Inc.

In addition, Santee Corp. should no longer be listed as a member company. Also, Passamaquoddy Technology and BHA Group, Inc. have become participating associates.

No other changes have been made in either the membership or planned activities of PCA.

On January 7, 1985, PCA filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice (the "Department") published a notice in the **Federal Register** pursuant to section 6(b) of the Act on February 5, 1985, 50 FR 5015. On March 14, 1985, August 13, 1985, January 3, 1986, February 14, 1986, May 30, 1986, July 10, 1986, December 31, 1986, February 3, 1987, April 17, 1987, June 3, 1987, July 29, 1987, August 6, 1987, October 9, 1987, February 18, 1988, March 9, 1988, March 11, 1988, July 7, 1988, August 9, 1988, August 23, 1988, January 23, 1989, February 24, 1989, March 13, 1989, May 25, 1989, July 20, 1989, August 24, 1989, September 25, 1989, and December 14, 1989, PCA filed additional written notifications. The Department published notices in the **Federal Register** in response to these additional notifications on April 10, 1985 (50 FR 14175), September 16, 1985 (50 FR 37594), November 15, 1985 (50 FR 47292), December 24, 1985 (50 FR 52568), February 4, 1986 (51 FR 4440), March 12, 1986 (51 FR 8573), June 27, 1986 (51 FR 23479), August 14, 1986 (51 FR 29173), February 3, 1987 (52 FR 3356), March 4, 1987 (52 FR 6635), May 14, 1987 (52 FR 18295), July 10, 1987 (52 FR 26103), August 26, 1987 (52 FR 32185), November 17, 1987 (52 FR 43953), March 28, 1988 (53 FR 9999), August 4, 1988 (53 FR 29397), September 15, 1988 (FR 35935), September 28, 1988 (52 FR 37883), February 23, 1989, (54 FR 7894), March 20, 1989 (54 FR 11455), April 25, 1989 (54 FR 17835), June 28, 1989 (54 FR 27220), August 23, 1989 (54 FR 35092), September 11, 1989 (54 FR 37513), October 20, 1989 (54 FR 43146), and February 1, 1990 (55 FR 3497), respectively.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 90-5149 Filed 3-6-90; 8:45 am]

BILLING CODE 4410-01-M

National Cooperative Research Act of 1984; Halon Alternatives Research Corp., Inc. (HARC)

Notice is hereby given that, on February 7, 1990 pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.*, ("the Act"), Halon Alternatives Research Corporation, Inc. ("Corporation") filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of its members and (2) the nature and objectives of the Corporation. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the members to the Corporation and its general purposes are given below:

The members to the Corporation are: ANSUL Fire Protection; Great Lakes Chemical Corporation; ICI General Products; E.I. DuPont; National Fire Protection Association; and British Petroleum.

The Corporation is formed for the purposes set forth below: (1) To encourage, educate, foster and promote the research, development and acceptance of halon alternatives; (2) to coordinate the development and regulatory approval of toxicologically and environmentally acceptable halon alternatives; (3) to undertake such other programs and activities as are consistent with these purposes, including, but not limited to acquiring, evaluating and disseminating and encouraging the acquisition, evaluation and dissemination of, information regarding halon alternatives; and (4) to provide an organization through which all individuals or firms engaged in or associated with the manufacture or distribution, support, testing or use of halon or chemical agents similar to halon may be united for the purpose of sponsoring scientific research, collecting and disseminating information to the membership of these industries and the general public.

Membership in this group research project remains open, and the parties intend to file additional written notification disclosing all changes in membership of this project.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 90-5148 Filed 3-6-90; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

Guy M. Autore, M.D., Partial Denial of Application

On January 18, 1990, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Guy M. Autore, M.D. of Whiskey Creek Lodge, Whiskey Creek Road, Whiskeytown, California 96095. The Order to Show Cause proposed to deny Dr. Autore's application, executed on May 16, 1988, for registration as a practitioner in Schedules II, IIN, III and IIIN under 21 U.S.C. 823(f). Dr. Autore currently possesses DEA Certificate of Registration AA2335479 authorizing him to handle controlled substances in Schedules IV and V. Dr. Autore's application, also sought the renewal of his Schedule IV and V privileges. The Order to Show Cause alleged that Dr. Autore's registration in Schedules II, IIN, III and IIIN would be inconsistent with the public interest as that term is used in 21 U.S.C. 823(f).

The Order to Show Cause was sent to Dr. Autore by registered mail. More than thirty days have passed since the Order to Show Cause was received by Dr. Autore and the Drug Enforcement Administration has received no response thereto. Pursuant to 21 CFR 1301.54(a) and 1301.54(d), Guy M. Autore, M.D. is deemed to have waived his opportunity for a hearing. Accordingly, the Administrator now enters his final order in this matter

without a hearing and based on the investigative file. 21 CFR 1301.57.

The Administrator finds that in the early 1970's the California State Bureau of Consumer Affairs initiated an investigation of Dr. Autore's controlled substance handling practices after receiving numerous complaints from members of the community. Between May 1970 and April 1973, undercover officers of the Los Angeles County Sheriff's Office, the California State Bureau of Consumer Affairs, and the Los Angeles Police Department purchased a total of 23 controlled substance prescriptions from Dr. Autore for no legitimate medical purpose. As a result of this investigation, on October 14, 1977, Dr. Autore was convicted in the United States District Court for the Central District of California of 10 counts of causing the distribution of controlled substances in violation of 21 U.S.C. 841(a)(1).

On October 30, 1980, the California State Board of Medical Quality Assurance revoked Dr. Autore's license to practice medicine, but stayed the revocation and placed Dr. Autore on probation for seven years subject to certain conditions. Dr. Autore was only allowed to practice medicine in a supervised structured environment and to prescribe or dispense Schedule IV and V controlled substances only when overseen by another physician. In addition, Dr. Autore was required to undergo and pass both an administrative medical evaluation and an administrative psychiatric evaluation. On October 30, 1987, the State of California Board of Medical Quality Assurance terminated Dr. Autore's probation and all of his controlled substance privileges were restored.

The Administrator may deny an application for registration if he determines that such registration would be inconsistent with the public interest. The factors which are to be considered in determining the public interest are enumerated in 21 U.S.C. 823(f). All factors need not be present for the Administrator to deny an application for registration. Instead, the Administrator may accord each factor the weight he deems appropriate in determining the public interest. See, *Nathan Beckman, D.D.S.*, Docket No. 88-90, 54 FR 37164 (1989); *Neveille H. Williams, D.D.S.*, Docket No. 87-47, 53 FR 23465 (1988); *Paul Stepak, M.D.*, 51 FR 17556 (1986).

Dr. Autore was convicted of felony offenses relating to controlled substances. In light of these convictions, it is clear that Dr. Autore did not comply with Federal laws relating to controlled substances and that his experience in dispensing controlled substances is questionable at best. Therefore, after considering the factors in 21 U.S.C. 823(f), the Administrator concludes that Dr. Autore's registration in Schedules II, IIN, III and IIIN would be inconsistent with the public interest. No evidence of explanation or mitigating circumstances has been offered by Dr. Autore. Consequently, the Administrator concludes that Dr. Autore's application for registration must be denied.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 28 CFR 0.100(b), hereby orders that Dr. Autore's Certificate of Registration AA2335479, authorizing him to handle Schedule IV and V controlled substances, be, and it hereby is, renewed. The Administrator further orders that Dr. Autore's application, executed on May 16, 1988, for the addition of Schedule II, IIN, III and IIIN, to his already existing registration, be, and it hereby is, denied. This order is effective March 7, 1990.

Dated: February 28, 1990.

John C. Lawn,

Administrator.

[FR Doc. 90-5088 Filed 3-6-90; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 88-50]

Denis C. Chan, M.D.; Revocation of Registration

On March 22, 1988, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Denis C. Chan, M.D. (Respondent) of 94-748 B Hikimoe Street, Waipahu, Hawaii 96797, proposing to revoke his DEA Certificate of Registration AC4559475, and to deny any pending applications for the renewal of such registration under 21 U.S.C. 823(f). The Order to Show Cause alleged that the continued registration of Respondent would be inconsistent with the public interest as that term is used in 21 U.S.C. 823(f) and 824(a)(4).

Respondent requested a hearing on the issues raised by the Order to Show Cause and the matter was docketed before Administrative Law Judge Francis L. Young. Following prehearing procedures, a hearing was held in Honolulu, Hawaii on November 1 and 2, 1988. On July 24, 1989, the administrative law judge issued his opinion and recommended ruling, findings of fact, conclusions of law and decision. Pursuant to 21 CFR 1316.66, the Government filed exceptions to Judge Young's opinion and recommended decision. On September 7, 1989, the administrative law judge transmitted the record of these proceedings, including the Government's exceptions, to the Administrator. The Administrator has considered the record in its entirety and, pursuant to 21 CFR 1316.67, hereby issues his final order in this matter based upon findings of fact and conclusions of law as hereinafter set forth.

The Administrator finds that Repondent has practiced general family medicine at his present location in Hawaii since 1973. Agents for the State of Hawaii initiated an investigation of Respondent upon receiving information from opiate abusers that Respondent was dispensing Tussionex, a potent Schedule III narcotic cough syrup, for nonmedical reasons.

On May 19, 1983, two undercover agents went to Respondent's office to attempt to purchase Tussionex for no legitimate medical purposes. The undercover visit had previously been arranged between a cooperating individual and a receptionist in Respondent's office. After performing cursory medical examinations of both undercover agents, Respondent gave each a three-ounce bottle of Tussionex. Five days later, the agents returned to Respondent's office and were each given a three-ounce bottle of Tussionex after a cursory examination. At this time, and prior to Respondent actually dispensing the Tussionex, Respondent told the agents that they had returned too soon after the last visit to obtain more Tussionex. However, Respondent did in fact dispense more Tussionex to both agents.

The undercover agents returned to Respondent's office on numerous occasions between May 19 and October 28, 1983, and were always dispensed Tussionex. Over the five-month period, one agent visited Respondent nine times and the other, ten times. On three occasions, the agent were even placed in the same examination room. Respondent never spent more than 30 seconds with the agents before authorizing refills of the Tussionex. During the course of all of these undercover visits, the agents were never sick nor were they coughing. Respondent never took a medical history from the agents nor did he ever perform a physical examination, other than by placing a stethoscope over the clothes of the agents. Respondent never attempted to determine the underlying cause of the agents' "coughs". He never dispensed or prescribed other medication such as non-controlled substances or Schedule V cough

preparations. Instead, Respondent continued to dispense a Schedule III narcotic cough syrup over a five-month period. Respondent never warned the agents of the potential addictiveness of Tussionex.

During one of the undercover visits, one of the agents asked for Tussionex for the other agent, who was not present on this occasion. Respondent refused this request. On other occasion, the agents each asked Respondent for an extra refill of Tussionex since they were going to be on another island for a couple of weeks. Respondent also refused this request.

On February 21, 1984, Respondent was arrested and a search warrant was executed at his office. During the course of these events, two individuals employed at Respondent's office were interviewed. These individuals were interviewed separately and were not present when the other was being interviewed. Since both individuals made essentially the same statements concerning Respondent's dispensing practices and since the statements were made in close proximity to the agents' last visit to Respondent, the Administrator finds these statements reliable. The individuals indicated that approximately 10–15 patients a week would go to Respondent's office asking for Tussionex. These individuals did not appear sick, yet always received Tussionex unless they came back before the previously received medication should have run out. Both of the individuals remembered the undercover agents. According to the individuals, the agents usually came to Respondent's office together. Neither of the agents appared sick, nor were they coughing. The individuals further stated that on each occasion, the agents were with Respondent a very short period of time, a minute or less. However, individuals who were really sick were usually with Respondent for a much longer period of time.

Following his arrest, Respondent was indicted and charged with 19 counts of promoting a harmful drug in the second degree, felony offenses under the laws of the State of Hawaii. On October 10, 1984, Respondent entered a plea of *nolo contendere* to five counts of the indictment. The administrative law jduge concluded, and the Administrator concurs, that in light of the unique procedure set up by the Hawaii statutes, Respondent was not convicted of these offenses. In addition, given the wording of the state court form recording entry of the plea, Respondent's *nolo contendere* plea cannot be taken as an admission of guilt.

In September 1985, the Hawaii Board of Medical Examiners suspended Respondent's license to dispense controlled substances for one year. In addition, his license to prescribe any controlled substances was suspended for six months. All but the first month of that six month period was set aside upon Respondent paying $10,000.00 to the Hawaii Department of Commerce and Consumer Affairs. As a result of the criminal proceeding, Respondent was required to perform 1,000 hours of community services, pay $5,000.00 to a drug rehabilitation program and to make restitution to the court.

The administrative law judge noted in his opinion that Respondent was guilty of poor medical judgment, but that "poor judgment is not the same as knowingly and willfully prescribing for an illegitimate purpose." Judge Young concluded that Respondent should be permitted to retain his DEA registration, stating that Respondent "has already paid sufficiently for such improper conduct as this record establishes."

After carefully reviewing the entire record in this proceeding, the Administrator rejects the administrative law judge's recommendation. The Administrator may revoke a DEA registration if he determines that such registration would be inconsistent with the public interest. The factors which are considered in determining whether the registration would be inconsistent with the public interest are enumerated in 21 U.S.C. 823(f). All factors need not be present for the Administrator to revoke a registration. Instead, the Administrator may accord each factor the weight he deems appropriate in determining the public interest. See, *Nathan Beckman, D.D.S.*, Docket No. 88–90, 54 FR 37164 (1989); *Neville H. Williams, D.D.S.*, Docket No. 87–47, 53 Fed. Reg. 23465 (1988); *Paul Stepak, M.D.*, 51 FR 17556 (1986).

The Hawaii Board of Medical Examiners did suspend Respondent's controlled substances privileges for a period of time. However, these privileges are now fully unrestricted. Respondent has not been convicted of any controlled substance-related offenses. The second and fourth factors are similar to each other, relating to Respondent's experience in dispensing controlled substances and his compliance with the laws relating to them. In considering these factors, the Administrators concluded that it is clear that Respondent did in fact dispense controlled substances without a legitimate medical purpose. This is most apparent in the undercover investigation of Respondent. The record clearly revealed that Respondent dispensed Tussionex to the undercover agents over a five-month period of time. On all but one occasion, the two undercover agents went to Respondent's office together and on three occasions were placed in the same examination room. Respondent performed a cursory physical examination of the agents, by briefly placing a stethoscope over the agents' clothing. He never attempted to detect any underlying medical problems, nor did he try any type of treatment, other than Tussionex. Respondent never spent more than 30 seconds with either agent before he authorized a refill of the Tussionex.

Respondent should have been suspicious of the agents. They did not cough during their visits. On one occasion, they returned before the Tussionex from their previous visit should have run out. On another occasion, one of the agents asked for Tussionex for the other agent who was not present during the visit. Finally, during one visit, the agents asked for extra Tussionex, since they would be leaving the island for a few weeks. All of these facts should have caused Respondent to be extremely cautious in dispensing Tussionex to the agents. Instead, Respondent regularly dispensed Tussionex to the agents over a five-month period of time after spending less than 30 seconds with them during each visit.

The Administrator concludes that Respondent knew he was dispensing the Tussionex for other than a legitimate medical purpose. The statements by Respondent's two employees further confirm that respondent's prescribing for the agents were not isolated instances.

The Administrator agrees with the administrative law judge's assertion that poor judgment is not the same as knowingly and willfully prescribing for an illegitimate purpose. However, the standard in this proceeding is not whether respondent knowingly and willfully prescribed controlled substances for an illegitimate purpose.That is a criminal standard. Instead, the standard here is whether Respondents continued registration is inconsistent with the public interest. Poor Medical judgment, and the dispensing of controlled substances that resulted from such judgment, is sufficient to establish that Respondent cannot be trusted to responsibly handle such substances and therefore, his continued registration is inconsistent with the public interest.

The administrative law judge felt that respondent had already sufficiently paid for the improper conduct established by

the record. However, this is not a punitive proceeding. Instead, this proceeding seeks to protect the public from further conduct of the same kind. Can Respondent be trusted to responsibly handle controlled substances in the future? The Administrator concludes that in light of respondent's history of ignoring his duty as a health care professional and his failure to protect against the improper dispensing of potentially dangerous substances, Respondent cannot be trusted to responsibly handle such substances in the future.

Accordingly, 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 DEA Certificate of Registration AC4559475, previously issued to Denis C. Chan, M.D., be, and it hereby is, revoked, and any pending applications for the renewal of such registration, be, and they hereby are, denied. This order is effective April 6, 1990.

Dated: February 28, 1990.

John C. Lawn,

Administrator.

[FR Doc. 90-5089 Filed 3-6-90; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 88-92]

Kissena Pharmacy; Revocation of Registration

On September 1, 1988, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Kissena Pharmacy, Inc. (Respondent), of Flushing, NY. The Order to Show Cause proposed to revoke Respondent's DEA Certificate of Registration, AK8695148, and to deny any pending applications for renewal of that registration. The statutory predicate for the proposed action was that Respondent's continued registration was inconsistent with the public interest, as that term is used in 21 U.S.C. 823(f) and 824(a)(4). Respondent, through counsel, filed a request for a hearing on October 5, 1988. Following prehearing procedures, the hearing was held in Washington, DC, on February 3, 1989. After the hearing, both parties filed proposed findings of fact, conclusions of law, and argument. On June 20, 1989, Administrative Law Judge Mary Ellen Bittner issued her opinion and recommended ruling, findings of fact, conclusions of law and decision. Thereafter, the entire record was transmitted to the Administrator for final agency action. The Administrator has considered the record in its entirety and, pursuant to 21 CFR 1316.67, hereby issues his final order in this matter, based upon findings of fact and conclusions of law as hereinafter set forth.

DEA Investigators initiated an investigation into Respondent pharmacy in September 1985. They found that between April and September 1985, Respondent had filled 2,612 prescriptions written by Dr. Pal Varga. Of these prescriptions, which represented approximately 154,200 dosage units of controlled substances, 87 percent were for Doriden and Empirin with codeine, or some other codeine-containing medication. Doriden is a Schedule III oral hypnotic controlled substance, and Empirin with codeine is a Schedule III oral analgesic controlled substance. These drugs are frequently taken together by drug abusers and the combination is colloquially known as "sets" or "fours and doors."

In the hearing, the Government placed in evidence more than 130 prescriptions written by Dr. Varga for Doriden and codeine preparations. The prescriptions were dated between July 22 and July 25, 1985, and were filling by Respondent pharmacy. Many of these prescriptions were for "sets," as described above. DEA Investigators unsuccessfully attempted to locate individuals named on prescriptions issued by Dr. Varga which were selected at random. Of approximately 200 names and addresses listed on the prescriptions, the Investigators did not find any that corresponded to a real person.

During the course of the investigation, DEA Investigators talked to Bernard Walden and Henry Richman, the two pharmacists who worked at Respondent pharmacy on weekdays. Both pharmacists admitted that various individuals would bring in prescriptions for Doriden and codeine-based products simultaneously, and that customers would present several prescriptions for these substances at the same time. Many prescriptions bore names different than those of the person presenting them.

In November 1985, the State of New York instituted a requirement that triplicate prescriptions be used for Doriden in order to curb abuse of that drug. This new requirement apparently prevented Doriden prescriptions from being brought to Respondent to be filled, since Investigators found no Doriden prescriptions at Respondent's pharmacy after the triplicate prescription requirement went into effect.

In January 1988, DEA Investigators again visited the Respondent's pharmacy and inspected its prescription file. This investigation revealed numerous fraudulent prescriptions. These included:

a. Seventy-seven (77) prescriptions were ostensibly issued by Marilyn R. Squire, M.D., from November 28, 1987 to January 18, 1988. Of these prescriptions, 76 were for the drug Lotusate, a Schedule IV controlled substance. The prescriptions were photocopied; the handwriting of the doctor's purported signature varied on different prescriptions; some of the prescriptions listed a different address for Dr. Squire than others, and one of those addresses was 50 miles from Respondent. The alleged DEA registration number of Dr. Squire printed on the prescriptions varied from prescription to prescription, and some of these alleged registration numbers were not in the form of a physician's DEA number. Furthermore, none of the various DEA numbers on the prescriptions was that assigned to Dr. Squire. When interviewed by investigators, Dr. Squire denied writing these prescriptions or having any knowledge of the individuals named on them. She further told investigators that she is a psychiatrist employed by the State of New York, was not familiar with Lotusate, and that her prescription pad had been either lost or stolen while she was commuting to work. Dr. Squire also stated that she had never been contacted by Respondent to verify any of the prescriptions.

b. Twenty-five (25) prescriptions for Lotusate were purportedly issued by Maria D. Garcia, M.D., between August 24 and December 30, 1987. When contacted by investigators and shown the prescriptions, Dr. Garcia stated that she did not write the prescriptions, they were not in her handwriting, she was unfamiliar with Lotusate and unfamiliar with any of the patients listed on the prescriptions. She further stated that she had never been contacted by Respondent to verify any of the prescriptions.

c. Twenty-five (25) prescriptions were purportedly issued by Irving J. Blumethal, M.D. Dr. Blumenthal was contacted by investigators and acknowledged that three of the 25 prescriptions were issued by him, but stated that all the others were forgeries or photocopies. Dr. Blumenthal recognized one patient name on the forged prescriptions, but told the investigators that the patient's address listed on the prescription was incorrect. In addition, several of the prescriptions purportedly written by Dr. Blumenthal listed the address of the Northern Boulevard Medical Group. Dr. Blumenthal said he had never been

associated with that organization. Finally, Dr. Blumenthal stated that he had never been contacted by Respondent to verify any of these prescriptions.

d. Nineteen (19) prescriptions were ostensibly written by James P. McDonald, M.D., between September 1985 and January 1986. The investigators were unable to find any such Dr. McDonald in New York City, and the American Medical Association did not list any physician by that name in New York. The DEA registration number on the prescriptions was fraudulent, and the state medical license number on the prescriptions was that of another physician in New York who did not know of Dr. McDonald. The prescriptions were for Lotusate and Didrex, a Schedule IV stimulant.

e. Twenty-five (25) prescriptions were purportedly issued by Guenther Gnatzy, M.D., between 1984 and 1987. Dr. Gnatzy died in 1980.

f. Three hundred thirteen (313) prescriptions were purportedly issued by Kolin Kolew, M.D., from June 1985 to November 1987. Dr. Kolew admitted to investigators that he had written the prescriptions and explained that he had been giving drugs on demand to "street people." Dr. Kolew subsequently surrendered his DEA registration.

g. Thirty-two (32) prescriptions were purportedly issued by Leo R. Miller, M.D., on forms bearing the name "Sidney Hillman Health Center". This facility is located in Manhattan, and is not near Respondent. Investigators ascertained that Dr. Leo Miller did not work at, nor did he have any connection with, the Sidney Hillman Health Center. The prescriptions were for Doriden, Empirin, and Tussionex. Tussionex is a Schedule III narcotic drug that is known colloquially as "liquid gold" and sells for approximately $125.00 a pint; it is popular among narcotic addicts. Among the prescriptions found at Respondent and purportedly written by Dr. Miller were two issued to a G. Balke on April 30, 1985; one of these prescriptions was for 40 Doriden and the other for 40 Empirin with codeine. Two days later the same patient filled two more prescriptions, purportedly issued by Dr. Miller, at Respondent: one prescription was for 90 Tussionex tablets and the other for 30 Valium. On May 9, 1985, Respondent filled another prescription, also ostensibly from Dr. Miller, for 90 Tussionex. Finally, on two consecutive days, May 20 and May 21 this patient presented prescriptions purportedly from Dr. Miller for 90 Tussionex, and Respondent filled both prescriptions.

Investigators visited twelve other pharmacies in the vicinity of Respondent to compare dispensing practices, particularly with respect to Lotusate. Nine of the twelve pharmacies did not stock Lotusate, and the three others had "a few" prescriptions for Lotusate.

Henry Richman is the supervising pharmacist at Respondent. He is 89 years old and graduated from a two-year program at the Brooklyn College of Pharmacy in 1924. This course was Mr. Richman's only formal pharmacy training. He became a registered pharmacist in 1925 or 1926. Mr. Richman works at Respondent pharmacy on Tuesdays, Wednesdays and Thursdays, eight hours each day. Bernard Walden, the other pharmacist, is more than 70 years old and works at Respondent on Mondays and Fridays. A third pharmacist works on weekends and evenings. Mr. Richman is the supervising pharmacist and is responsible for the proper filling of all prescriptions at the pharmacy, even on those days he does not work.

Mr. Richman admitted that he does not ask customers about their need for a particular drug, nor does he ask doctors why they are prescribing a particular drug. He felt that it was not his responsibility to ascertain whether a prescription was issued for a legitimate medical purpose, because "all the prescriptions that we get that the doctor write we assume are for legitimate medical purposes."

Mr. Richman's testimony displayed confusion and a lack of knowledge about important properties of various controlled substances he dispensed. For example, Mr. Richman incorrectly stated that Doriden was a narcotic and admitted that he did not know what controlled substance it contained. Mr. Richman also stated that he did not know how Doriden reacts with Empirin with codeine, or that these are highly abused in combination. He opined that a pharmacist was not supposed to know those things. In addition, Mr. Richman did not know the controlled substances in either Lotusate or Placidyl. He stated that amphetamines make one "sleepy and drowsy," and then asked, "Isn't amphetamine a group of drugs?" Mr. Richman stated that he did not know whether barbiturates and amphetamines act similarly.

A registration may be revoked pursuant to 21 U.S.C. 823(f) and 824(a)(4) if such registration is not in the public interest. In determining what is in the public interest, the registrant's experience in dispensing or conducting research with respect to controlled substances may be considered as well as compliance with applicable state, Federal, or local laws relating to controlled substances. Moreover, any other conduct which may threaten the public health and safety may also be considered. In the instant case, the evidence conclusively establishes that in 1985, Respondent filled thousands of prescriptions, issued by one physician for dangerous combinations of controlled substances. No attempt was made to verify that the prescriptions were issued for a legitimate medical purpose, even though the circumstances under which the prescriptions were presented were extremely suspicious. The evidence further establishes that in 1987 and 1988, Respondent filled controlled substance prescriptions which were photocopies, listed obviously nonexistent DEA numbers, or on which the purported signature of the physician obviously differed from that of other prescriptions issued by the same physician.

Respondent filled numerous controlled substance prescriptions without any attempt to verify them with the issuing physician, and many of those prescriptions were forged. Respondent filled prescriptions for highly abused controlled substances under circumstances which should have caused a responsible pharmacist to question whether the prescriptions were valid.

The Administrator concurs with the opinion of the administrative law judge and adopts her findings of fact and conclusions of law in their entirety. The Administrator further concurs in the administrative law judge's assessment that Respondent's dispensing practices have demonstrated a total disregard for its responsibilities as a DEA registrant, and that Respondent has utterly failed to prove that it will act more responsibly in the future. It is hard to imagine a more egregious example of gross neglect and abandonment of professional responsibility than the one presented here. It is, therefore, the Administrator's conclusion that Respondent's continued registration is not in the public interest.

Accordingly, having concluded that there is a lawful basis for the revocation of Respondent's registration and for the denial of any pending applications for the renewal of that registration, 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 the DEA Certificate of Registration, AK8695148, previously issued to Kissena Pharmacy, be, and it hereby is, revoked, and any pending applications are hereby denied.

This order is effective April 6, 1990.

Dated: February 28, 1990.

John C. Lawn,

Administrator.

[FR Doc. 90-5090 Filed 3-6-90; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 89-58]

Mortimer B. Levin, D.O.; Denial of Application

On July 24, 1989, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Mortimer B. Levin, D.O., of Detroit, Michigan, proposing to deny Dr. Levin's application dated November 18, 1988. The Order to Show Cause alleged, as reason for such denial, that in 1985, Dr. Levin had been convicted of violating 21 U.S.C. 843(a)(2), a felony relating to controlled substances, and, in 1980, he was convicted of violating 42 U.S.C. 1395NN, a felony relating to Medicare.

Dr. Levin initially requested a hearing by letter dated August 7, 1989. On October 6, 1989, however, Dr. Levin waived his opportunity for a hearing on his application and moved for consideration of the merits based upon his written submissions. Attached to his motion, Dr. Levin submitted a statement in support of his application for DEA registration, several affidavits and letters from colleagues, certain documents filed with the Michigan Department of Licensing and Regulation, and portions of the transcript of a hearing before the Michigan Department of Licensing and Regulation Board of Osteopathic Medicine and Surgery.

On October 11, 1989, Administrative Law Judge Francis L. Young ordered that all proceedings before him be terminated and that all information be transmitted to the Administrator for his consideration pursuant to 21 CFR 1301.54(e). Thereafter, Dr. Levin's statement, along with the Government's investigative file, was forwarded to the Administrator.

Pursuant to 21 CFR 1301.57, the Administrator now issues his final order in this matter, based upon the following findings of fact and conclusions of law. In November 1983, a pharmacist working in Detroit contacted the Detroit Office of the Federal Bureau of Investigation (FBI) concerning some questionable prescriptions for controlled substances which had been presented to him in the course of his practice. The pharmacist provided the FBI with three prescriptions, all for Quaalude, purportedly signed by Dr. Mortimer B. Levin, of the Mount Elliott Medical Center. Two of the prescriptions were verified by calling Dr. Levin at his residence. When Dr. Levin refused to verify the third questionable Quaalude prescription, the pharmacist contacted the FBI.

The FBI interviewed two of the three patients listed on the questionable prescriptions and learned that they had not been examined by Dr. Levin, but had been provided the prescriptions by two other individuals, Carlson and Charach. Carlson was interviewed and admitted to buying, selling and using prescription controlled substances.

During the summer of 1983, Carlson contacted Walter Brockington, D.O., of the Mount Elliott Medical Center, in an attempt to find a doctor who would sell him prescriptions for controlled substances. Dr. Brockington indicated that he was not interested in doing so, but referred Carlson to Dr. Levin. Carlson and Charach purchased prescriptions from Dr. Levin from August 1983 until February 1984, when Carlson began to cooperate with the FBI. From August 1983 through December 1983, Carlson met with Dr. Levin three to four times a week to obtain prescriptions. The number of prescriptions obtained on each occasion ranged from one to eight, with three or four being a typical number. Dr. Levin wrote illegitimate prescriptions for Desoxyn, Preludin, Quaalude, Dilaudid, and Ritalin, but usually wrote for Dilaudid or Quaalude.

On November 23, 1983, FBI Special Agent James Triano warned Dr. Levin of the need for security regarding prescription pads and prescribing controlled substances only for legitimate medical purposes. Dr. Levin informed Agent Triano that he would keep the telephone number of the FBI and would contact them if any patients attempted to obtain fraudulent prescriptions.

In February 1984, Carlson agreed to assist the FBI in the investigation of Dr. Levin. On February 9, 1984, Carlson approached Dr. Levin and purchased three prescriptions, each for 100 Dilaudid, using $400 that had been provided to him by the FBI. FBI Agents monitored the transaction by means of a radio transmitter. On that same date, an Agent posing as a pharmacist contacted Dr. Levin who verified the prescriptions as legitimate.

On February 21, 1984, Dr. Levin engaged Carlson in a telephone conversation during which Dr. Levin discussed a proposal to set up a sham clinic or a "script mill" which he hoped would produce $10,000 to $15,000 a month. The telephone conversation was recorded. Carlson was to rent a building, lease telephone lines, obtain a person to actually verify the prescriptions, and bring customers to the clinic. Dr. Levin would sign the prescriptions, using the name of another doctor and a false DEA number. Dr. Levin planned to either leave the name of the patient blank or to fill in whatever patient name was requested.

On February 22, 1984, FBI Special Agent Sharon Green and Carlson met with Dr. Levin to discuss the clinic proposal. Special Agent Green was presented as an individual who would assist in the operation of the sham clinic by posing as a receptionist and verifying the prescriptions. However, the defendant expressed his concern that Special Agent Green was in fact an FBI Agent, since he had heard that the FBI was looking for Carlson.

On February 29, 1984, Special Agent Green and Carlson again met with Dr. Levin. From Dr. Levin, Special Agent Green purchased two prescriptions for 30 Desoxyn and one prescription for 100 Dilaudid for $300. There was no medical examination, and the patient's name was left blank so that it could be filled in later. On March 9, 1984, Special Agent Green and Carlson again met with Dr. Levin and purchased five prescriptions for 100 Dilaudid for $600. When Special Agent Green told Dr. Levin that she might have a buyer for a whole pad of prescriptions, he responded "the more the merrier." On March 16, 1984, Special Agent Green met with Dr. Levin and again purchased five prescriptions for 100 Dilaudid for $600. On this occasion, Dr. Levin, who had provided Special Agent Green with prescriptions for hundreds of Dilaudid 4 mg. tablets, a very potent narcotic, also gave her a bottle of prenatal vitamins. Special Agent Green was approximately seven months pregnant at that time.

The FBI later learned that from January 1984 through April 1984, Dr. Levin was dealing directly with Charach and was selling additional prescriptions for controlled substances without regard to medical need. Charach was severely addicted to the controlled substances and had a "$400 a day habit." Dr. Levin had also discussed his proposal to set up a sham clinic or a "script mill" with Charach. However, Charach was only interested in obtaining enough drugs to sell in order to supply his own habit. Through subsequent interviews with Dr. Levin and his retained counsel, it was learned that Dr. Levin's income from wages in his medical practice declined from $100,760 in 1979 to $61,600 in 1984. Due to poor investments, his taxable income was substantially less. Additionally, it was learned that Dr. Levin had been defrauded out of

approximately $200,000. As a result, he was indebted to the National Bank of Detroit and was required to make payments of $10,000 a month. It was evidently in an attempt to obtain this payment that Dr. Levin proposed the prescription mill operation.

On June 20, 1985, a ten-count indictment was handed up, charging Dr. Levin with conspiracy to distribute controlled substances, distribution of controlled substances and utilization of the DEA registration number of another person. After extended negotiations, Dr. Levin appeared before the court on June 25, 1985, was arraigned, and pled guilty to a one-count superseding information which charged the utilization of a DEA registration number belonging to another person, in violation of title 21, United States Code, section 843(a)(2).

In his statement to the Administrator, Dr. Levin provided additional financial information. Dr. Levin states that in 1975 he was defrauded out of $310,000 and that in 1982, he took a $162,000 lump sum distribution from his pension plan. This ultimately generated a $71,000 tax liability. These circumstances, Dr. Levin asserts made him vulnerable.

In seeking to establish his rehabilitation, Dr. Levin has submitted affidavits and hearing transcripts attesting to his good character and competence. The transcript was testimony recorded before the Board of Osteopathic Medicine and Surgery of the Michigan Department of Licensing and Regulation. Most of the affidavits were intended for that state proceeding. On April 7, 1988, the Michigan Department of Licensing and Regulation reinstated Dr. Levin's license to practice Osteopathic Medicine and Surgery.

In granting or denying an application for Certificate or Registration the Administrator must consider the following factors: 1. The recommendation of the appropriate state licensing board or professional disciplinary authority; 2. The applicant's experience in dispensing or conducting research with respect to controlled substances; 3. The applicant's conviction record under Federal or state laws relating to the manufacture, distribution, or dispensing of controlled substances; 4. Compliance with applicable state, Federal, or local laws relating to controlled substances; and 5. Such other conduct which may threaten the public health and safety.

There is quite a discrepancy between the facts surrounding Dr. Levin's criminal acts and conviction, and the affidavits in support of Dr. Levin's good character filed with the Osteopathic Board. While reinstatement by the Board if probative, it is not dispositive of the issue. The DEA maintains a separate oversight responsibility with respect to the handling of controlled substances and has a statutory obligation to make its independent determination as to whether the granting of such privileges would be in the public interest.

Dr. Levin's quest for money would have placed Special Agent Green and her unborn child in serious physical danger had she taken the Schedule II narcotic prescriptions that Dr. Levin issued to her while she was pregnant. The discussions between Dr. Levin, Carlson and Special Agent Green on setting up an operation to distribute illicit prescriptions is all the more reprehensible in that it sought to institutionalize the unlawful behavior. Far from being isolated instances of aberrant behavior, the Administrator finds that Dr. Levin's scheme was carefully planned and thought out.

Dr. Levin suggests that Carlson is somewhat to blame for his unlawful acts in that Carlson preyed upon Dr. Levin's dire financial circumstances. Allying himself with such an unsavory character as Carlson does no credit to Dr. Levin. While the Administrator sympathizes with Dr. Levin's severe financial straits, they do not justify Dr. Levin's illicit sale of prescriptions or his proposal to establish a corrupt organization to sell many more.

Dr. Levin states that he is now employed in a general osteopathic practice in Detroit with two other physicians. The two other physicians must concur with Dr. Levin's diagnosis and prescribe for his patients wherever a controlled substance is required. This procedure, although burdensome to Dr. Levin and his partners, also serves to protect the public. Since other physicians are available to prescribe for Dr. Levin's patients, the process provides a much-needed extra layer of protection for both Dr. Levin's patients and the public at large.

In view of Dr. Levin's past experience in handling controlled substances, his blatant disregard of Federal and state laws relating to such substances, his criminal conviction record and his lack of concern with the health and safety of those who would ultimately abuse the drugs he prescribed, the Administrator concludes that the registration of Mortimer B. Levin, D.O. would be inconsistent with the public interest. Accordingly, having concluded that there is a lawful basis for the denial of Dr. Levin'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 the application for registration executed by Dr. Levin on November 18, 1988, be, and it hereby is, denied.

This order is effective March 7, 1990.

Dated: March 1, 1990.

John C. Lawn,

Administrator.

[FR Doc. 90-5165 Filed 3-6-90; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 88-40]

Lou's Pharmacy, Inc.; Revocation of Registration

This proceeding before the Drug Enforcement Administration (DEA) was initiated on January 13, 1988, by issuance of an Order to Show Cause proposing to revoke DEA Certificate of Registration AL3041706, previously issued to Lou's Pharmacy, Inc. of Philadelphia, Pennsylvania. The Order to Show Cause alleged that the continued registration of Lou's Pharmacy (Respondent) would be inconsistent with the public interest as that term is used in 21 U.S.C. 823(f) and 21 U.S.C. 824(a)(4).

Respondent requested a hearing and, following prehearing procedures, a hearing was held in Washington, D.C. on February 7, 1989. On May 31, 1989, Administrative Law Judge Francis L. Young issued his opinion and recommended findings of fact and conclusions of law. Exceptions were filed by Respondent and answered by the Government. On July 21, 1989, Judge Young forwarded the record of these proceedings to the Administrator. The record included, *inter alia*, the administrative law judge's opinion, the hearing transcript, all of the exhibits which had been placed in the record and all of the post-hearing exceptions. The Administrator has considered the record in its entirety and, pursuant to 21 CFR 1316.67, hereby issues his final order in this matter, based upon findings of fact and conclusions of law as hereinafter set forth.

Lou's Pharmacy, Inc. is a retail pharmacy located in Philadelphia, Pennsylvania and is owned and operated by Louis Brickman. Through routine monitoring of drug purchases nationwide, DEA found that during 1985, Lou's Pharmacy had purchased 8,000 dosage units of Dilaudid, ranking 25th in the State of Pennsylvania as a purchaser of that drug. By checking with local distributors, Investigators found that Lou's Pharmacy had purchased 400,000 dosage units of Doriden and a like amount of Empirin with codeine for a

period beginning March 1, 1986, to March 31, 1987. Doriden and codeine compounds are known in combination as "hits and lodes" and "fours and doors" on the street. They are highly abused in the Philadelphia area. Based on the large purchases of these controlled substances, the Investigators began an audit and investigation of Lou's Pharmacy on May 20, 1987. The audit covered the period beginning March 13, 1985, through May 20, 1987. The audit revealed, among other things, that the pharmacy could not account for over 500,000 dosage units of Doriden and a like amount of Empirin with codeine. The pharmacy was short over 43,000 dosage units of Valium 5 milligram tablets and was short over 300,000 dosage units of Valium 10 milligram tablets. In fact, there were large shortages of nearly all of the controlled substances audited.

An examination of pharmacy records revealed that Respondent failed to maintain official DEA order forms as required by law and that widespread irregularities pervaded the prescription files. The Schedule II prescriptions were all written in what appeared to be only two or three different styles of penmanship, although they purportedly had been written by more than two or three prescribing physicians. One very unusual and consistent style of penmanship appeared on prescriptions purportedly written by twelve different doctors. Doctors also purportedly called prescriptions into the pharmacy for filling. When this was done, the pharmacist reduced the telephonic order to a written prescription. These call-in prescriptions at Lou's Pharmacy were written in black, felt tip marker and bore a very similar style of penmanship to other prescriptions, also written in black, felt tip marker, which were not call-ins. Quantities were altered by erasure on other prescriptions to the point where, in one instance, a hole appeared on a prescription. On other prescriptions written in pencil, patient's names were changed and there appeared blatant misspellings of the drugs. Directions for taking the specified drugs on some of the prescriptions were not consonant with the recognized purposes of the drugs. Tuinal, a barbiturate used for sleep, for example, was directed to be ingested three times daily. The same directions were indicated on prescriptions for Doriden, another strong medication used to induce sleep. Many Ritalin prescriptions bore the words "for throat". Ritalin, a stimulant, is used primarily for the treatment of hyperkinetic children. Seven or eight of the doctors purportedly responsible for the majority of the controlled substance prescriptions at Lou's Pharmacy did not write the prescriptions bearing their names or signatures as prescribing physicians. There were approximately 1,300 prescriptions listing a Doctor Tarun K. Ray as the authorizing physician. Dr. Ray did not write these prescriptions. The penmanship on the call-in prescriptions was the same as that on the prescriptions purportedly written by Dr. Ray. No doctor contacted by the DEA was ever called by Mr. Brickman for verification. The Respondent pharmacy also failed to take a biennial inventory as required by 21 CFR 1304.13.

As the administrative law judge noted in his decision, this case calls for very little discussion. 21 U.S.C. 824(a)(4) and 21 U.S.C. 823(f)(4) allow the revocation of a Certificate of Registration for non-compliance with Federal, state or local laws and section 823(a)(5) makes conduct which may threaten the public health and safety an additional ground. The vast unexplained shortages of highly abused drugs indicate that Respondent engaged in large-scale diversion of controlled substances into the illicit maket. The prescriptions were blatant forgeries. This pharmacy more nearly resembled an illegal trafficking operation than a legitimate pharmacy responsibly handling controlled substances. The Administrator agrees with the judge's assessment. The case against this pharmacy is overwhelming. The Administrator adopts the findings of facts and conclusions of law recommended by the administrative law judge, and further concludes that Respondent is unfit to hold a DEA registration.

Accordingly, having concluded that there is a lawful basis for the revocation of Respondent's registration, and for the denial of any pending applications for renewal, 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 DEA Certificate of Registration AL3041706, previously issued to Lou's Pharmacy, Inc., be and it hereby is revoked. Any pending applications for renewal of such registration are hereby revoked. This order shall be effective April 6, 1990.

Dated: February 28, 1990.

John C. Lawn,

Administrator.

[FR Doc. 90-5091 Filed 3-6-90; 8:45 am]

BILLING CODE 4410-09-M

Raymond H. Wexler, M.D.; Revocation of Registration

This proceeding before the Drug Enforcement Administration (DEA), was initiated on June 16, 1989, by issuance of an Order to Show Cause proposing to revoke DEA Certificate of Registration AW9137779, previously issued to Raymond H. Wexler, M.D., of Atlanta, Georgia. The Order to Show Cause alleged that, by order of the Georgia State Board of Medical Examiners, Dr. Wexler is no longer authorized to handle controlled substances in the State of Georgia. The Order to Show Cause was sent by registered mail and was received on June 29, 1989.

Title 21 of the Code of Federal Regulations, Section 1301.54(a), requires that a request for a hearing be filed within 30 days of the date of the receipt of the Order to Show Cause. Section 1301.54(d) provides that failure to timely file a request for a hearing acts as a waiver of the hearing. It has been more than 30 days since the receipt of the order and Dr. Wexler has not filed a request for a hearing. He is therefore deemed to have waived his opportunity for a hearing before an administrative law judge. Pursuant to 21 CFR 1301.57, the Administrator now issues his final order in this matter, based on the information contained in the investigative file.

On June 28, 1988, the Georgia Board of Medical Examiners issued to Dr. Wexler an Order of Summary Suspension of privileges for the prescribing of controlled substances. The order stated that the Board had received reliable information and evidence indicating that Dr. Wexler may be diverting the controlled substance Demerol for his own use. Dr. Wexler was writing prescriptions for injections of Demerol in the names of other individuals and filling them, or attempting to have them filled, at various pharmacies.

The Board further determined that Dr. Wexler's ability to prescribe, administer, dispense, order or possess controlled substances would be a detriment to himself and the public health, safety and welfare. The Board found that Dr. Wexler was unable to practice medicine with reasonable skill and safety and, thereupon suspended his ability to prescribe, administer, dispense, order or possess controlled substances.

21 U.S.C. 824(a)(*i*) specifically states that a registration may be suspended or revoked upon finding that the registrant "has had this state license or registration suspended, revoked, or denied, by competent state authority

and is no longer authorized by state law to engage in the manufacturing, distribution, or dispensing of controlled substances or has had the suspension, revocation, or denial of his registration recommended by competent state authority."

The Administrator finds that Dr. Wexler's authority to handle controlled substances in Georgia, the state in which he was registered by DEA, has been terminated. Without such authorization, DEA may neither issue nor maintain a Federal registration. 21 U.S.C. 823(f), 824(a)(3). Dr. Wexler's registration must, therefore, be revoked. Section 824 further provides that the Administrator may revoke a registration when such registration is inconsistent with the public interest. in determining the public interest the Administrator must consider, *inter alia*, the recommendations of the appropriate state licensing board or professional disciplinary authority, compliance with applicable state, Federal or local laws relating to controlled substances; and such other conduct which may threaten the public health and safety.

The Administrator finds that Dr. Wexler has violated applicable Federal and state laws relating to controlled substances in that he has diverted controlled substances to his own use by means of unlawful prescriptions issued for other than a legitimate medical purpose. the Georgia Medical Board found that Dr. Wexler's conduct constituted a danger to the public health, safety and welfare. The Administrator therefore finds that Dr. Wexler's continued registration would be contrary to the public interest.

Accordingly, having concluded that there are lawful bases for the revocation of Dr. Wexler's registration and for the denial of any pending applications for renewal thereof, 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 the DEA Certificate of Registration AW9137779, previously issued to Raymond H. Wexler, M.D., be, and it here by is, revoked. The Administrator further orders that any pending applications for renewal of that registration be, and they hereby are, denied.

This order is effective March 7, 1990

Dated: March 1, 1990

John C. Lawn,

Administrator.

[FR Doc. 90-5166 Filed 3-6-90; 8:45 am]

BILLING CODE 4410-09-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Comments on this information collection must be submitted by April 6, 1990.

ADDRESSES: Send comments to Mr. Jim Houser, Office of Management and Budget, New Executive Office Building, 726 Jackson Place NW., room 3002, Washington, DC 20503; (202-395-7316). In addition, copies of such comments may be sent to Mrs. Anne C. Doyle, National Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue NW., Washington, DC 20506; (202-682-5401).

FOR FURTHER INFORMATION CONTACT: Mrs. Anne C. Doyle, National Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue NW., Washington, DC 20506; (202-682-5401) from whom copies of the documents are available.

SUPPLEMENTARY INFORMATION: The Endowment requests the revision of a currently approved collection of information. This entry is issued by the Endowment and contains the following information.

(1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

Title: Visual Arts Organizations Application Guidelines FY 1991.

Frequency of Collection: One time.

Respondents: Individuals or households; State or local governments; Non-profit institutions.

Use: Guidelines instructions and applications elicit relevant information from individual artists, nonprofit organizations, and state or local arts agencies that apply for funding under specific Visual Arts program categories. This information is necessary for the accurate, fair and thorough consideration of competing proposals in the peer review process.

Estimated Number of Respondents: 386.

Average Burden House per Response: 29.5.

Total Estimated Burden: 11,378.

Anne C. Doyle,

Administrative Services Division, National Endowment for the Arts.

[FR Doc. 90-5103 Filed 3-6-90; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Academic Research Facilities Advisory Review Panel; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Review Panel for Academic Research Facilities.

Date and Time: April 1, 1990—7 to 9 p.m., April 2, 1990—8 a.m. to 6 p.m., April 3, 1990—8 a.m. to 1 p.m.

Place: Crowne Plaza Holiday Inn, 1750 Rockville Pike, Rockville, Maryland.

Type of Meeting: Closed.

Contact Person: Altie Metcalf, Staff Associate, Research Facilities Office, (202) 357-9785, Room 436, National Science Foundation, Washington, DC 20550.

Purpose of Meeting: To provide advice on the merit of proposals seeking support for academic research facilities.

Agenda: Reveiw and evaluation of Academic Research Facilities Modernization Program proposals as part of the selection process of awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 90-5069 Filed 3-6-90; 8:45 am]

BILLING CODE 7555-01-M

Cellular Biochemistry Advisory Panel; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Cellular Biochemistry.

Date/Time: March 26 & 27, 1990, Monday, 8:30 a.m. to 5 p.m., Tuesday, 8:30 a.m. to 5 p.m.
Place: National Science Foundation, 1800 G Street NW, Washington, DC 20550; Room 1242.
Type of Meeting: Closed.
Contact Person: Carter Kimsey, Cellular Biochemistry Program, Rm. 321-F, National Science Foundation, Washington, DC 20550, Telephone (202) 357-7987.
Minutes: May be obtained from the Contact Person at the above address.
Purpose of Advisory Panel: To provide advice and recommendations concerning support for reserach in cellular biochemistry and metabolism.
Agenda: To review and evaluate research proposals as part of the selection process for award.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of Government in the Sunshine Act.

M. Rebecca Winkler,
Committee Management Officer.
[FR Doc. 90-5070 Filed 3-6-90; 8:45 am]
BILLING CODE 7550-01-M

Cultural Anthropology Advisory Panel; Meeting—Part Open

The National Science Foundation announces the following meeting:
Name: Advisory Panel for Cultural Anthropology.
Date and Time: March 22 & 23, 1990, 9:00 a.m., 5:00 p.m. each day.
Place: National Science Foundation, 1800 G Street, NW., Room 1242 Washington, DC 20550.
Type of Meeting: Part Open. Closed 3/22: 9 a.m.-5 p.m.; Closed 3/23: 9 a.m.-11 a.m.; 12 a.m.-5 p.m.; Open 3/23: 11-12 a.m.
Contact Person: Dr. Stuart Plattner, Program Director, Cultural Anthropology, Room 320, National Science Foundation, Washington, DC 20550 Telephone (202) 357-7804.
Minutes: May be obtained from contact person listed above.
Purpose of Meeting: To provide advice and recommendations concerning support for research in cultural anthropology.
Agenda: OPEN—General discussion of the current status and future plans of the Anthropology Program.
CLOSED—To review and evaluate research proposals as part of the selection process for awards.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of the Government in the Sunshine Act.

M. Rebecca Winkler,
Committee Management Officer.
[FR Doc. 90-5071 Filed 3-6-90; 8:45 am]
BILLING CODE 7555-01-M

Earth Sciences Advisory Committee; Meeting

The National Science Foundation announces the following meeting:
Name: Advisory Committee for Earth Sciences.
Date: March 26-28, 1990.
Time: 9 a.m. to 5:30 p.m., March 26; 8:30 a.m. to 5 p.m., March 27; 8:30 a.m. to 4:30 p.m., March 28.
Place: The National Science Foundation, Room 543, 1800 G Street, NW., Washington, DC 20550.
Type of Meeting: Open. March 27—8:30 a.m. to 5 p.m.; March 28—8:30 a.m. to 4:30 p.m.; Closed. March 26—9 a.m. to 5:30 p.m.
Contact Person: Dr. James F. Hays, Division Director, Division of Earth Sciences, Room 602, National Science Foundation, Washington, DC 20550. Telephone: (202) 357-9591.
Summary Minutes: May be obtained from the Contact Person at the above address.
Purpose of Meeting: To provide advice, recommendations, and oversight concerning support for research and research-related activities in the Earth Sciences.
Agenda: Closed. Oversight review of the Geophysics Program, including examination of proposals, reviewer comments, and other privileged material. Open. Review ACES resolutions; report on EAR role in Education and Human Resource programs; discuss EAR's response to Global Change programs, International Decade of Natural Hazard Reduction and other environmental concerns; review the Geophysics Program; discuss EAR response to NSF policy statement on Sharing of Research Materials, and general discussion.
Reason for Closing: The oversight committee's review of proposal actions will include privileged intellectual property and personal information that could harm individuals if it were disclosed and predecisional intra-agency records not available by law. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552b (c) (4) and (6) of the Government in the Sunshine Act would improperly be disclosed.

M. Rebecca Winkler,
Committee Management Officer.
[FR Doc. 90-5072 Filed 3-6-90; 8:45 am]
BILLING CODE 7555-01-M

Engineering Advisory Committee; Meeting

The National Science Foundation announces the following meeting:
Name: Advisory Committee for Engineering.
Date and Time: March 29-30, 1990.
8:30 a.m.—5 p.m., March 29, 1990 (open)
8 a.m.—9 a.m., March 30, 1990 (closed)
9 a.m.—12 Noon, March 30, 1990 (open)
Place: National Science Foundation, 1800 "G" Street, NW., Room 540, Washington, DC 20550
Type of Meeting: Partially Closed.
Contact Person: Mrs. Martha Cuffie, Advisory Committee for Engineering, Room 537, National Science Foundation, Washington, DC 20550, Telephone: (202) 357-9832.
Minutes: Mrs. Martha Cuffie at the above address.
Purpose of Meeting: To provide advice, recommendations, and counsel on major goals and policies pertaining to Engineering programs and activities.
Reason for Closing: The personnel matters being discussed include information of a personal nature where disclosure would constitute unwarranted invasions of personal privacy. These matters are within exemption 6 of U.S.C. 552b(c), Government in the Sunshine Act.
Authority to Close Meeting: The determination made on February 22, 1990 by the Director for the National Science Foundation pursuant to the provisions of section 10 (d) of Pub. L. 92-463.
Agenda: Friday, March 30, 1990, Room 540—8 a.m. to 9 a.m.—Closed.
Discussion of personnel issues including candidates for vacancies.
Thursday, March 29, 1990, Room 540—8:30 a.m. to 5 p.m., and Friday, March 30, 1990, Room 540—9 a.m. to 12 Noon—Open
Discussion on issues, opportunities and future directions for the Engineering Directorate; discussion of Engineering

Directorate budget situation as well as other items.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 90-5073 Filed 3-6-90; 8:45 am]

BILLING CODE 7555-01-M

Instrumentation and Instrument Development Advisory Panel; Meeting

The National Science Foundation announces the following meeting.

Name: Advisory Panel Meeting for Instrumentation and Instrument Development.

Date and Time: Friday, March 30, 1990 from 7:30-6 Saturday, March 31, 1990 from 8:30-12.

Place: Omni Georgetown Hotel, 2121 P Street, NW., Washington, DC 20037, Rm Gallery Ballroom.

Type of Meeting: Closed.

Contact Person: Dr. Harold Jones, Program Director, Instrumentation and Instrument Development, Room 312, National Science Foundation, Washington, DC 20550, Telephone 202/357-7652.

Minutes: May be obtained from the Contact Person at the above address.

Purpose of Advisory Panel: To provide advice and recommendations concerning support for research equipment.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: confidential. The proposals being reviewed include information of a proprietary nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 90-5074 Filed 3-6-90; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Physiological Processes; Meeting

In accordance with the Federal Advisory Committee Act, as amended, P.L. 92-463, the National Science Foundation announces the following meeting.

Name: Advisory Panel for Physiological Processes.

Date and Time: March 26-30, 1990, 8:30 a.m. to 5 p.m.

Place: Room 1243, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Type of Meeting: Part Open—March 28, 12 p.m.-1 p.m. (open), March 30, 12 p.m.-1 p.m. (open), all other times the meeting is closed.

Contact Person: Dr. Betty M. Twarog, Program Director, Physiological Processes, room 321, National Science Foundation, Washington, DC 20550, Telephone (202) 357-7975.

Purpose of Advisory Panel: To provide advice and recommendations concerning support for research in Physiological Processes.

Agenda: Open—General discussion of the current status and future plans of the Physiological Processes Program. Closed—To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to Close Meeting: This determination was made by the committee Management Officer pursuant to provisions of Section 10(d) of P.L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF on July 6, 1979.

M. Rebecca Winkler,

Committee Mangement Officer.

[FR Doc. 90-5075 Filed 3-6-90; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (P.L.) 97-415, the Nuclear Regulatory Commission (the Commission) is publishing this regular biweekly notice. P.L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from February 12, 1990 through February 23, 1990. The last biweekly notice was published on February 21, 1990 (55 FR 6100).

NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By April 6, 1990, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and

any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (*Project Director*): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Arkansas Power & Light Company, Docket No. 50-313, Arkansas Nuclear One, Unit 1, Pope County, Arkansas

Date of amendment request: October 19, 1989.

Description of amendment request: The proposed amendment would change Technical Specification 3.2.1.2 regarding the temperature for the piping and valves necessary to establish a flow path from the boric acid addition tank to the makeup system, from a comparison to the tank temperature to a temperature

of at least 10° F above the crystallization temperature for the concentration in the tank.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee provided an analysis that addressed the above three standards in the amendment application. With regard to the three standards, the licensee states that operaiton of the facility in accordance with this change would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change would not alter the probability of any previously analyzed accident occurring. The proposed change simply clarifies the temperature requirement of the boric acid system piping and valves to eliminate ambiguity. This will not impact the accident-mitigating events described in Chapter 14 of the ANO-1 SAR. Further the proposed change will not adversely affect the consequences of accidents which have been previously evaluated. The proposed change simply clarifies the temperature requirement of the boric system piping and valves to reduce ambiguity and therefore increases the ability to mitigate the consequences of postulated accidents.

(2) Create the possibility of a new or different kind of accident from any previously evaluated.

No new possibility for an accident is introduced by clarifying the requirement for boric acid system piping and valves. The proposed amendment will not change the overall design and system function of the boric acid system. The temperature control system is based on a predetermined setpoint rather than an [sic] boric acid addition tank temperature. The proposed change simply eliminates the potential for misinterpretation of the temperature requirement for the boric acid system.

(3) Involve a significant reduction in the margin of safety.

The proposed change provides for a clarification of the temperature requirement for the boric acid system piping and valves which will reduce the ambiguity of the specification. This change does not involve a significant reduction in the margin of safety, and in fact will increase the margin of safety by reducing the ambiguity of the temperature requirement and therefore its capabilities to mitigate accidents.

The NRC has provided guidance concerning the application of these standards by providing examples of changes involving no significant hazards considerations. The proposed amendment most closely matches example (i): "A purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature." The proposed change provides consistency in verbage of the temperature specifications to reduce ambiguity.

Therefore, based on the evaluation discussed above, [the licensee]...concluded that the proposed change does not involve a significant hazards consideration.

The staff has reviewed the licensee's no significant hazards consideration determination analysis and agrees with its conclusion. Therefore, the staff proposes to determine that the application for amendment involves no significant hazards considerations.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

Attorney for licensee: Nicholas S. Reynolds, Esq., Bishop, Cook, Purcell, & Reynolds, 1400 L Street, NW., Washington, DC 20005-3502

NRC Project Director: Frederick J. Hebdon

Arkansas Power & Light Company, Docket No. 50-368, Arkansas Nuclear One, Unit 2, Pope County, Arkansas

Date of amendment request: October 19, 1989

Description of amendment request: The proposed amendment would change Arkansas Nuclear One, Unit 2 Technical Specification 4.7.12.1.a (page 3/4 7-38) surveillance requirements on the spent fuel pool inspection frequency from once per 18 months to once per 5 years.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee provided an analysis that addressed the above three standards in the amendment application, as follows.

The proposed change does not involve a significant hazards consideration because:

(1) This change does not increase the probability and/or consequences of an accident, as previously evaluated in the Licensing Basis Documents. The accident identified in Section 15.1 of the Unit 2 Safety Analysis Report (SAR) which could be affected by this change to the Technical Specifications is Section 15.1.12, Internal and External Events including Major and Minor Fires, Floods, Storms, and Earthquakes. As indicated in Section 3.1.6, Criterion 61 of the SAR, "the spent fuel pool is designed to withstand the postulated missiles and seismic events without loss of pool water or damage to stored fuel." Since the frequency of inspection interval remains adequate to ensure structural integrity and does not invalidate this statement, this accident evaluation remains accurate. Also, the technical specification requirement of visual inspection after a seismic event remains in place.

(2) No increase in the probability and/or consequences of a malfunction of equipment important to safety will occur as a result of the proposed technical specification change. The "equipment" important to safety in this case would be the Spent Fuel Pool structure itself. The pool's structural integrity has clearly been demonstrated by analysis and testing. The visual inspection is simply a further verification of this integrity. To increase the interval between inspections has no direct bearing on the structural integrity.

The accidents previously identified are the postulated events which could affect the structural integrity of the Spent Fuel Pool. The increased inspection interval would not create a new or different accident possibility, since it is a passive activity which provides additional verification of structural integrity. Similarly, the possibility of a malfunction of equipment important to safety (Spent Fuel Pool) different than previously evaluated is not created.

(3) The basis for Section 4.7.12 of the technical specification will not be changed by this recommendation. The margin of safety defined by this basis is "to ensure that the pool remains safe for use and that it will adequately resist the imposed loadings."

Since pool performance has indicated that no abnormal degradation has occurred, this margin of safety is not jeopardized.

The Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing certain examples (51FR7750) of amendment that are considered not likely to involve a significant hazards. Example (iv) related to a relief granted upon demonstration of acceptable operation from an operating restriction that was imposed because acceptable operation was not yet demonstrated. This assumes that the operating restrictions and the criteria to be applied to a request for relief have been established in a prior review and that it is justified in a satisfactory way to the criteria have been met.

This proposed amendment to reduce the surveillance inspection frequency of the ANO-2 spent fuel storage pool from once per 18 months to once per 5 years is similar to Example (iv) in that demonstration of

acceptable operation has been demonstrated by the results of past inspections.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with its conclusion. Therefore, the staff proposes to determine that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

Attorney for licensee: Nicholas S. Reynolds, Esq., Bishop, Cook, Purcell & Reynolds, 1400 L Street, NW., Washington, DC 20005-3502

NRC Project Director: Frederick J. Hebdon

Arkansas Power & Light Company, Docket No. 50-368, Arkansas Nuclear One, Unit 2, Pope County, Arkansas

Date of amendment request: December 15, 1989.

Description of amendment request: This amendment would modify the Arkansas Nuclear One, Unit 2 Technical Specifications (TS) Surveillance Requirement (SR) 4.9.8.1 to reflect a lower minimum allowed shutdown cooling (SDC) loop flow of 2000 gallons per minute (gpm). The current TS specifies a minimum SDC loop flow of 3000 gpm.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee provided an analysis that addressed the above three standards in the amendment application as follows:

In accordance with 10 CFR 50.92, AP&L has evaluated whether the proposed change involves a significant safety hazards consideration. AP&L has concluded that the proposed change to reduce the minimum required SDC loop flow does not involve a significant hazards consideration because the operation of Arkansas Nuclear One, Unit 2 in accordance with this change would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

The SDC flow rate affects the amount of reactor coolant circulating through the core during Mode 6 (refueling). This flow rate determines the amount of mixing which occurs in the RCS during a postulated boron dilution event. The boron dilution accident analyses are well understood, and adequate mixing is provided by any flow rate which is significantly larger than the dilution flow (the maximum dilution flow analysed is 132 gpm from all three charging pumps). In fact, specific SDC flow is not an input parameter to these analyses. The proposed 2000 gpm minimum flow will continue to provide adequate RCS mixing and will maintain the acceptance criteria of the present analyses. Therefore, the accident mitigation features of the plant are not affected by the proposed change.

(2) Create the possibility of a new or different kind of accident from any previously evaluated.

No new possibility for an accident is introduced by the proposed reduction in the minimum SDC flow which must be periodically verified in accordance with TS SR 4.9.8.1. The reduced minimum flow requirement has been evaluated and determined acceptable for the SDC pump minimum continuous flow requirement, therefore, no greater possibility of a different kind of accident related to equipment failure is created. The reduced minimum flow requirement also continues to assure sufficient flow for adequate core cooling during Mode 5.

(3) Involve a significant reduction in the margin of safety.

The NRC evaluated various improvements in equipment and procedures related to DHR operation from a balanced risk perspective during preparation of GL 88-17. It was identified that during certain plant conditions, i.e., operation of SDC with a lowered RCS level during refueling maintenance activities, the potential for loss of DHR due to flow vortexing the DHR (SDC) suction drop line was increased significantly at high DHR (SDC) flow rates. When the criteria of adequate RCS mixing, pump minimum flow requirements, and core cooling requirements are all met, as in the proposed change, a reduction in required minimum SDC flow (that is higher than necessary) has been determined to significantly improve the margin of safety with respect to potential loss of DHR events.

The NRC has provided guidance concerning the application of these standards by providing examples of changes involving no significant hazards considerations. The proposed amendment does not closely match any of the examples. The proposed change reflects an improvement identified during industry (NRC and utility) response to, and resolution of, an emerging technical issue (loss of DHR).

The staff reviewed the licensee's no significant hazards consideration determination and agrees with the analysis. Therefore, the staff proposes to determine that the application for amendment involves no significant hazards considerations.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

Attorney for licensee: Nicholas S. Reynolds, Esq., Bishop, Cook, Purcell & Reynolds, 1400 L Street, NW., Washington, DC 20005-3502

NRC Project Director: Frederick J. Hebdon

Arkansas Power & Light Company, Docket No. 50-368, Arkansas Nuclear One, Unit 2, Pope County, Arkansas

Date of amendment request: December 15, 1989.

Description of amendment request: This amendment would make several administrative changes to the Arkansas Nuclear One, Unit 2 Technical Specifications (TS) Table 3.6-1. They include correcting the indicated location of a containment isolation valve, and the relabelling of two other containment isolation valves to reflect a design change. The amendment would also correct a TS reference included in TS 4.6.1.5.2.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee provided an analysis that addressed the above three standards in the amendment application as follows:

Arkansas Power & Light Company has performed analysis of the proposed change in accordance with 10CFR90.91(a)(1) regarding no significant hazards consideration, using the standards in 10CFR90.92(c).

1) The proposed changes would not increase the probability or consequences of any accident previously evaluated since these editorial changes do not provide any relief from the requirements of the Technical Specifications, or change to intended operation or administrative requirements of the plant.

2) The proposed changes would not create the possibility of a new or different kind of accident from any previously analyzed since these editorial changes do not adversely affect any components or system which contribute to the safety of the plant or the ability to properly handle potential offsite releases.

3) The proposed changes would not involve a significant reduction in the margin of safety

since these editorial changes provide the correct valve designations and correct a typographical error but have no effect on any plant parameters or accident mitigation capabilities.

The Commission has provided guidance concerning the application of these standards by providing examples. The proposed amendment is most closely encompassed by example (i): purely administratively changes to the Technical Specifications.

The staff has reviewed the licensee's analysis and has determined that the requested changes do not involve a significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Attorney for licensee: Nicholas S. Reynolds, Esq., Bishop, Cook, Purcell & Reynolds, 1400 L Street, NW., Washington, DC 20005-3502.

NRC Project Director: Frederick J. Hebdon

Baltimore Gas and Electric Company, Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of amendment request: August 30, 1989, as supplemented on January 12, 1990.

Description of amendment request: The proposed amendments would include the following changes in accordance with the licensee's requests dated August 30, 1989, as supplemented on January 12, 1990:

This proposal would change the Technical Specifications covering the following systems: (1) containment iodine removal system, (2) penetration room exhaust air filtration system, (3) control room emergency ventilation system, (4) emergency core cooling system (ECCS) pump room exhaust air filtration system, and (5) spent fuel pool ventilation system.

These proposed changes involve Surveillance Requirements for the laboratory and in-place testing of the charcoal adsorbers and high efficiency particulate adsorbers (HEPA) filters. The proposed changes are:

1. Change the temperature at which the laboratory analysis is done from 130° C to 30° C for the following systems: penetration room exhaust air filtration, control room emergency ventilation, ECCS pump room exhaust air filtration, and spent fuel pool ventilation. A temperature of 30° C is more indicative of the accident conditions to which these adsorbers will be subjected. This portion of the request is consistent with NRC Information Notice 86-76, dated August 28, 1986.

2. Change the requirement for obtaining charcoal samples so that only one sample is obtained for the laboratory analysis. The Technical Specifications now require that two charcoal samples be removed and tested. The intent was to remove two samples in case one became unusable, but only to test one. This change applies to all five systems. This portion of the request is with Generic Letter 83-13, dated March 2, 1983, which clarified surveillance requirements for HEPA filters.

3. One change is proposed for in-place testing of the HEPA filters and charcoal adsorbers. The procedure used for the in-place testing would be changed from ANSI N510-1975 to Regulatory Guide 1.52 Regulatory Positions C.5.a, C.5.c, and C.5.d. This change is administrative in nature, would not affect the performance of the test, and has been requested by the NRC. The same sections of ANSI N510-1975 will still be used, but the Technical Specifications will reference the Regulatory Positions. This change applies to all five systems.

4. One change is proposed for the surveillance which verifies isolation of the Control Room on a high radiation signal. The change would clarify that all appropriate isolation valves will be closed. It specifically provides verification that both isolation valves in each inlet duct and the common exhaust duct area, close. This change has been requested by the NRC.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee addressed the above three standards in the amendment application. In regard to the three standards, the licensee provided the following analysis.

(1) Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The change to have laboratory testing of charcoal adsorber samples performed at 30° C rather than 130° C does not increase the probability or consequences of an accident previously evaluated. This more realistic testing parameter (i.e., 30° C) will yield more realistic test results.

Information Notice (IN) 86-76, dated August 28, 1986, identified that testing at lower temperatures (e.g. 30° C) will yield lower efficiencies. The following was described in IN 86-76:

Laboratory testing of charcoal efficiency is being performed at temperatures much higher than any temperature expected during the course of an accident. This can result in erroneously high efficiency measurements. Retention efficiencies as low as 70% were noted when samples of charcoal that had just passed its surveillance tests (greater than 90% efficient) were retested at 30° C.

The proposed activity change will not degrade or prevent actions described or assumed in an accident discussed in the FSAR. The proposed activity does not alter any assumptions previously made in evaluating the radiological consequences of an accident as described in the FSAR. The proposed activity does play a direct role in mitigating the radiological consequences of an accident described in the FSAR. The temperature reduction from 130° C to 30° C will result in lower efficiencies thereby increasing the likelihood that a charcoal adsorber would have to be replaced. This proposed change will continue to ensure that the Control Room environment is habitable for 30 days continuous occupancy without exceeding 5 Rem whole body dose, GDC 19. The proposed change will not use instrumentation with accuracies or response characteristics that are different than existing instrumentation. Further, the proposed change will not cause a change to any system interface in a way that would increase the likelihood of an accident. Additionally, the proposed change will not cause systems to be operated outside of their design or test limits. Therefore, the proposed activity does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Changing our charcoal adsorber bed sample removal and testing requirement from two to one representative carbon sample will not affect accident probabilities or consequences. Additionally, Generic Letter No. 83-13, "Clarification of Surveillance Requirements For HEPA Filters and Charcoal Adsorber Units in Standard Technical Specifications On ESF Cleanup Systems" provides the following wording, in part, in reference to obtaining of carbon samples:

"verifying ..., that a laboratory analysis of a representative carbon sample obtained in ..."

These words imply that a single sample is sufficient.

This proposed change is administrative in nature and would not affect performance of the test. The intent of this requirement was to remove a large enough sample (representative), such that, in case one sample (or portion thereof) became unusable, a sufficient amount would still be available for performance of the test. The intent of this surveillance requirement is not to both obtain two samples and also perform two independent tests.

Changing the reference for in-place testing of HEPA filters and charcoal adsorbers from ANSI N510-1975 to Regulatory Guide 1.52 Positions C.5.a, C.5.c, and C.5.d is an administrative change. The three Regulatory Positions direct us to the same ANSI N510-1975 sections that we were using all along. Therefore, this change does not effect accident probabilities or consequences.

Clarifying the requirements to periodically verify that the Control Room has been isolated on a Control Room High Radiation alarm will not effect the probabilities of any accidents and could actually reduce the potential consequences of an accident if the verification finds valves not fully closed.

(2) Use of the modified specification would not create the possibility of a new or different kind of accident from any accident previously evaluated.

None of these changes modify equipment design or operation. Therefore, none would create the possibility of a new or different accident.

(3) Use of the modified specification would not involve a significant reduction in a margin of safety.

The change to have laboratory testing of charcoal adsorber samples performed at 30° C from 130° C will cause results to be more conservative. As described in IN 86-76, testing of carbon samples at the temperatures realistically expected during the course of an accident (30° C) yields lower efficiencies, thereby increasing the likelihood of the charcoal adsorber being replaced. Therefore, this change does not effect any margin of safety and will continue to ensure compliance with the requirements of GDC 19.

Regarding changing our charcoal adsorber bed sample removal and testing requirement from two down to one, the two samples taken in the past each were a representative sample for determining the condition of the charcoal bed. Taking one sample will still give a representative sample. Current regulatory guidance and industry practice do not indicate a need for more than one sample. Margin of safety is not effected by this change.

Changing the reference for in-place testing of HEPA filters and charcoal adsorbers from ANSI N510-1975 to Regulatory Guide 1.52 Positions C.5.a, C.5.c, and C.5.d is an administrative change. The three Regulatory Positions direct us to the same ANSI N510-1975 sections that we were using all along. Therefore, this change does not effect any margin of safety.

Clarifying the requirements to periodically verify that the Control Room has been isolated on a Control Room High Radiation alarm will actually increase the margin of safety in that there is more assurance that each valve will be check closed and, therefore, the changes that the Control Room would not be totally isolated have been reduced.

Based upon the above discussion, the staff proposes to determine that the changes, as proposed, do not involve a signficant hazards consideration.

Local Public Document Room location: Calvert County Library, Prince Frederick Maryland.

Attorney for licensee: Jay E. Silbert, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Robert A. Capra

Carolina Power & Light Company, et al., Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendments: February 29, 1988, as superseded September 20, 1989, with additional information provided in letters dated December 5, 1989 and February 15, 1990.

Description of amendment request: The proposed change accomplishes the following:

1. Deletes references to a valve group (group 7) that currently does not exist and was never intended to exist,

2. Establishes specific operability and surveillance requirements for instruments designed to detect accident conditions, not prevent the onset of an accident,

3. Provides consistency within Tables 3.3.2-1, (Isolation Instrumentation Operability), 3.3.2-2 (Isolation Instrumentation Setpoints), 3.3.2-3 (Isolation Instrumentation Response Times), and 4.3.2-1 (Isolation Instrumentation Surveillance) by correcting administrative errors and clarifying information already provided in the Technical Specifications,

4. More accurately describes the information provided in Table 3.3.2-3 by clarifying instrument response times, and

5. Relocates the primary containment isolation valve list and secondary containment automatic isolation damper list to the plant procedures.

Basis for proposed no significant hazard consideration determination: The Commission has provided standards for determining whether a no significant hazard consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee stated that changes do not involve a significant hazards consideration for the following reasons:

1. The changes do not represent changes in the design or operation of systems or components of systems. The majority of the changes clarify the description of the existing design so the information provided in the Technical Specifications is more meaningful to operating personnel. Current references to Valve Group 7 are deleted because this valve group currently does not exist and was never intended to exist. Several new items and valve groups are being added to better reflect the actual function of the valves. Such changes for clarification do not increase the probability of an accident because they provide a more accurate description of the component and do not represent changes to the design of the systems. They do not impact the consequences of an accident because, as stated above, there are no changes to the design and, therefore, to the mitigative functions of any system.

Removal of the primary containment isolation valve and secondary containment isolation damper listings from the Technical Specifications is appropriate in the context of Technical Specification reform. Component listings have been identified in recent industry and NRC efforts to improve Technical Specifications as items of primary interest for removal because they do not directly contribute to plant safety. Maintaining these lists in the plant procedures will ensure that timely information, reflecting recent plant modifications, is available. The plant procedures are controlled under the requirements of 10 CFR 50.59, and the Technical Specifications will continue to require primary containment integrity while in Operational Conditions 1, 2, and 3, and secondary containment integrity in Operational Conditions 1, 2, 3, 5, and when moving irradiated fuel assemblies in secondary containment. Thus, the proper identification, control, and periodic testing of the appropriate valves and dampers is maintained as it currently is in the Technical Specifications.

Removal of this information from the Technical Specifications does not change the design or operation of the valves or dampers, nor does it affect any accident analysis. Thus, the proposed change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. As stated above, the proposed changes do not represent changes in the design or operation of any system or component. Deletion of the existing reference to a Valve Group 7 reflects the fact that this valve group does not exist, and was never intended to exist. Thus, Valve Group 7 does not provide any means of protection and, therefore, no new accident situations may be created by its deletion. Deletion of the valve and damper tables will relocate the information currently provided in the Technical Specifications in a more practical and appropriate place. The valve and damper operability requirements remain unchanged. Thus, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. As stated above, the design and operation of the components and system represented in the affected sections of the Technical Specifications are unchanged. The descriptive information has been revised to more accurately describe the function of the component and information that does not directly contribute to plant safety has been relocated to the plant procedures where it will be more readily maintainable. The

safety-related requirements associated with the information being relocated, i.e., proper identification, control, and periodic testing requirements, will be maintained in the Technical Specifications just as they currently are. Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The licensee has concluded that the proposed amendment meets the three standards in 10 CFR 50.92 and, therefore, involves no significant hazards consideration.

The NRC staff has made a preliminary review of the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that the requested amendment does not involve a significant hazards consideration.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, P. O. Box 1551, Raleigh, North Carolina 27602

NRC Project Director: Elinor G. Adensam

Carolina Power & Light Company, et al., Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendments: February 16, 1990

Description of amendment request: Technical Specification (TS) 4.0.2, Surveillance Requirements, provides the allowable tolerances for extending surveillance intervals beyond those specified in the nominal surveillance requirements. Currently, Specification 4.0.2 requires that each surveillance activity be performed within the specified time interval with: (a) maximum allowable extension not to exceed 25% of the surveillance interval, and (b) the total maximum combined time interval for any three consecutive surveillance intervals shall not exceed 3.25 times the specified surveillance interval.

The purpose of the 25-percent extension is to aid in the scheduling of surveillance activities and to permit surveillances to be postponed when plant conditions are not suitable for conducting a surveillance. The 3.25 limit was designed to prohibit routine use of the 25-percent interval extensions.

This amendment eliminates TS paragraph 4.0.2.b based on the NRC staff conclusion that the removal of the 3.25 limit results in a greater benefit to safety than limiting the use of the 25-percent allowance to extend surveillance intervals.

Carolina Power & Light Company (CP&L) is requesting this revision because it will offer CP&L more flexibility in using the Specification for extending surveillance intervals and will also reduce the administrative burden associated with its use.

Basis for proposed no significant hazard consideration determination: The Commission has provided standards for determining whether a no significant hazard consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Carolina Power & Light Company (CP&L) has reviewed the proposed changes and has determined that the requested amendment does not involve a significant hazards consideration for the following reasons:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated because there is no physical change or alteration to the facility that could cause the probability of an accident to increase. In addition, removal of the 3.25 combined interval enhances safety by reducing the potential of a forced shutdown or performing surveillances during unsuitable plant conditions.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated because the design of the facility and system operating parameters are not changing. Surveillance intervals are not changing and will continue to be limited to the 25% extension.

3. The proposed amendment does not involve a significant reduction in the margin of safety because surveillance frequencies will retain the 25% extension limit which is an acceptable extension tolerance, as documented in Generic Letter 89-14, sufficient to ensure the reliability of equipment. Maintaining equipment in a reliable condition does not introduce a reduction in any margin of safety.

The licensee has concluded that the proposed amendment meets the three standards in 10 CFR 50.92 and, therefore, involves no significant hazards consideration.

The NRC staff has made a preliminary review of the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that the requested amendment does not involve a significant hazards consideration.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, P.O. Box 1551, Raleigh, North Carolina 27602

NRC Project Director: Elinor G. Adensam

Carolina Power & Light Company, Docket No. 50-261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of amendment request: February 13, 1990

Description of amendment request: The request would amend the Technical Specifications (TS) for the operation of the reactor vessel level instrumentation system (RVLIS) and core exit thermocouples (CET).

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has performed an analysis addressing these standards. The analysis follows:

1. Operation of the facility, in accordance with the proposed amendment, would not involve a significant increase in the probability or consequences of an accident previously analyzed because the RVLIS and CETs are neither credited nor required for the mitigation of any previously evaluated accident, and are not relied upon for reactor trip or initiation of any plant safety system. The systems merely provide the operators with additional corroborative information and do not initiate any automatic actions. Further, the RVLIS sensing line meets the design requirements of the Reactor Coolant Pressure Boundary, and if a leak or rupture of this line does occur, the reactor coolant flow would be limited by orifices to that flow which is within the makeup capability of the existing ECCS. Therefore, the proposed change does not affect the probability or consequences of an accident previously evaluated.

2. Operation of the facility, in accordance with the proposed amendment, would not create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed change is intended solely to enhance the ability of the operator to manage accidents and transients by providing the operator with additional corroborative information; the systems do not initiate any automatic actions. Further, the CETs and RVLIS do not alter any thermohydraulic characteristics of the reactor. The equipment does not have the potential to create new or different accidents from any accident previously evaluated.

3. Operation of the facility, in accordance with the proposed amendment, would not involve a significant reduction in a margin of safety because existing TS continue to provide assurance that adequate core cooling is maintained during normal operation. The specific purpose of the proposed amendment is to enhance accident and transient monitoring capabilities.

The licensee has concluded that the proposed amendment meets the three standards in 10 CFR 50.92 and, therefore, involves no significant hazards consideration.

The Commission's staff has made a preliminary review of the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that the requested amendment does not involve a significant hazards consideration.

Local Public Document Room location: Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29535.

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, P.O. Box 1551, Raleigh, North Carolina 27602

NRC Acting Project Director: Ed Tourigny

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of amendment request: June 28, 1989

Description of amendment request: The proposed amendment would add new operational requirements, action statements, and surveillance requirements to assure the availability of shutdown cooling to the Primary Coolant System (PCS) during certain operational conditions. Specifically, the proposed amendment would add new Technical Specification (TS) Sections 3.1.9 and 3.7.3, and would add Item 14 to Table 4.2.2.

TS Section 3.1.9 lists operability requirements for equipment to provide shutdown cooling whenever the PCS is below 325° F and fuel is in the reactor. TS Section 3.7.3 identifies electrical system operability requirements to support the shutdown cooling systems. Item 14 to Table 4.2.2 establishes a surveillance requirement to assure availability of the steam generators for shutdown cooling service when required by TS Section 3.1.9.

Basis for proposed no significant hazards consideration determination: The Commission has made a proposed determination that the amendment involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92(c), this means that the operation of the facility in accordance with the proposed amendment would not; (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The Commission has evaluated the proposed changes against the above standards as required by 10 CFR 50.91(a) and has concluded that:

A. The changes do not involve a significant increase in the probability or consequences of an accident previously evaluated (10 CFR 50.92(c)(1)) because the proposed changes merely add operability and surveillance requirements to assure continued availability of shutdown cooling to the reactor where none had existed previously.

B. The changes do not create the possibility of a new or different kind of accident from any accident previously evaluated (10 CFR 50.92(c)(2)) because they do not affect the manner by which the facility is operated. The proposed changes merely add operability and surveillance requirements for equipment to assure shutdown cooling where none had existed previously.

C. The changes do not involve a significant reduction in a margin of safety (10 CFR 50.92(c)(3)) because the proposed changes do not affect the manner by which the facility is operated or involve changes to equipment or features which affect the operational characteristics of the facility.

Local Public Document Room location: Van Zoeren Library, Hope College, Holland, Michigan 49423.

Attorney for licensee: Judd L. Bacon, Esq., Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

NRC Project Director: John O. Thoma, Acting

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of amendment request: October 23, 1989

Description of amendment request: The proposed amendment would modify the Palisades Plant Technical Specifications (TS) to support the use of an improved core analysis program. The modifications would allow the use of PIDAL, a full-core incore analysis program, in place of the older INCA program currently being used which depends upon one-eighth core symmetry.

Specifically, the proposed amendment would revise TS Section 3.11 to require at least 160 out of a possible 215 incore detectors to be operable vice the current requirement of at least 50% of the incore detectors to be operable. The proposed amendment would also change the Action 3 requirement to include readings from at least 160 detectors in a ten-hour period vice 50% of the incore detectors in the same period.

The associated Bases to TS Sections 3.23.1, 3.23.2, and 3.23.3 would also be revised to reflect improved uncertainty factors for power distribution measurement through the addition of Table 3.23-3, and clarification that the quadrant power tilt calibration factors are determined using incore measurements and an incore analysis computer program.

Basis for proposed no significant hazards consideration determination: The Commission has made a proposed determination that the amendment involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92(c), this means that the operation of the facility in accordance with the proposed amendment would not; (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The Commission has evaluated the proposed changes against the above standards as required by 10 CFR 50.91(a) and has concluded that:

A. The changes do not involve a significant increase in the probability or consequences of an accident previously evaluated (10 CFR 50.92(c)(1)). The changes merely increase the number of incore detectors that must be operable and used to determine local power level. These readings are compared to alarm setpoints to determine if action must be taken. The alarm setpoints are determined from an improved full-core analysis program. This program also is used to confirm that operation is within the bounds of the accident analyses assumptions. The changes further support core loadings which will reduce the neutron fluence to the reactor vessel walls and hence decrease the rate of embrittlement.

B. The changes do not create the possibility of a new or different kind of accident from any accident previously evaluated (10 CFR 50.92(c)(2)) because the changes merely affect

the number of incore detectors that must be operable and compared to setpoint values and no changes to plant equipment or operating procedures are involved.

C. The changes do not involve a significant reduction in a margin of safety (10 CFR 50.92(c)(3)) because the proposed changes do not affect the manner by which the facility is operated or involve equipment or features which affect the operational characteristics of the facility.

Local Public Document Room location: Van Zoeren Library, Hope College, Holland, Michigan 49423.

Attorney for licensee: Judd L. Bacon, Esq., Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

NRC Project Director: John O. Thoma, Acting

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of amendment request: July 24, 1989.

Description of amendment request: The proposed amendment revises Technical Specification Sections 6.2.2.f, 6.2.3.4, 6.5.1.2, 6.5.1.7.b, 6.5.2.5, and 6.5.2.6. to allow scheduling of 8 or 12 hour shifts, to ensure that the recommendations of the Independent Safety Engineer Group are received by the Vice President of Nuclear Engineering and Services, to reflect the title change for the Superintendent - Maintenance and Modifications to Superintendent - Maintenance, to clarify which items currently reviewed by the Onsite Review Organization (OSRO) require a 10 CFR 50.59 safety evaluation, to remove OSRO meeting frequency requirements applicable for the initial year of operation following fuel loading, and to clarify quorum requirements for the Nuclear Safety Group (NSRG), respectively.

Basis for proposed no significant hazards consideration determination: The commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)) for a proposed amendment to a facility operating license. A proposed amendment to an operating license for a facility involves no significant hazards consideration, if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed change against the above standards as required by 10 CFR 50.92. The licensee concluded that:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated. None of the proposed changes involve a physical modification to the plant, a new mode of operation, or a change to the UFSAR transient analyses. No limiting condition for operation (LCO), ACTION statement, or surveillance requirement is affected by any of the proposed changes.

The proposed change to allow flexibility in the number of hours normally worked each day while retaining the objective of a nominal 40-hour work week would allow the opportunity for a reduction in the number of shift turnovers. Detroit Edison believes this will increase productivity and reduce human errors. Maintaining the objective of a nominal 40-hour work week and the current controls on substantial overtime still limits the working hours of the unit staff who perform safety-related work. (Results from a paper presented at the 1986 Annual Meeting of the Human Factors Society, entitled "Evaluation of a 12-Hour/Day Shift Schedule," indicate that the 12-hour shift schedule is a reasonable alternative to an 8-hour shift schedule.) The proposed change in title of the executive who receives the ISEG recommendations on improving unit safety is consistent with the position specified in the Standard Technical Specifications. This title change will also allow the existing executive to maintain his association with the ISEG. The proposed change in the OSRO member's title from Superintendent - Maintenance and Modifications to Superintendent - Maintenance does not affect the items reviewed by OSRO or the qualifications for this position. The same individual, the head of the Maintenance Department, will stay on the OSRO. The proposed change to the OSRO's responsibility with respect to the Technical Specifications is consistent with 10 CFR 50.59 which does not allow the Technical Specifications to be changed using a 10 CFR 50.59 evaluation. The increased meeting frequency requirement of the NSRG during the initial year of operation following fuel loading is no longer necessary because Fermi-2 has completed its initial year of operation. The proposed change to the NSRG quorum removes the ambiguity in the number of members and alternates required for a quorum.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated. As stated in Item 1 above, none of the proposed changes involve a physical modification to the plant or a new mode operation. Also, no LCO, ACTION statement or surveillance requirement is affected by the proposed changes.

3. The proposed changes do not involve a significant reduction in a margin of safety. The proposed changes to the NSRG quorum requirements, NSRG meeting frequency, and OSRO member's title either clarify, correct, or more accurately reflect Detroit Edison's onsite nuclear organization. Therefore, these changes provide a safety benefit by reducing the possibility of a misinterpretation.

The change to allow flexibility in the number of hours normally worked each day does not involve a significant reduction in the margin of safety because it will permit a reduction in the number of required shift turnovers. Detroit Edison believes that this will increase productivity and reduce human errors. The proposed Technical Specification maintains a nominal 40-hour work week which will limit the amount of hours unit staff, who perform safety-related work, are allowed to work. The existing Technical Specification guidelines which limit substantial overtime are not affected by this change. Additionally, (results from the paper referenced above) indicate that the 12-hour shift schedule is a reasonable alternative to an 8-hour shift schedule. The change in title of the executive who receives the ISEG recommendations does not involve a significant reduction in the margin of safety because the proposed position meets the intent of the Standard Technical Specifications. This change will also allow the existing executive to continue to receive the ISEG recommendations. The change to the items reviewed by OSRO, with respect to safety evaluations, does not involve a significant reduction in the margin of safety because this change does not affect the activities for which safety evaluations are performed. It corrects, the list of items in Section 6.5.1.7 to match the activities for which safety evaluations are performed.

The staff has reviewed the licensee's evaluation and concurs with it. On the basis of the above consideration, the staff proposes to find that the changes do not involve a significant hazards consideration.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Attorney for licensee: John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit Michigan 48226.

NRC Project Director: John O. Thoma, Acting

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: January 19, 1990

Description of amendment request: The proposed amendments would revise the Technical Specifications (TSs) by: (1) deleting an obsolete footnote and its associated reference from TS 3.7.6; (2) reducing the allowable air temperature in the control room, specified by TS Surveillance Requirement 4.7.6.a, from 120° F to 90° F; and (3) correcting the extent of methyl iodide penetration, specified in TS Surveillance Requirements 4.7.6.c.2 and 4.7.6.d, for laboratory testing of charcoal absorbers of the control area ventilation system from less than 1% to less than 0.175%.

Basis for proposed no significant hazards consideration determination: By Amendments 95 (Unit 1) and 77 (Unit

2), the NRC added a footnote to TS 3.7.6 granting a one-time extension of the outage time specified for the Control Room Area Ventilation Chilled Water system to allow fan replacement and associated system modifications. The replacement and modifications have been completed and the footnotes are, therefore, no longer applicable. Their removal from the TSs is purely an administrative change.

McGuire has occasionally been experiencing erratic behavior and failure of certain solid state electronic components located in cabinets in the control room complex and associated with controls for safety systems and engineered safety features. The erratic behavior and failures occurred when control room temperature was increased above 90° F. To provide a higher level of reliability for electronic equipment in the control room area, the licensee proposes to revise the TSs by reducing the present limit of 120° F to a more restrictive 90° F.

The carbon filter beds of the McGuire Control Area Ventilation System are 4 inches in depth and are rated at a 99% decontamination efficiency with respect to methyl iodide removal. For such filters, periodic testing of carbon samples in accordance with Regulatory Guide 1.52 and TS 4.7.6 should be based upon methyl iodide penetration of less than 0.175%. Presently, TS 4.7.6.c.2 and TS 4.7.6.d specify a testing criterion for methyl iodide penetration of less than 1%, corresponding to a decontamination efficiency of 95% and based upon a filter bed 2 inches in depth. The licensee calculates that the thyroid dose to control room personnel assuming a 95% decontamination efficiency would exceed the acceptance criterion of Standard Review Plan 6.4. Therefore, the existing TS is not sufficiently conservative and should be corrected to specify a methyl iodide penetration of 0.175%, the appropriate value for a filter with 99% efficiency.

The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Commission's staff has reviewed the licensee's request and has determined that the changes are of a purely administrative nature, impose a more restrictive limit on control room area temperature to provide a more favorable operating environment for electronic equipment, or correct a nonconservative error in the existing TSs regarding charcoal testing criterion so as to be consistent with the actual design and licensing basis for operator exposure. These changes do not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

These changes also match examples (i), "A purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature;" and (ii), "A change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications, e.g., a more stringent surveillance requirement." The Commission provided these examples in 44 FR 7750 (March 6, 1986) as examples of actions not likely to involve significant hazards considerations. Accordingly, the Commission proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242.

NRC Project Director: David B. Matthews

Duke Power Company, Docket Nos. 50-269, 50-270 and 50-287, Oconee Nuclear Station, Units 1, 2 and 3, Oconee County, South Carolina

Date of amendment request: August 31, 1989, as supplemented January 24, 1990.

Description of amendment request: The proposed amendments would revise the Technical Specifications (TSs) to clarify operability requirements of Emergency Power Switching Logic (EPSL) functional units, provide more explicit operability requirements for specific electrical components and flowpaths, and update the operability requirements for the 125 VDC instrumentation and control batteries. Various administrative changes are also included in the proposed amendments.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards (10 CFR 50.92(c)) for determining whether a significant hazards consideration exists. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

In regard to the proposed amendments, the licensee provided an evaluation of the proposed changes with respect to these three standards:

(1) The changes included within the proposed amendment request constitute either additional restrictions not presently included in the TSs or are administrative in nature. The changes constituting additional restrictions provide more explicit operability requirements for specific electrical components and flowpaths and assure the availability of auxiliary power systems during all Design Basis Accident (DBA) scenarios. The changes result in more stringent requirements than the present requirements. The administrative and Bases changes support this amendment request. The probability of any DBA is not increased by this change. Since these changes contribute significantly to assurance of auxiliary electrical power system operability, operation within the bounds of accident analyses addressed in the Oconee Final Safety Analysis Report is assured. As such, the changes will not involve a significant increase in the probability or consequences of any accident previously evaluated.

(2) These changes assure auxiliary electrical system operability during all DBA scenarios by providing more explicit operability requirements for specific electrical components and/or flowpaths. These changes do not result in alterations in system configurations, require more conservative operating criteria than the present TSs, and will not create any failure modes not bounded by previously evaluated accidents. As such, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) The design basis of the Oconee auxiliary electrical systems is to supply the required engineered safeguards

loads of one unit and the safe shutdown loads of the other two units. The proposed changes significantly contribute to assurances that the auxiliary electrical system will be available and operable during all DBA situations. As such, these changes will not result in a significant reduction in a margin of safety.

The Commission's staff has reviewed the licensee's submittal and agrees with the licensee's conclusion that the requested changes meet the three standards of 10 CFR 50.92(c). Accordingly, the Commission proposes to determine that the amendment request does not involve a significant hazards consideration.

Local Public Document Room location: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29691.

Attorney for licensee: J. Michael McGarry, III, Bishop, Lieberman, Cook, Purcell and Reynolds, 1200 17th Street, NW., Washington, DC 20036

NRC Project Director: David B. Matthews

Duquesne Light Company, Docket Nos. 50-334 and 50-412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania

Date of amendment request: February 7, 1990

Description of amendment request: The proposed amendment would revise Technical Specification 3.8.2.1 regarding alternating current (A.C.) distribution. This change would modify the existing Technical Specification 3.8.2.1, along with Surveillance Requirement 4.8.2.1, to more closely resemble the wording contained in the Standard Technical Specifications. The major change contained in this proposed amendment is the addition of the requirement that an operable 120-volt A.C. vital bus must be energized from an inverter connected to a direct current (D.C.) bus. The current specification contains no specific requirement on operability of the inverters.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists in accordance with 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility or a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The proposed amendments will not adversely affect the reliability or availability of the A.C. distribution system. The Technical Specifications, as revised, will continue to ensure that the A.C. distribution system will be available to mitigate the consequences of an accident. Since the amendments will impose restrictions, currently non-existent, on the allowable out-of-service times for the inverters, these will lead to an increase in the reliability and availability of the A.C. vital busses. Thus, the answer to the first criterion is negative.

There is no design or hardware change associated with the proposed amendments, and no safety analysis assumptions or acceptance criterion will be altered. Hence the answers to criteria (2) and (3) are also negative.

The staff therefore proposes to determine that the requested amendments involve no significant hazards considerations.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Attorney for licensee: Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

Florida Power and Light Company, et al., Docket No. 50-389, St. Lucie Plant, Unit No. 2, St. Lucie County, Florida

Date of amendment request: February 7, 1990

Description of amendment request: The purpose of this amendment is to incorporate revised pressure/temperature (P-T) limits and the results of a revised low temperature overpressure protection (LTOP) analysis into the Technical Specifications for St. Lucie Unit 2 for up to 15 effective full power years (EFPY) of operation. The current St. Lucie Unit 2 Technical Specifications for P-T/LTOP are applicable to 6 EFPY of operation. Accordingly, the St. Lucie Unit 2 Technical Specifications require revision prior to the plant reaching 6 EFPY.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee provided the following discussion regarding the above three criteria.

Criterion 1

Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The pressure-temperature (P-T) limit curves in the Technical Specifications are conservatively generated in accordance with the fracture toughness requirements of 10 CFR [Part] 50 Appendix G[,] as supplemented by the ASME Code Section III, Appendix G recommendations. The RT_{NDT} values for the revised curves are based on Regulatory Guide 1.99, Revision 02 shift prediction and attenuation formulas. Analyses of reactor vessel material irradiation surveillance specimens are used to verify the validity of the fluence predictions and the P-T limit curves. Use of the revised curves, in conjunction with the surveillance specimen program, ensures that the reactor coolant pressure boundary will behave in a non-brittle manner and that the possibility of [a] rapidly propagating fracture is minimized.

In conjunction with revising the P-T limit curves for operation up to 15 EFPY, a low temperature overpressure protection (LTOP) analysis has been performed to confirm that the current LTOP setpoints for the power-operated relief valves (PORVs) and shutdown cooling relief valves (SDCRVs) will provide the appropriate overpressure protection at the low Reactor Coolant System (RCS) temperatures. The LTOP analysis also revised the current values of the limiting temperatures for the PORV and SDCRV setpoints' applicability, heatup and cooldown rates, based upon the revised P-T limits.

To ensure compliance with P-T limit curves, overpressure protection is provided to keep the RCS pressure below the P-T limits for any given temperature after the initiation of assumed pressure transients (energy-addition and mass-addition transients) while operating below the enable temperatures that were determined in accordance with Standard Review Plan 5.2.2, Revision 02.

The revised P-T curves and LTOP system temperature ranges do not represent a significant change in the configuration or operation of the plant. The results of the LTOP analysis show that the limiting pressures for given temperatures are not exceeded for the assumed transients and that reactor vessel integrity is maintained. Thus, the proposed amendment does not involve an increase in the probability or consequences of accidents previously evaluated.

Criterion 2

Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different

kind of accident from any accident previously evaluated.

The evaluation performed has resulted in revised P-T limits based on on the fracture toughness requirements of 10 CFR [Part] 50 Appendix G, and in revised LTOP system temperature ranges based on standard energy and mass addition transients. Since there is no significant change in the configuration or operation of the facility as a result of the proposed amendment, the use of revised P-T limits and the LTOP ranges does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3

Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

The proposed amendment does not involve a significant reduction in a margin of safety, because the fracture toughness requirements of 10 CFR [Part] 50 Appendix G are satisfied and conservative operating restrictions are applied for the purpose of low temperature overpressure protection.

In conclusion, based on the analysis performed, we have determined that the amendment request does not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the probability of a new and different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety; and therefore, does not involve a significant hazards consideration.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the NRC staff proposes to determine that the proposed changes to the TS involve no significant hazards consideration.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 33450

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036

NRC Project Director: Herbert N. Berkow

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of amendment request: January 8, 1990

Description of amendment request: The proposed amendment modifies the TMI-1 Technical Specifications to remove the 3.25 limit on extending surveillance intervals, in accordance with the guidance contained in NRC Generic Letter 89-14, dated August 21, 1989. Specification 4.0.2 of the Standard Technical Specifications allows surveillance intervals to be extended up to 25 percent of the time interval specified. In addition, this specification limits the combined time interval for any three consecutive surveillance intervals to less than 3.25 times the specified surveillance interval. In Generic Letter 89-14, the NRC staff concludes that the removal of the 3.25 limit from Specification 4.0.2 results in a greater benefit to safety than limiting the use of the 25-percent allowance to extend surveillance intervals.

Basis for proposed no significant hazards consideration determination: GPUN has determined that this Technical Specification Change Request involves no significant hazards consideration as defined in 10 CFR 50.92.

1. Operation of the facility in accordance with the proposed amendment would not involve a signficant increase in the probability of occurrence or the consequences of an accident previously evaluated. The proposed amendment removes the 3.25 limit on extending surveillance intervals and adds the Bases statements for the existing 25% allowance, in accordance with the guidance contained in Generic Letter 89-14. Removal of the 3.25 limit on extending surveillance intervals provides a safety benefit by allowing a surveillance interval to be extended at a time that conditions are not suitable for performing the surveillance (e.g. transient plant operating conditions or other ongoing surveillance or maintenance activities). The safety benefit of allowing the use of the 25% allowance to extend a surveillance interval in such cases outweighs any benefit derived by limiting three consecutive surveillance intervals to the 3.25 limit. This change does not involve any change to the actual surveillance requirements. The reliability ensured through surveillance activities is not significantly degraded beyond that obtained from the specified surveillance interval. The addition of Technical Specification 1.25 FREQUENCY NOTATION is an administrative change to achieve consistency with Standard Technical Specifications, and relocation of the existing provision to allow a maximum surveillance interval extension of 25%, from Table 1.2 to the new definition only provides clarification that this extension is applicable to all Technical Specifications surveillance requirements. Therefore, this change does not increase this probability of occurrence or the consequences of an accident previously evaluated.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated. This change does not involve any change to the actual surveillance requirements and allows a surveillance interval to be extended at a time that conditions are not suitable for performing the surveillance. Therefore, this change has no effect on the possibility of creating a new or different kind of accident from any accident previously evaluated.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety. Removal of the 3.25 limit on extending surveillance intervals provides a positive effect on safety by allowing a surveillance interval to be extended at a time that conditions are not suitable for performing the surveillance. The safety benefit of allowing the use of the 25% allowance to extend a surveillance interval in such cases outweighs any benefit derived by limiting three consecutive surveillance intervals to the 3.25 limit. This change does not involve any change to the actual surveillance requirements. The reliability ensured through surveillance activities is not significantly degraded beyond that obtained from the specified surveillance interval. The addition of Technical Specification 1.25 FREQUENCY NOTATION is an administrative change to achieve consistency with Standard Technical Specifications, and relocation of the existing provision to allow a maximum surveillance interval extension of 25%, from Table 1.2 to the new definition only provides clarification that this extension is applicable to all Technical Specifications surveillance requirements. Therefore, it is concluded that operation of the facility in accordance with the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed and agrees with the licensee's determination. Therefore, the NRC staff proposes to determine that the requested amendment involves no significant hazards considerations.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50-321, Edwin I. Hatch Nuclear Plant, Unit 1, Appling County, Georgia

Date of amendment request: January 15, 1990

Description of amendment request: The amendment would modify the Technical Specifications (TSs) for Unit 1 to: (1) accommodate changes to the Anticipated Transients Without Scram - Recirculation Pump Trip (ATWS-RPT) trip logic mandated by the NRC, and (2) modify trip settings and surveillance frequencies to be consistent with the current BWR Standard Technical Specifications and the philosophy of Analog Transmitter Trip System (ATTS) design previously approved by the NRC.

Specifically, Change 1 would replace the "one-out-of-two" logic scheme for ATWS-RPT initiation with a "two-out-

of-two" logic design to minimize inadvertent actuations. This change also would allow continued plant operation with an inoperable channel placed in its tripped condition, and would retain the provision allowing up to 14 days of continued operation with an inoperable trip system.

Change 2 would revise the trip settings in TS Table 3.2-9 to be consistent with the instruments' allowable values, would lower the RPT Water Level 2 trip to be consistent with other Reactor Water Level 2 trip settings, and would make an editorial change to the table to identify the reactor vessel water level trip as a "Level 2" trip. In addition, Change 2 would revise TS Table 4.2-9 to indicate that the minimum frequency for instrument checks is once per shift and the minimum frequency for instrument functional tests is once per month.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee's January 15, 1990, submittal provided an evaluation of the proposed changes with respect to these three standards.

Basis for Proposed Change 1:

This change does not involve a significant increase in the probability or consequences of an accident, because the "two-out-of-two" logic scheme is designed to reduce inadvertent actuations of the ATWS-RPT trip system. Therefore, overall plant reliability is increased. This design meets the 10CFR50.62, paragraph (c)(5) requirement to automatically trip the reactor coolant recirculation pumps. The proposed changes do not change, degrade or prevent any actions or assumptions in the current ATWS analyses.

The possibility of a different kind of accident from any analyzed previously is not created by this change, since the proposed change is consistent with the ATWS Rule guidelines. The ATWS-RPT logic is proposed to be changed to "two-out-of-two" to minimize inadvertent actuations and to allow maintenance testing or calibration during power operation.

Margins of safety are not significantly reduced by this change, since the provision to place an inoperable channel in the tripped condition and allow continued plant operation is consistent with the current BWR Standard Technical Specifications for a "two-out-of-two" logic system. While in this "LCO" condition, single failure capability of the plant logic system is being maintained while the channel is in the tripped condition. If a complete trip system is inoperable, the 14 day LCO for continued plant operation will be maintained.

Basis for Proposed Change 2:

This change does not involve a significant increase in the probability or consequences of an accident, since lowering the analytical limit for the reactor water low level trip from -38 in. H_2O to -58 in. H_2O will not affect the plant FSAR nor will plant safety be affected. A review of the transient and accident analysis in the plant FSAR shows that the RPT on low water level has insignificant effect on these analyses. This is because the safety function of the RPT is to mitigate the consequences of anticipated transient without scram (ATWS) events. However, for most ATWS events, the RPT on Level 2 is a secondary signal to the RPT on high reactor pressure. The only exception is the ATWS event of loss of feedwater flow. The loss of feedwater flow is a mild ATWS event since the fuel would not experience boiling transition and the suppression pool pressure and temperature are unchanged. The change of the RPT setpoint analytical limit from -38 in. H_2O to -58 in. H_2O will not affect these results because the fuel will still be sufficiently covered and the reactor will not be isolated (MSIV isolation is at Level 1). Therefore, the analytical limit of -58 in. H_2O for the RPT is acceptable for Plant Hatch Unit 1. Changes to Table 4.2-9 will require more frequent instrumentation checks and functional testing than is presently specified, is consistent with the NRC approved surveillances for the ATTS design in Unit 1 Technical Specification Amendment 103, and would therefore provide equal or better assurance of system availability.

The possibility of a different kind of accident from any analyzed previously is not created by this change, since the proposed change of allowable values for the ATWS-RPT reactor value water level trip function, and the editorial change of identifying the reactor vessel water level trip as "Level 2" do not change any plant failure modes.

Margins of safety are not significantly reduced by this change, since lowering the analytical limit for the RPT water level trip setting does not have a significant affect on any plant accident analysis. The ATWS-RPT reactor vessel low water level and reactor high reactor pressure trip settings are calculated using the setpoint calculation methodology approved by the NRC for the ATTS system in Amendment 103 to the Unit 1 Technical Specifications. This methodology calculated allowable values of 1095 psig for the high pressure and -47 in. H_2O for the Level 2 reactor vessel water level ATWS-RPT trip settings. The changes of -38 in. H_2O to -47 in. H_2O for reactor vessel low water level and 1120 psig to 1095 psig for reactor high pressure trip settings are therefore conservative since these changes represent a move away from analytical limits and a move to the use of allowable values in the Unit 1 Technical Specifications. Allowable values provide a conservative margin for a technical specifications value from the analytical limit.

The Commission's staff has considered the proposed changes and agrees with the licensee's evaluations with respect to the three standards.

On this basis, the Commission has determined that the requested amendment meets the three standards and, therefore, has made a proposed determination that the amendment application does not involve a significant hazards consideration.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

Attorney for licensee: Bruce W. Churchill, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: David B. Matthews

Illinois Power Company, Soyland Power Cooperative, Inc., Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of amendment request: June 30, 1989

Description of amendment request: This proposed amendment would revise Technical Specification Table 3.6.4-1 to add certain testable check valves as containment isolation valves. This amendment is in response to an NRC determination that the four valves must be considered containment isolation valves. Declaring the applicable testable check valves as containment isolation valves will involve a re-establishment of the containment test boundary. In the course of establishing the new test boundary, some test connection/vent/drain valves would no longer be considered containment isolation valves. Therefore, some valve equipment identification numbers would be added to Table 3.6.4-1 and others would be deleted.

Basis for proposed no significant hazards consideration determination: The staff has evaluated this proposed amendment and determined that it involves no significant hazards consideration. According to 10 CFR 50.92(c), a proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated because under the proposed change, the affected containment penetrations will continue to be leakage-tested in accordance with 10 CFR Part 50, Appendix J to ensure an acceptable leak-tight integrity of the primary containment. That is, the requirements of CPS Technical Specification 3.6.1.2 (and 3.6.4) remain unchanged except that they will apply to different valves for certain penetrations. In addition, the proposed changes are requested in support of an NRC-mandated action to ensure compliance with the applicable requirements of General Design Criterion (GDC)-55 and GDC-56, 10 CFR Part 50, Appendix A. Compliance with these criteria ensures that the containment can accommodate, without exceeding the design leakage rate, the calculated pressure and conditions resulting from any loss-of-coolant accident.

The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed changes do no involve any physical changes to the plant design, and as the NRC staff has already determined, consideration of the testable check valve as a containment barrier does not reduce the availability of the associated safety system.

With respect to maintaining an acceptable margin between the leakage rate limit specified in the Technical Specifications and the leakage rate assumed in the associated accident analysis, the proposed change does not involve a significant reduction in a margin of safety since this margin would remain unchanged. No other margin of safety assumed or required by an accident analysis is affected by the proposed change.

For the reasons stated above, the staff believes this proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

Attorney for licensee: Sheldon Zabel, Esq., Schiff, Hardin and Waite, 7200 Sears Tower, 233 Wacker Drive, Chicago, Illinois 60606

NRC Project Director: John W. Craig

Indiana Michigan Power Company, Docket No. 50-315, Donald C. Cook Nuclear Plant, Unit No. 1, Berrien County, Michigan

Date of amendments request: January 31, 1990

Description of amendments request: The proposed amendment would change Technical Specification (TS) 3/4.7.1.5.1.b, "Steam Generator Stop Valve" to require full valve closure within 8 seconds. TS 3/4.7.1.5.1.b currently requires full valve closure within 5 seconds. Additionally, TS Table 3.3-5 Items 5.h, 6.h, and 7.c would be changed to reflect the increase in the time allowed for steam generator stop valve closure.

Basis for proposed no significant hazards consideration determination: 10 CFR 50.92 states that a proposed amendment will not involve a significant hazards consideration if the proposed amendment does not: (i) Involve a significant increase in the probability or consequence of an accident previously evaluated; or (ii) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (iii) Involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against the standards of 10 CFR 50.92, and has determined the following:

Criterion 1 - Based on the safety analyses performed by Westinghouse for the steam line break core response, steam line break mass/energy releases for inside containment integrity, Steam Generator Tube Rupture (SGTR), and Loss of Coolant Accident (LOCA), the proposed TS change to increase the steam line break isolation response time and the steam generator stop valve closure time by three seconds will not involve a significant increase in the probability or consequences of a previously analyzed accident.

Criterion 2 - The three-second increase for the steam line isolation response time will not change the design or operation of the plant. Therefore, this change will not create the possibility of a new or different kind of accident from any previously analyzed or evaluated.

Criterion 3 - Based on the safety analyses performed by Westinghouse for the steam line break core response, steam line break mass/energy releases for inside containment integrity, SGTR, and LOCA, the proposed TS change increasing the steam line break isolation response time and the steam generator stop valve closure time by three seconds will not involve a significant reduction in a margin of safety.

The staff has reviewed the licensee's no significant hazards analysis sprand concurs with the licensee's conclusions. As such the staff proposes to determine that the requested changes do not involve a significant hazards consideration.

Local Public Document Room location: Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John O. Thoma, Acting.

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: February 12, 1990

Description of amendment request: The proposed amendment involves the following changes:

1. Changing the Minimum Critical Power Ratio (MCPR) Safety Limit From 1.07 to 1.06.

2. Use of GE8X8NB fuel assemblies and associated analysis methodologies (GEXL-PLUS, GEMINI) previously reviewed and found acceptable by the NRC.

3. Changing Specification 5.2.A from denoting specific fuel types to a more generic description of allowed fuel types.

4. Various editorial corrections to the Technical Specification Bases section.

Basis for proposed no significant hazards consideration determination: In accordance with the requirements of 10 CFR 50.92, the licensee has submitted the following no significant hazards determination:

1. Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Evaluation

a. The proposed change would reduce the Minimum Critical Power Ratio (MCPR) safety limit from 1.07 to 1.06. The MCPR safety limit is set to protect the fuel cladding from undergoing boiling transition following any design basis transient. The MCPR safety limit is defined as the critical power ratio in the limiting fuel assembly for which more than 99.9% of the fuel rods in the core are expected to avoid boiling transition considering the power distribution within the core and all uncertainties. The safety limit MCPR is determined for each fuel type using the methodology described in NEDE-24011-P-A "General Electric Standard Application for Reactor Fuel" (GESTAR). The MCPR safety limit for the fuel types in the Reload 13, Cycle 14 core were determined using accepted GESTAR methodologies, and the most conservative value, 1.06, is used as the proposed limit. For the limiting MCPR event there would be no increase in consequences of any design basis event since use of the GESTAR methodologies assures that the criteria of 99.9% of all fuel rods in the core being expected to avoid boiling transition is met.

b. The proposed change would allow use of GE8X8NB fuel type in the core during plant operation. Use of this fuel type was generically found to be acceptable by the NRC in Amendment 18 to GESTAR with documented restrictions. The fuel design has been analyzed using approved methods documented in GESTAR with the results being within accepted limits. Use of the GE8X8NB fuel has been evaluated against current accident analysis results in the USAR for the Refueling Accident, Rod Drop Accident, Main Steam Line Break and Loss of Coolant Accidents. Present results for these accident analyses remain bounding. As discussed in part a) above, the MCPR safety limit was selected to maintain the fuel cladding integrity safety limit. The GE8X8NB fuel response to analyzed transients was also performed and appropriate operating limit MCPR values are incorporated into Technical Specifications. Use of GE8X8NB fuel will not increase the probability or consequences of an accident previously evaluated.

c. The proposed change will replace wording in Technical Specification 5.2.A regarding specifically allowed fuel assemblies with more generic wording that will permit a fuel type to be used if it is of a design approved by the NRC for use in BWRs. Before NRC approval, fuel designs will have been analyzed and evaluated to approved methodologies and their impact on generic design basis accidents accepted and documented. When this change is implemented, a licensee will still be required to perform a 10 CFR 50.59 evaluation to determine if an unreviewed safety question exists for the plant-specific use of that fuel type. This two-tier review will ensure the probability and consequences of a previously evaluated accident are not significantly increased. The proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

d. The proposed change will correct several editorial errors located in the Bases section of the plant's Technical Specifications. This will not affect any accident analysis or equipment response in mitigation of an accident. It involves no changes to plant hardware, procedure, or analysis, but is instead administrative in nature and will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed license amendment create the possibility for a new or different kind of accident from any accident previously evaluated?

Evaluation

a. The proposed change would reduce the MCPR safety limit from 1.07 to 1.06. It does not allow any new mode or condition of plant operation different from that currently stated in the Plant's Updated Safety Analysis Report, nor are plant controls or equipment modified that would change the plant's response to any accident or transient as given in any current analysis. The proposed change does not create the possibility for a new or different kind of accident from any accident previously evaluated.

b. The proposed change will allow use of GE8X8NB fuel type in the core. The fuel type was previously reviewed and found acceptable for use as documented in Amendment No. 18 to GESTAR. No new mode or condition of plant operation will be authorized by this change. The proposed change will not create the possibility for a new or different kind of accident from any accident previously evaluated.

c. The proposed change will replace wording in Technical Specification 5.2.A regarding specifically allowed fuel assemblies with more generic wording that will permit a fuel type to be used if it is of a design approved by the NRC for use in BWRs. The change will not allow any new mode or condition of plant operation different from that currently stated in the plant's Updated Safety Analysis Report. The proposed change will not create the possibility for a new or different kind of accident from any accident previously evaluated.

d. The proposed change will correct several editorial errors located in the Bases section of the plant's Technical Specifications. The change will not allow any new mode of plant operation nor change the function or capability of any plant hardware. The proposed change is administrative in nature and will not create the possibility for a new or different kind of accident from any accident previously evaluated.

3. Does the proposed license amendment involve a significant reduction in a margin of safety?

Evaluation:

a. The MCPR safety limit is set to protect the fuel cladding from undergoing boiling transition following any design basis transient. Margin is incorporated into the limit to allow for uncertainties in monitoring the core operating state and in calculating the critical power ratio so that 99.9 percent of all rods do not experience boiling transition following any design basis transient. Although the proposed change will reduce the safety limit MCPR from 1.07 to 1.06 because the safety limit MCPR was determined using methodologies described in GESTAR for the fuel types in use for this reload, the margin of safety is maintained. The proposed change does not involve a significant reduction in a margin of safety.

b. The proposed change will allow use of GE8X8NB fuel type in the core. This fuel type and its associated analysis methodologies were reviewed and found acceptable in Amendment 18 to GESTAR. The GE8X8NB fuel for Cooper Nuclear Station was analyzed using these methods to ensure required margins to safety (e.g., fuel cladding integrity safety limit and reactor coolant system integrity) are maintained. The proposed change does not involve a significant reduction in a margin of safety.

c. The proposed change will replace wording in the plant's Technical Specification 5.2.A regarding specifically allowed fuel assemblies with more generic wording that will permit a fuel type to be used if it is of a design approved by the NRC for use in BWRs. A new fuel design's effect on nuclear safety margins will be evaluated by the NRC as part of their review and acceptance of the design. In addition, a licensee will be required to evaluate, under 10 CFR 50.59, if an unreviewed safety question exists for the plant-specific use of that fuel type. This two-tier effort will ensure no significant reduction in safety margins will take place in using fuels approved by the NRC for use in BWRs. The proposed change does not involve a significant reduction in a margin of safety.

d. The proposed change will correct several editorial errors located in the Bases section of the plant's Technical Specifications. The change will not allow any change to limits in the allowed operation of the plant or any instrument setpoints, limiting conditions for operation and surveillance requirements. The proposed change is administrative in nature and will not involve a significant reduction in a margin of safety.

Based on the previous discussion, the licensee concluded that the proposed amendment request does not involve a significant increase in the probability or consequences of an accident previously evaluated; nor create the possibility of a new or different kind of accident from any accident previously evaluated; nor involve a significant reduction in the required margin of safety. The NRC staff has reviewed the licensee's no significant hazards considerations determination and agrees with the licensee's analysis. The staff has, therefore, made a proposed determination that the licensee's request does not involve a significant hazards consideration.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

Attorney for licensee: Mr. G.D. Watson, Nebraska Public Power District, Post Office Box 499, Columbus, Nebraska 68601.

NRC Project Director: Frederick J. Hebdon

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: December 1, 1989, as supplemented January 12, 1990.

Description of amendment request: The proposed amendment would revise the Fort Calhoun Station's Technical Specifications to address several administrative and typographical errors. These changes are as follows:

Page viii, Technical Specifications - Figures, Table of Contents: The change corrects two column labels by changing the word "TABLE" to "FIGURE". The location reference for "Figure 1-3" is corrected to read "Page 1-6".

Page 1-2, 1.1, Safety Limits - Reactor Core (continued): The word "test" in the last paragraph is corrected to read "tests". References (1) and (3) are changed to reflect a section of the current version of the Updated Safety

Analysis Report that is a more applicable reference.

Page 2-4, 2.1.2, Heatup and Cooldown Rate (continued), Paragraph (c): The word "boilup" is changed to read "boltup".

Page 2-28, 2.5, Steam and Feedwater Systems: The word "about" is change to read "above".

Page 2-29, References: The references to "FSAR" is changed to read "USAR".

Page 2-35, Electrical Systems (continued): Analysis of the diesel generator loading scenario determined that the 16,000 gallons of fuel oil in the storage tank and the 550 gallons in the base tanks was sufficient under the required loading conditions to provide fuel for diesel operation for a minimum period of four days in lieu of the seven days that was stated in the Updated Safety Analysis Report (USAR). An evaluation in accordance with 10 CFR 50.59 was performed and the USAR was changed to incorporate the new analysis. The changes to the bases section of Paragraph 2.7 of the Technical Specifications will ensure consistency between the Technical Specifications and the information given in the USAR.

Page 2-36, 2.7, Electrical Systems (continued): This change is to update the Basis of Section 2.7 of the Technical Specifications to reflect the increased capacity of the battery chargers that has resulted from system modifications. The battery charger rating was changed from "200" amperes to "400" amperes. The change insures that the Basis of the Technical Specifications is consistent with information in the USAR.

The references to "FSAR" are changed to read "USAR" and Reference (2) is changed to refer to a more applicable section of the USAR.

Page 2-39, Refueling Operations (continued): This change corrects a typographical error in the word "concentration". References to "FSAR" are changed to "USAR" and Reference (2) is changed to refer to a more applicable section of the USAR.

Page 2-57c, 2.10.4(5) Power Distribution Limits: Should read "...Above 15% *of* Rated Power" - typographical error.

Page 2-98, Table 2-10, Post-Accident Monitoring Instrumentation Operating Limits: This change corrects a typographical error, from "LT-559" to "LT-599", in Item 5 of the Table.

Page 3-62a, 3.9 Basis: The temperature and operating conditions were changed to agree with the USAR, Section 9.3.1, and accurately reflect the design basis of the shutdown cooling system.

Page 5-3, 5.5.1.2: The title "Plant Chemist" is changed to "Supervisor - Chemistry" to conform with present station organization.

Page 5-12, 5.9.2(c): The word "arrive" is changed to "be postmarked" to provide a more definitive requirement for submittal of the Monthly Operating Report and provide sufficient time for preparation and processing of the Monthly Operating Report.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee provided an analysis that addressed the above three standards in the amendment application as follows:

This proposed change does not involve significant hazards consideration because operation of Fort Calhoun Station in accordance with this change would not:

1. Involve a significant increase in the probability or consequence of an accident previously evaluated. This change contains only administrative and typographical corrections. This change should eliminate confusion and thus decrease the probability of human errors associated with accidents previously evaluated.

2. Create the possibility of a new or different kind of accident from any previously evaluated. This change contains only administrative and typographical corrections. No new or different modes of operation are proposed for the plant.

3. Involve a significant reduction in the margin of safety. This change contains only administrative and typographical corrections and, as such, does not result in a decrease in the margin of safety.

The NRC staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that the proposed amendment involves no signficant hazards consideration.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102

Attorney for licensee: LeBoeuf, Lamb, Leiby, and MacRae, 1333 New Hampshire Avenue, NW., Washington, DC 20036

NRC Project Director: Frederick J. Hebdon

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: December 20, 1989

Description of amendment request: The proposed amendment to the Fort Calhoun Technical Specifications (TSs) is to modify TS 2.12, "Control Room Systems" to more accurately apply the TS to the safety-related components as it was originally intended to address. As written currently, the temperature limitation applicable is 120° F in the control room. The safety-related panels (Reactor Protection Systems (RPS) and Engineered Safety Features (ESF)) which have temperature limitations of 120° F are housed in enclosed cabinets. Testing performed at the Fort Calhoun Station indicates as much as a 15° F differential may exist between the inside and outside of the equipment cabinets. Therefore, with the present TS, this could allow the control room cabinet temperature to exceed the design criteria of various components without requiring action to be taken. This proposed amendment is changing the temperature in the control room from 120° F to 105° F. Consequently, the temperature limitation is being stated in terms of the components rather than the control room, generally.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee provided an analysis that addressed the above three standards in the amendment application.

The proposed change does not involve a significant hazards consideration because operation of Fort Calhoun Station in accordance with this change would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated. This change applies the technical specification directly to the components and circuits it is intended to limit, and hence, protect. Previously, the technical specification was applied indirectly, i.e., limiting the temperature of the control room while the components to which it should have been applied could have been

subjected to a higher temperature than that intended by the technical specification. Through the proposed application of the technical specification additional assurance is provided that the design temperature limitations of the certain safety-related circuits and components will not be exceeded.

2. Create the possibility of a new or different kind of accident from any previously analyzed. There are no circuit or component changes resulting from this proposed amendment. There are no new system applications or system application changes resulting from this proposed amendment. Hence, there are no new or different kinds of accidents possible due to this proposed amendment. The more direct and specific application of the temperature limitation inherent in technical specification 2.12 does not create the possibility of a new or different kind of accident.

3. Involve a significant reduction in a margin of safety. The acceptance of this proposed amendment would increase the margin of safety by providing additional assurance that the RPS and ESF equipment located in the enclosed control room panels will not operate above their design temperature during power operation. The more stringent application of the temperature limitation helps to guarantee the proper and predictable functioning of solid-state devices in the above mentioned panels. The application of temperature limitation to the components environment directly instead of indirectly (i.e. the control room environment) is a more conservative operating position and therefore will not reduce the margin of safety.

The NRC staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102.

Attorney for licensee: LeBoeuf, Lamb, Leiby, and MacRae, 1333 New Hampshire Avenue, NW., Washington, DC 20036

NRC Project Director: Frederick J. Hebdon

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: December 20, 1989 as supplemented January 24, 1990.

Description of amendment request: The proposed amendment would make changes to Fort Calhoun Technical Specifications (TSs) pertaining to the Limiting Conditions for Operation for the Chemical and Volume Control System which consists of the Safety Injection Refueling Tank (SIRWT), the Boric Acid Storage Tanks (BASTs) and flow paths from the BASTs to the reactor coolant system. The changes consist of the following: (1) TS 2.2.(2).c and 2.2.(2).d specify the minimum tank levels and system flow paths to ensure an adequate source of boric acid is available to provide a 4.0% delta k/k shutdown margin during a plant cooldown; (2) TS 2.2.(2).e is deleted as heat tracing of the boric acid system is no longer required to prevent precipitation of boric acid from solution since a new Figure 2-11 specifies the reduction of boric acid concentration to be maintained; (3) TS 2.2.(3).c and 2.2.(3).d are deleted since they specify the minimum system configuration requirements for the equipment during operation which are now covered by TS 2.2.(2); (4) TS 2.2.(3).e is deleted as it specifies heat tracing operability and heat tracing is no longer required; (5) TS 2.2.(3).f has been changed to 2.2.(3).c for consistency in numbering for the TS; (6) Figure 2-11 is incorporated in the TSs to specify the minimum required boric acid tank volume as a function of concentration to maintain the shutdown margin of 4.0% delta k/k at all times during cooldown to 210° F; (7) The Basis of TS 2.2 has been amended to reflect the proposed changes; and (8) The reference "FSAR, Section 9.2" has been changed to "USAR, Section 9.2."

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee provided an analysis that addressed the above three standards in the amendment application as follows:

The proposed amendment to the Technical Specification does not involve a significant hazards consideration because the operation of the Fort Calhoun Station in accordance with this amendment would not:

(1) Involve a significant increase in the probability of occurrence or consequence of an accident or malfunction of equipment important to safety previously evaluated in the safety analysis report. The boric acid system is not utilized in the safety analysis report to mitigate the consequences of an accident or malfunction. From the standpoint of reactivity control, the BAST and SIRWT concentrations ensure that a minimum of 4.0% shutdown margin is maintained during a cooldown from hot standby to cold shutdown as described in the safe shutdown scenario described below.

The plant is in hot standby and has been held at hot zero power conditions with the most reactive rod stuck in the full out position for 23.5 hours following a power reduction from 100% to 0%. (The Xenon peak after shutdown will have decayed back to the 100% power equilibrium Xenon level. Further Xenon decay will add positive reactivity to the core during the plant cooldown.) No credit was taken for the negative reactivity effects of the Xenon concentration peak following the power reduction. At 23.5 hours offsite power is lost and the plant goes into natural circulation. All non-safety grade plant equipment and components are lost. During the natural circulation cooldown the RCS average temperature initially rises 25° F due to decay heat in the core. The initial temperature at the start of the cooldown in 557° F.

Approximately 0.5 hours later, at 24 hours, the operators commence a cooldown to cold shutdown (210° F). The proposed volume and flow path requirements will ensure that the plant can be brought to cold shutdown conditions assuming letdown is unavailable, in conjunction with the loss of offsite power, and assuming the limiting single failure. Therefore, the proposed change does not increase the probability or consequences of an accident or malfunction of equipment important to safety.

(2) Create the possibility for an accident or malfunction of a new or different type than previously evaluated in the safety analysis report. The proposed change does not physically alter the configuration of the plant and no new or different mode of operation has been implemented. Therefore, [there is no]... possibility of an accident or malfunction of a new or different type than any previously evaluated in the safety analysis report.

(3) Involve a significant reduction in the margin of safety as defined in the basis for any Technical Specification. The proposed change maintains the basis of the safety analysis. In addition, the more restrictive requirements of boron flow paths effectively ensure that the plant can be brought to cold shutdown in the limiting safe shutdown scenario. Therefore, the margin of safety as defined in the basis for the Technical Specification is not reduced.

The NRC staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102.

Attorney for licensee: LeBoeuf, Lamb, Leiby, and MacRae, 1333 New Hampshire Avenue, NW., Washington, DC 20036

NRC Project Director: Frederick J. Hebdon

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: January 24, 1990

Description of amendment request: The proposed amendment to the Fort Calhoun Technical Specifications (TSs) is to delete the 3.25 surveillance factor limit from TS 3.0.1, which allows a 1.25 and 3.25 extension, as recommended in Generic Letter (GL) 89-14. The 3.25 factor limit is to extend the surveillance so that the combined time interval for any three surveillances will not exceed 3.25 times the specified interval. The GL, therefore, allows for all surveillances to be extended by 25 percent without limitations.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee provided an analysis that addressed the above three standards in the amendment application as follows:

The proposed change does not involve significant hazards consideration because the operation of Fort Calhoun Station in accordance with this amendment would not:

1. involve a significant increase in the probability or consequence of an accident previously evaluated. The 25 percent extension has been evaluated as a reasonable time limit to facilitate the scheduling of surveillance activities and allow surveillances to be postponed when plant conditions are not suitable for conducting a surveillance. The 25 percent is maintained by the 1.25 limit and will not significantly increase the probability or consequences of an accident.

2. create the possibility of a new or different kind of accident from any previously analyzed. The proposed change does not alter the Updated Safety Analysis Report in which the accidents were previously analyzed and will not create the possibility of a new or different kind of accidents.

3. involve a significant reduction in a margin of safety. The surveillance intervals in determining operability of the plant equipment/systems are not changed and deletion of 3.25 limit will not reduce the margin of safety.

The NRC staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102

Attorney for licensee: LeBoeuf, Lamb, Leiby, and MacRae, 1333 New Hampshire Avenue, NW., Washington, DC 20036.

NRC Project Director: Frederick J. Hebdon

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: February 21, 1990.

Description of amendment request: The proposed amendment to the Fort Calhoun Technical Specifications (TSs) is to change TS 2.5 to allow a performance of a functional test of the steam driven Auxiliary Feedwater (AFW) pump prior to achieving criticality. The present TSs allow the water temperature to attain only 300° F unless both AFW pumps are operable. The 300° F temperature will not provide enough steam to allow for a normal operability test for the steam driven AFW pump. Also, the present TSs do allow either the electrical or steam driven AFW pump to be inoperable when the reactor coolant temperature is above 300° F for up to 24 hours. However, for the steam driven AFW pump, a longer time is required due to the steam generator soak period which affects the system to heat up.

In addition, there are some administrative changes: (1) correcting a typographical error by changing "about" to "above", (2) changing "FSAR" to "USAR", and (3) inserting "shall be available" for clarification.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee provided an analysis that addressed the above three standards in the amendment application as follows:

This proposed amendment does not involve a significant hazards consideration because the operation of Fort Calhoun Station in accordance with this amendment would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated. Accidents have been analyzed assuming the auxiliary feedwater system is available to provide removal of decay heat produced during the eight hours after a reactor trip concurrent with a loss of main feedwater. The current specification allows either the electric or steam-driven auxiliary feedwater pump to be inoperable when the reactor coolant temperature is above 300° F for up to 24 hours. The proposed change would require the motor driven pump be operable above 300° F with the reactor subcritical when the steam driven pump would be of little use due to the lack of steam and decay heat.

2. Create the possibility of a new or different kind of accident from any previously evaluated. The proposed change does not physically alter the configuration of the plant and no new different mode of operation has been implemented. Therefore, the possibility of an accident or malfunction of a new or different type than any previously evaluated in the safety analysis report is not created.

3. Involve a significant reduction in a margin of safety. Decay heat removal is still assured to the same degree as prior to this change because the operability requirements of the Auxiliary Feedwater System have been clarified and strengthened. The intent of the specification has not been changed, and thus the basis for the safety analysis is maintained. As a result the margin of safety is not reduced.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102.

Attorney for licensee: LeBoeuf, Lamb, Leiby, and MacRae, 1333 New Hampshire Avenue, NW., Washington, DC 20036.

NRC Project Director: Frederick J. Hebdon

Philadelphia Electric Company, Docket No. 50-353, Limerick Generating Station, Unit 2, Montgomery County, Pennsylvania

Date of amendment request: January 29, 1990

Description of amendment request: The amendment would change the Technical Specifications (TS) to allow the required source range monitor (SRM) count rate to be reduced while ensuring that the design level of counting certainty is maintained at all times for the SRMs. The Limerick Unit 2 TS presently allow reduction of the minimum SRM count rate required for control rod withdrawal or core alterations from the normal 3 counts per second (cps) to 0.7 cps as long as the signal-to-noise ratio is greater than or equal to two. General Electric Company (GE) has advised licensees that this provision is non-conservative with respect to the design bases of the SRM system, in that utilization of this provision could result in a reduction in counting certainty. In order to ensure that the design level of counting certainty is maintained, a change to the TS is proposed to incorporate a graph of SRM minimum count rate versus signal-to-noise ratio such that reduction of the count rate permitted by TS (3 cps to 0.8 cps) is accompanied by a corresponding increase in the signal-to-noise ratio (2 to 30).

The same amendment requested by the licensee for Limerick, Unit 2 by this application of January 29, 1990 was approved for Limerick, Unit 1 by Amendment No. 34 to Facility Operating License No. NPF-39 on December 13, 1989. The application for Limerick, Unit 1 had been noticed in the **Federal Register** on October 4, 1989 (54 FR 40932).

Similar amendments were recently approved for Peach Bottom Units 2 and 3 (Amendment Nos. 147 and 149 to Facility Operating License Nos. DPR-44 and DPR-56 dated August 28, 1989), two other BWRs operated by the licensee. Similar amendments have also been approved for other BWRs. For each plant, the General Electric Company derived a curve of SRM count rate vs signal-to-noise ratio which ensures the same level of confidence at lower counts per second (cps) setpoints as is provided at the nominal 3 cps setpoint.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has provided an analysis of no significant hazards considerations with the request for the license amendment, which was identical to that provided in the application for Limerick, Unit 1 for the same changes to the TSs. The licensee's analysis of the proposed amendment against the three standards in 10 CFR 50.92 is reproduced below:

A. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes reduce the minimum SRM count rate required to permit core alterations during reactor refueling and withdrawal of control rods during reactor startup. The proposed count rate is still within the design range of the SRM and specifying a signal-to-noise ratio assures the SRMs are responding to the thermal neutron flux. No hardware changes are required to the SRM system, therefore malfunction of an SRM will still produce the required control rod withdrawal blocks.

The applicable accident analyses related to the proposed change are those involving SRMs during reactor startup (control rod drop accident (RDA)) and continuous control rod withdrawal, and those involving SRMs during reactor refueling (i.e., control rod removal error during refueling, a second control rod removal or withdrawal, fuel insertion with the control rod withdrawn, and a control rod removal without the fuel removed). No credit is taken for the SRMs in any of these accident analyses.

The RDA is the more limiting accident during reactor startup. Chapter 15 (Section 15.4.9) of the FSAR assumes an initial condition of 10^{-8} of rated power with the reactor critical in the analysis of transient cold reactor core conditions including the RDA. Therefore, reduction of the minimum SRM count rate required to permit withdrawal of control rods as shown in Figure 3.3.6-1 still ensures that criticality will be achieved well above 10^{-8} of rated reactor power. Accordingly, this proposed change does not affect the probability or consequences of previously evaluated accidents.

The nuclear characteristics of the core assure that the reactor is subcritical even at its most reactive condition with the most reactive control rod withdrawn during refueling. When the reactor mode switch is in the REFUEL position, only one control rod can be withdrawn. Selection of a second control rod initiates a control rod block, thereby preventing the withdrawal of more than on control rod at a time. Therefore, the refueling interlocks prevent any condition which could lead to inadvertent criticality due to a control rod withdrawal error during refueling. Further, the mechanical design of the control rod, incorporating the velocity limiter, does not physically permit the upward removal of the control rod without the simultaneous or prior removal of the four adjacent fuel assemblies, thus eliminating any hazardous condition. In addition, the refueling interlocks require that all control rods must be fully inserted before a fuel assembly may be inserted into the core. Therefore, based on the above evaluation, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

B. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

No hardware modifications are required to implement this proposed change. The design functions of the SRM system are not being changed. The only effect of this proposed change is a reduction in the minimum count rate required for control rod withdrawal and reactor core alterations. The reduced minimum count rate, which must be accompanied by a corresponding increase in signal-to-noise ratio, will continue to assure that all transients of concern begin above 10^{-8} of rated reactor power, thereby maintaining the validity of the FSAR analysis. Accordingly, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

C. The proposed changes do not involve a significant reduction in a margin of safety.

The normal requirement of at least 3 cps assures that any transient, should it occur, begins at or above the initial value of 10^{-8} of rated reactor power with the reactor critical as used in analysis of transient cold reactor core conditions. In fact, any observable neutron count rate on the SRM is sufficient to ensure the analysis remains valid. Therefore, reduction of the minimum count rate from 3 cps to the values shown in Figure 3.3.6-1 will not reduce this margin of safety because any transient will still begin at or above 10^{-8} of rated reactor power with the reactor critical. Further, the SRMs are not required to ensure the margin of safety as analyzed in Chapter 15 of the FSAR.

The staff has reviewed the licensee's analysis and agrees with it. Therefore, we conclude that the proposed amendment satisfies the three criteria listed in 10 CFR 50.92(c). Based on that conclusion, the staff proposes to determine that the proposed amendment involves no significant hazards determination.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Attorney for licensee: Conner and Wetterhahn, 1747 Pennsylvania Avenue, NW., Washington, DC 20006

NRC Project Director: Walter R. Butler

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego, New York

Date of amendment request: January 9, 1990

Description of amendment request: The proposed amendment would change the Safety Limit Minimum Critical Power Ratio from the current value of 1.04 specified in Technical Specification Section 1.1.A to 1.07. The change would reflect the fuel changes which will occur during the Reload 9/Cycle 10 reload which is scheduled to start in March 1990.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against the standards provided above and has supplied the following information.

Operation of the FitzPatrick plant in accordance with the proposed amendment would not involve a significant hazards consideration as defined in 10 CFR 50.92, since it would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

NRC approved methodologies and codes have been used to perform all analyses concerning General Electric Company fuel to be loaded at this refueling. The fuel design has been reviewed and approved for use at the FitzPatrick plant under applicable constraints and methodologies. There are no unique aspects of this fuel or its application which have not undergone prior NRC review and approval. The refueling of the FitzPatrick reactor and Cycle 10 operation does not result in an increase in the probability or consequences of any accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

Refueling the FitzPatrick reactor is a periodic evolution performed in accordance with appropriate procedures and controlled by the Technical Specifications. The GE-10 type of fuel bundles which will be inserted as Reload 9, have been fully reviewed by the NRC and their use will not create the possibility of a new or different type of accident. The nuclear characteristics of the individual fuel bundles and the core loading pattern have been fully analyzed by the General Electric Company and do not create the possibilty of a new or different type of accident.

3. Involve a significant reduction in a margin of safety.

The analyses performed in support of this reload assure maintenance of all existing margins of safety. These analyses have resulted in core wide and bundle specific limits for General Electric Company fuel which, when applied to the reloaded core, assure operation within the design criteria previously approved. The revised MCPR safety limit provides an equivalent margin of safety as the previous safety limit value in preventing boiling transition. Therefore, the proposed change does not result in the reduction of any margin of safety.

The licensee has reviewed the licensee's no significant hazards consideration determination. Based on the review and the above discussion, the staff proposes to determine that the proposed change does not involve a significant hazards consideration.

Local Public Document Room location: State University of New York, Penfield Library, Reference and Documents Department, Oswego, New York 13126.

Attorney for licensee: Mr. Charles M. Pratt, 1633 Broadway, New York, New York 10019.

NRC Project Director: Robert A. Capra

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego, New York

Date of amendment request: January 12, 1990

Description of amendment request: The proposed amendment would replace the pressure-temperature curves in Figure 3.6-1 with new curves for operation to 12, 14, and 16 Effective Full Power Years (EFPY). In addition, corresponding changes would be made to Specification 3.6.A and the Bases Section to reflect the addition of the new curves. The changes are being proposed in order to comply with Generic Letter 88-11 and Regulatory Guide 1.99, Revision 2, which required reevaluation of the effect of neutron radiation on reactor vessel materials.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against the standards provided above and has supplied the following information.

Operation of the James A. FitzPatrick Nuclear Power Plant in accordance with the proposed amendment would not involve a significant hazards consideration as defined in 10 CFR 50.92, since it would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated. The effect of neutron radiation on reactor vessel materials has been recalculated using the latest NRC approved guidance (Regulatory Guide 1.99, Revision 2 methodology). The resultant changes to the pressure-temperature limits contained in Specification 3.6.A will preclude brittle fracture failure of the reactor vessel. The requirements on pressure-temperature limitations contained in FSAR Section 4.2 are unaffected.

Changes are also proposed to Section 3.6.A and its associated Bases to reflect the new pressure-temperature curves. These changes are editorial in nature and, as such, cannot involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from those previously evaluated. The proposed changes revise existing limitations to preclude reactor vessel brittle failure. They do not involve any physical modification to the plant, nor do they introduce any new failure modes.

The changes to Section 3.6.A and its Bases Section are editorial in nature; thus, they cannot create the possibility of a new or different kind of accident from those previously evaluated.

3. Involve a significant reduction in the margin of safety. The safety margins are increased because the new pressure-temperature limitations are more conservation (restrictive) and a more accurate method is used to predict radiation embrittlement.

The changes to Section 3.6.A and its Bases Section are editorial in nature; thus, they cannot involve a signficiant reduction in the margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination. Based on the review and the above discussion, the staff proposes to determine that the proposed changes do not involve a signficant hazards consideration.

Local Public Document Room location: State University of New York, Penfield Library, Reference and Documents Department, Oswego, New York 13126.

Attorney for licensee: Mr. Charles M. Pratt, 1633 Broadway, New York, New York 10019.

NRC Project Director: Robert A. Capra

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego, New York

Date of amendment request: January 12, 1990

Description of amendment request: The proposed amendment would remove the cycle-specific parameter limits from the Technical Specifications using the guidance supplied in Generic Letter No. 88-16. The proposed change would also reference a document called the Core Operating Limits Report (COLR) which would contain the limits instead. The limits and parameters, and any changes to them, would be reviewed and approved by the Plant Operating Review Committee (PORC) and the Safety Review Committee (SRC) prior to implementation. Use of the COLR would commence with startup for Cycle 10, scheduled for May 1990. The following parameters have been identified as cycle-specific and are being relocated to the COLR: Operating Limit Minimum Critical Power Ratio (MCPR), Flow Dependent MCPR Limits, Maximum Average Planar Linear Heat Generation Rate, Linear Heat Generation Rate, Flow-biased Average Power Range Monitor and Rod Block Monitor settings, and Fuel Design Features. In addition, the proposal would remove discussions contained in the Bases Sections which reference these limits.

Another proposed change would replace the core thermal power value specified in the Bases of Section 2.1 of 2535 MWt with the rated full power value of 2436 MWt. This would reflect use of a more accurate core thermal power technique for analyzing abnormal operational transients related to the Minimum Critical Power Ratio (MCPR) Operating Limit.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against the standards provided above and has supplied the following information.

Operation of the FitzPatrick plant in accordance with the proposed amendment would not involve a significant hazards consideration as defined in 10 CFR 50.92 since it would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

A. *Generic Letter 88-16 Changes:*

The proposed amendment merely moves cycle-specific parameter limits from the Technical Specifications to the Core Operating Limits Report. NRC approved methodologies will continue to be used as the basis for establishing the limits. The establishment of these limits in accordance with NRC-approved methodology and the incorporation of these results into the Core Operating Limits Report will ensure that proper steps have been taken to establish the values of these limits. Furthermore, the submittal of the Core Operating Limits Report to the NRC will allow the staff to continue to trend the values of these limits.

B. *Technical Specification Bases 2.1 Change:*

The use of 100 percent power in the analysis of abnormal operational transients using GEMINI methods has been reviewed and approved previously by the NRC for both generic and FitzPatrick specific application. Power level measurement uncertainties are accounted for adequately in the MCPR Operating Limit, and the level of confidence that the MCPR Safety Limit will not be violated as a result of a transient is not reduced.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

No safety-related equipment, function, or plant operation will be altered as a result of the proposed changes. The changes do not create any new accident mode. The level of document control and quality assurance applied to the preparation and use of the Core Operating Limits Report will be equivalent to that applied to Technical Specifications.

3. Involve a significant reduction in a margin of safety.

A. *Generic Letter 88-16 Changes:*

The proposed changes are administrative in nature and do not impact the operation of the plant in a manner that will reduce the margin of safety. The proposed amendment still requires operation within the limits determined using NRC-approved methods, and that appropriate remedial actions be taken if the limits are violated.

B. *Technical Specification Bases 2.1 Change:*

The MCPR Operating Limit continues to be determined using an approved methodology that conservatively accounts for power level measurement uncertainties. The same criterion for acceptable operation is maintained; that is, 99.9 percent of all fuel rods will not enter boiling transition in the event of the limiting transient. Therefore, the margin of safety is not reduced.

The staff as reviewed the licensee's no significant hazards consideration determination. Based on the review and the above discussion, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: State University of New York, Penfield Library, Reference and Documents Department, Oswego, New York 13126.

Attorney for licensee: Mr. Charles M. Pratt, 1633 Broadway, New York, New York 10019.

NRC Project Director: Robert A. Capra

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego, New York

Date of amendment request: January 12, 1990

Description of amendment request: The proposed amendment would reflect replacement of the Traversing Incore Probe (TIP) System during the 1990 Refueling Outage. As a result of the resulting system changes, two containment penetrations which are being cut and capped would be deleted from Tables 3.7-1 and 4.7-2. One of these penetrations to be deleted would reflect changing from a four channel system to a three channel system (i.e., from four drive units to three drive units). The other penetration to be deleted would reflect removal of the TIP nitrogen purge penetration which will no longer be needed with the upgraded system.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against the standards provided above and has supplied the following information:

Operation of the James A. FitzPatrick Nuclear Power Plant in accordance with this proposed amendment would not involve a significant hazards consideration, as defined in 10 CFR 50.92, since the proposed changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated. The changes update Tables 3.7-1 and 4.7-2 in support of a plant modification which caps penetrations X-35D

and X-35E. These penetrations will be leak tested during the integrated leak rate test of the containment in accordance with the requirements of 10 CFR 50, Appendix J. The capping of these penetrations does not impact the plant's accident analyses as documented in the FSAR or the NRC staff's SER.

2. Create the possibility of a new or different kind of accident from those previously evaluated. The capping of these two containment penetrations improves containment isolation because a passive barrier is less likely to fail than an active isolation valve. These changes do not introduce any new active failure modes and cannot create a new or different kind of accident.

3. Involve a significant reduction in the margin of safety. The proposed changes cap two penetrations which are no longer required by the TIP system. These changes do not reduce the margin of safety, since a passive barrier is a more reliable method of containment isolation then an active isolation valve.

The staff has reviewed the licensee's no significant hazards consideration determination. Based on the review and the above discussion, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: State University of New York, Penfield Library, Reference and Documents Department, Oswego, New York 13126.

Attorney for licensee: Mr. Charles M. Pratt, 1633 Broadway, New York, New York 10019.

NRC Project Director: Robert A. Capra

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego, New York

Date of amendment request: January 12, 1990

Description of amendment request: The proposed amendment would allow the trip level setpoints of the main steam line high radiation monitors to be increased during Operating Cycle 10 to accommodate testing of the in-core stress corrosion monitoring system. The proposed change would allow the setpoints to be raised within twenty-four hours prior to performance of the test, to three times the radiation level which is expected to result from the test, and then reduced to the original setpoints within twenty-four hours after the test is completed.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against the standards provided above and has supplied the following information.

Operation of the James A. FitzPatrick Nuclear Power Plant in accordance with this proposed amendment would not involve a significant hazards consideration, as defined in 10 CFR 50.92, since the proposed changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change to the setpoints of the main steam line high radiation monitor trip levels do not involve an increase in the probability or consequences of an accident previously evaluated, since the proposed test of the in-core stress corrosion monitoring system would be conducted only at power levels greater than 50 percent. Above 20 percent of rated power, there is significant margin between the calculated peak fuel enthalpy and the fuel cladding failure threshold enthalpy. Should power levels drop below 20 percent, the trip setpoints will be readjusted to the original setting. This will ensure the trip setpoints are at the original setting for power levels below 10 percent of rated power for which the control rod drop accident results become more severe.

2. Create the possibility of a new or different kind of accident from those previously evaluated. The proposed change to the setpoints does not create the possibility of a new or different kind of accident previously evaluated, because the only function of these monitors is to detect gross fission product release in the event of a control rod drop accident. Below 20 percent of rated power, the monitors would be at their original setting. Above 20 percent of rated power, there will be a significant margin to the fuel cladding failure threshold.

3. Involve a significant reduction in the margin of safety. The proposed change to the setpoints does not involve a significant reduction in the margin of safety because the monitor setpoint will only be changed above 20 percent of rated power. Above 20 percent of rated power, a significant margin of safety will still be provided.

The staff has reviewed the licensee's no significant hazards consideration determination. Based on the review and the above discussion, the staff proposes to determine that the proposed change does not involve a significant hazards consideration.

Local Public Document Room location: State University of New York, Penfield Library, Reference and Documents Department, Oswego, New York 13126.

Attorney for licensee: Mr. Charles M. Pratt, 1633 Broadway, New York, New York 10019.

NRC Project Director: Robert A. Capra

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego, New York

Date of amendment request: January 16, 1990

Description of amendment request: The proposed amendment would revise the crescent area unit cooler surveillance requirements to reflect the modifications being made to the cooler's control instrumentation during and following the March 1990 refueling outage. The modification involves elimination of the temperature indicator controllers which have been used to modulate temperature control valves in the service water system at the outlet of each cooler in response to crescent area temperature changes, and installation of temperature control switches which will cycle the cooler fans on and off in response to crescent area temperature changes. The change is designed to reduce the potential for silt accumulation at low service water flow caused by the operation of the temperature control valves.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety. The licensee has evaluated the proposed amendment against the standards provided above and has supplied the following information.

Operation of the James A. FitzPatrick Nuclear Power Plant in accordance with this proposed amendment would not involve a significant hazards consideration, as defined in 10 CFR 50.92, since the proposed change would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated. The change to Surveillance Requirement 4.11.B.2 is required

to reflect a planned plant modification. The modification will improve the reliability, performance and operability of the crescent area coolers. Since the crescent area cooler's maximum thermal capacity is unchanged, there is no increase in consequences to any existing accident scenarios which require cooler operation and, therefore, the change does not increase the probability of any existing accident scenarios.

2. Create the possibility of a new or different kind of accident from those previously evaluated. The new temperature control method replaces a constant air flow through the coolers with a constant water flow. Any failure on the liquid side would, therefore, be due to a failure of the Service Water or Emergency Service Water systems and would be the same as if the coolers had a throttled water flow rate. The operation of the fans, on the air side of the coolers, in an "as-needed" mode, as opposed to a constant air flow, does not alter the existing accident analyses. The system is either available (i.e., constantly on) or unavailable. This change, therefore, does not affect the plant's accident analyses as documented in the FSAR or the NRC staff's SER.

3. Involve a significant reduction in the margin of safety. The margin of safety is not affected by the change from air flow control to water flow control. The maximum heat capacity of the coolers remains unchanged. Their ability to maintain the Crescent Area's temperature is also unchanged. Operation of essential equipment in the Crescent Area is not affected by this change, nor is there any relaxation of controls or limitations.

The staff has reviewed the licensee's no significant hazards consideration determination. Based on the review and the above discussion, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: State University of New York, Penfield Library, Reference and Documents Department, Oswego, New York 13126.

Attorney for licensee: Mr. Charles M. Pratt, 1633 Broadway, New York, New York 10019.

NRC Project Director: Robert A. Capra

Public Service Electric & Gas Company, Docket No. 50-272, Salem Generating Station, Unit No. 1, Salem County, New Jersey

Date of amendment request: January 22, 1990

Description of amendment request: The licensee has proposed to add clarifying statements to the Surveillance Requirements specified in Table 4.3-13 of Technical Specification 3.3.3.9. Under Notation (1), No. 3, the statement "(Indication on instrument drawer in Control Equipment Room only for 1R12A)" would be added. Under Notation (2), No. 3, the statement "(Indication on instrument drawer in Control Equipment Room only for 1R16)" would be added. Under Notation (2), No. 4, the statement "(Applicable to 1R16 only)" would be added.

Basis for proposed no significant hazards consideration determination: The clarifying statements would change the Channel Functional Test response requirements associated with radiation monitors 1R12A and 1R16 to match their actual design. Radiation monitor 1R12A functions as an alternate to radiation monitor 1R41C when the Containment Purge and Pressure-Vacuum Relief is being used. In this application noble gas activity is monitored and alarm and automatic termination of the release is provided under certain conditions. The design is such that when radiation monitor 1R12A has a downscale failure it does not alarm in the control room; there is only indication of the failure on the instrument drawer in the Control Equipment Room. Like radiation monitor 1R41C, with a downscale failure on radiation monitor 1R12A, termination of the release does not automatically occur.

Radiation monitor 1R16 functions as an alternate to radiation monitor 1R41C when the Plant Vent Header System is being used. In this application noble gas activity is monitored and an alarm is provided under certain conditions. The design is such that when radiation monitor 1R16 has a downscale failure it does not alarm in the control room; there is only indication of the failure on the instrument drawer in the Control Equipment Room. In addition, if the instrument controls are not set in the operate mode there is an alarm annunciation in the control room for 1R16 only.

The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has analyzed the proposed amendment to determine if a significant hazards consideration exists.

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

The changes are administrative in that they correct the Technical Specifications so that the surveillance requirement for the 1R16 and 1R12A match the actual design of the Radiation Monitors. The monitors will still be proven capable of meeting the required functions and therefore be maintained OPERABLE in accordance with the Limiting Condition of Operations (LCO) requirements.

(2) Create the possibility of a new or different kind of accident from any previously analyzed.

The changes are only administrative and do not change the requirements to maintain the Radiation Monitors OPERABLE in accordance with the LCO requirements. Therefore, the change cannot create the possibility of a new or different kind of accident.

(3) Involve a significant reduction in a margin of safety.

The 1R16 and 1R12A Radiation Monitors will continue to be proven OPERABLE in accordance with the Technical Specification specified surveillance intervals. The changes to specification only clarify the method of verifying the performance of the CHANNEL FUNCTIONAL TEST and do not effect the capability of the instrumentation to isolate the release path on the appropriate high radiation signals. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The staff has reviewed the licensee's submittal and significant hazards analysis and concurs with the licensee's determination that the proposed amendment does not involve a significant hazards consideration. Therefore, the staff proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public library, 112 West Broadway, Salem, New Jersey 08079.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Conner and Wetterhahn, Suite 1050, 1747 Pennsylvania Avenue, NW., Washington, DC 20006.

NRC Project Director: Walter R. Butler

Southern California Edison Company, et al., Docket No. 50-206, San Onofre Nuclear Generating Station, Unit No. 1, San Diego County, California

Date of amendment request: December 12, 1989

Description of amendment request: The amendment application consists of Proposed Technical Specification Change No. 209 to Provisional Operating License No. DPR-13. Proposed Technical Specification Change No. 209 is a request to revise San Onofre Unit 1 Radiological Effluent Technical Specifications in accordance with the guidance in NRC Generic Letter 89-01. The proposed change allows for the implementation of programmatic controls for the Radiological Effluent

Technical Specifications and Radiological Environmental Monitoring Program in the administrative controls section of the Technical Specifications and the relocation of procedural details to the Offsite Dose Calculation Manual (ODCM) or to the Process Control Program (PCP).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis about the issue of no significant hazards consideration which is quoted below:

1. Will operation of the facility in accordance with the proposed change involve a significant increase in the probability or consequences of any accident previously evaluated?

Response: No

Operation of the facility in accordance with this proposed change has been reviewed by the NRC for generic implementation. The proposed Technical Specifications amendment does not reduce the level of radiological effluent control. Rather, it will provide programmatic controls for RETS consistent with regulatory requirements and allow relocation of the procedural details of the current RETS to the ODCM and PCP. These procedural details are not required to be included in the Technical Specifications by 10 CFR 50.36a. Future changes to these procedural details will be controlled by the ODCM and PCP Administrative Controls sections of the Technical Specifications. Records of reviews performed for changes made to the ODCM an PCP will be documented and retained for the duration of the operating license. Therefore, it is concluded that operation of the facility in accordance with this proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No

Operation of the facility in accordance with this proposed change has been reviewed by the NRC for generic implementation. The proposed change does not modify the configuration of the facility or its mode of operation. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any previously identified.

3. Will operation of the facility in accordance with the proposed change involve a significant reduction in a margin of safety?

Response: No

Operation of the facility in accordance with this proposed change has been reviewed by the NRC for generic implementation. The proposed change does not affect the operation of the facility nor modify any method of radiological effluent monitoring or analysis. Therefore, it is concluded that operation of the facility in accordance with this proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the analysis and, based on that review, it appears that the three criteria are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: General Library, University of California, P.O. Box 19557, Irvine, California 92713.

Attorney for licensee: Charles R. Kocher, Assistant General Counsel, and James Beoletto, Esquire, Southern California Edison Company, P.O. Box 800, Rosemead, California 91770.

NRC Project Director: Charles M. Trammell, Acting

Southern California Edison Company, et al., Docket No. 50-362, San Onofre Nuclear Generating Station, Unit No. 3, San Diego County, California

Date of application for amendments: February 12, 1990

Description of amendments request: The licensee has requested to amend the Technical Specifications to Facility Operating License No. NPF-15. This is a request to revise Surveillance Requirement 4.8.1.1.2.d of Technical Specification 3/4.8.1.1, "A.C. Sources". The proposed change would permit a one time extension during Cycle 4 from 24 months to 25 months of the surveillance interval for Surveillance Requirement 4.8.1.1.2.d, which requires certain maintenance and testing activities be performed.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided the following no significant hazards consideration determination:

1. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Extending the surveillance interval for these maintenance and testing activities by one month will not result in a significant increase in the probability of the DG failing to perform its intended function. Failure history for the DGs indicates that they are extremely reliable. In addition, schedules for other DG surveillances remain unaffected. These surveillances will serve to assure continued operability. Therefore, this proposed change will not result in a significant increase in the probability or consequences of a previously evaluated accident.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any previously evaluated?

Response: No.

The proposed revision only extends the surveillance interval by one month. There is no change to the plant or its manner of operation. Also, there are no changes to the surveillance acceptance criteria. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

Response: No.

DG failure and performance history indicates that system performance will not be adversely affected by the one time one month extension. In addition, continued operability checks will assure continued DG operability. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed this analysis and, based on the review, it appears that the three criteria are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: General Library, University of California, P.O. Box 19557, Irvine, California 92713.

Attorney for licensee: Charles R. Kocher, Assistant General Counsel, and James Beoletto, Esquire, Southern California Edison Company, P.O. Box 800, Rosemead, California 91770.

NRC Project Director: Charles M. Trammell, Acting

Virginia Electric and Power Company, Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of amendment request: February 1, 1990

Description of amendment request: The proposed changes would revise the North Anna Power Station, Units No. 1 and No. 2 (NA-1&2) Technical Specifications (TS). The changes would replace the Independent/Operational Event Review Group (IOERG) with a Management Safety Review Committee (MSRC) as the organization responsible for the offsite review function. In addition, the audits required by the TS that were the responsibility of the Quality Assurance Department (QAD) would now be performed under the cognizance of the MSRC. The changes would put the licensee's review and audit process in line with Standard Technical Specifications (STS); remove the responsibility for the overall review of station activities from staff personnel; and increase the licensee's senior management's involvement in the review and assessment of the nuclear plant activities. Also, the IOERG would not be dissolved and will be utilized by

the MSRC to perform reviews and assessments of plant activities.

The proposed TS changes would eliminate Sections 6.5.2 - Independent Operational Event Review Group, and 6.5.3 - Quality Assurance Audits in the present NA-1&2 TS. These sections would be replaced with the appropriate STS requirements for the offsite safety review and audit function (i.e., STS Section 6.5.2 - Company Nuclear Review and Audit Group). The following differences exist between the present NA-1&2 TS and the proposed NA-1&2 TS. The offsite review function would be the responsibility of the MSRC. The majority of the reviews would be performed by a subcommittee of qualified staff specialists and the results reported to the committee. Section 6.5.2.1, Function - The list of areas and activities to be reviewed by the MSRC would be updated to more closely parallel plant and engineering activities. Section 6.5.2.7, Reviews - The existing TS contain a requirement for the IOER staff to review the quality assurance (QA) audit program once per 12 months. This requirement was incorporated into the present TS because the QA Department is responsible for the TS-required audits, and this requirement provided the necessary interface for the two groups. These same TS-required audits would now be performed under the cognizance of the MSRC which will provide the required interface with the group performing the audit (the QA Department). Section 6.5.2.8, Quality Assurance Department - The Quality Assurance Department is currently responsible for the TS-required audits. In the proposed TS change the MSRC is required to have the audits performed under their cognizance. The MSRC will have an input to the audit schedule, the program attributes and activities audited. These audits will normally be performed by the Quality Assurance Department and the results reported to MSRC. However, three audits in the existing TS are not included in the STS list of required audits. These three audits are (1) the radiological environmental monitoring program, (2) the offsite dose calculation manual, and (3) the process control program and radwaste procedures. These audits would remain in the NA-1&2 TS to meet previous commitments by the licensee to the NRC. Section 6.5.2.10.a, Records - The requirement to prepare, approve, and forward MSRC minutes to the Senior Vice President - Nuclear within 14 days of each meeting would be revised to require the minutes to be prepared, approved and forwarded to the Senior Vice President - Nuclear prior to the next regularly scheduled meeting. Safety significant findings are reported to the Senior Vice President - Nuclear within 14 days as required by Section 6.5.2.10.b. Finally, in order to clarify that the Vice-Chairman can act as a voting member when the Chairman is presiding over a Station Nuclear Safety Oversight Committee (SNSOC) meeting, Section 6.5.1.2, Composition of SNSOC, would be modified to include the Vice-Chairman as a member.

In addition to the above, the proposed TS change deletes or modifies titles, as necessary, to reflect a recent reorganization, in which certain responsibilities have changed. The changes are as follows: The title for the Senior Vice President - Power has changed to Senior Vice President - Nuclear. This change is in Sections 6.1, 6.2 and 6.5. The title for the Vice President - Nuclear has changed to Vice President - Nuclear Operations. This change is throughout Sections 6.2, 6.5, 6.6 and 6.7. The Superintendent - Technical Services position had been eliminated. These functions have been charged to the Superintendent of Maintenance and Superintendent of Engineering. Therefore, that position is being eliminated from the membership of SNSOC (Section 6.5.1.2). The title for the Superintendent - Health Physics has changed to Superintendent - Radiological Protection (Section 6.5.1.2). Training is now the functional responsibility of the Manager - Nuclear Training and would changed to reflect that in Section 6.4.1.

Basis for proposed no significant consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed changes in accordance with the criteria above and has made the following determination that the proposed changes do not involve a significant hazards consideration as defined in 10 CFR 50.92 because the changes would not:

1. Involve a significant increase in the probability of occurrence or consequences of any accident or malfunction of equipment which is important to safety and which has been evaluated in the USFAR. This modification is of an organizational nature and has no impact on plant design or operation. No plant equipment or operational procedures are being modified.

2. Create the possibility of a new or different type of accident from those previously evaluated in the safety analysis report. The organizational and plant activities review changes have no impact on plant design or operation and in no way impact the accidents previously analyzed in the safety analysis report. Therefore no new or different kind of accident is created.

3. Involve a significant reduction in the margin of safety. No physical plant modifications, changes in plant operations, or changes in accident analysis assumptions are being made. Therefore, the accident analysis assumptions remain bounding and safety margins remain unchanged.

The staff has reviewed the licensee's no significant hazards consideration determination analysis and agrees with the above conclusion. Therefore, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: The Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, P.O. Box 1535, Richmond, Virginia 23212

NRC Project Director: Herbert N. Berkow

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virgnia

Date of amendment requests: December 11, 1989

Description of amendment requests: The proposed change would delete Technical Specification 5.3.A.7, which states that up to 10 grams of enriched fissionable material may be used either in the core or available on site, in the form of fabricated neutron flux detectors, for the purpose of monitoring core neutron flux. The licensee believes that the 10-gram figure was incorporated into the original Technical Specifications (TS) for information purposes only and was not intended to limit the quantity of special nuclear material used in neutron flux detectors. This conclusion is supported by the absence of a corresponding limiting condition for operation and the fact that the licensee conducted an investigation to determine the source of the TS and was unable to uncover any correspondence that referenced the figure. Also, Standard Technical Specifications in use at other facilities do not include a corresponding

limitation or discussion of the quantity of special nuclear material used on site.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee provided the following evaluation with respect to these three criteria.

The proposed change to delete Technical Specification 5.3.A.7 is made to prevent original design information from being interpreted as a limiting condition. The proposed deletion is consistent with Standard Technical Specifications and the intent of Section 2.C of the Operating License. This action does not result in a significant hazards consideration as defined in 10 CFR 50.92.

1. The proposed change does not significantly increase the probability of occurrence or the consequences of an accident previously evaluated. The proposed change to the Technical Specifications only deletes a reference to the quantity of special nuclear material used as neutron flux detectors. The number of detectors, their operation, and the control of their associated special nuclear material remains unchanged. Thus the probability of occurrence of any accident previously evaluated remains unchanged. The total quantity of special nuclear material employed in neutron flux detectors is not considered in, and therefore has no effect on, any accident previously evaluated in the [Updated Final Safety Analysis Report]. As previously stated, the number of detectors, their operation, and the control of their associated special nuclear material is not affected by the proposed change. Therefore, the consequences of any accident previously evaluated is unaffected.

2. The proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed change does not involve a physical change to the facility or its operating procedures. Also, the quantity of special nuclear material used in neutron flux detectors will remain at only those amounts as required and allowed by the Facility Operating Licenses. Thus, no possibility is created for any accident of a new or different kind.

3. The proposed change does not involve a significant reduction in a margin of safety. No accident analysis or limiting condition of operation assumes a specific quantity of special nuclear material is used in neutron flux detectors. The number of detectors, their operation, and the control of their associated special nuclear material will not be affected. Accordingly, the safety function of any neutron flux detector will be unaffected by this change and no reduction in a margin of safety will result.

Based on the staff's review of the licensee's evaluation, the staff agrees with the licensee's conclusions as stated above. Therefore, the staff proposes to determine that the proposed amendments do not involve a significant consideration.

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, Post Office Box 1535, Richmond, Virginia 23213.

NRC Project Director: Herbert N. Berkow

PREVIOUSLY PUBLISHED NOTICES OF CONSIDERATION OF ISSUANCE OF AMENDMENTS TO OPERATING LICENSES AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of application for amendment: January 29, 1990

Brief description of amendment: The amendment would revise the refueling shutdown margin requirement from greater than or equal to 10% delta K/K to greater than or equal to 5% delta K/K. Specification 1.j would be changed to revise the definition of refueling mode. Specification 3.8.a.5 would be revised to insert the words "and a shutdown margin of greater than or equal to 5% delta K/K" and to make the boron analysis requirement a separate sentence. The corresponding basis sections would be revised accordingly.

Date of individual notice in **Federal Register:** February 15, 1990 (55 FR 5526)

Expiration date of individual notice: March 19, 1990.

Local Public Document Room location: University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

Arizona Public Service Company, et al, Docket Nos. STN 50-528, STN 50-529 and STN 50-530, Palo Verde Nuclear Generating Station, Units 1, 2 and 3, Maricopa County, Arizona

Date of application for amendments: October 24, 1989

Brief description of amendments: The amendments revise Palo Verde Nuclear Generating Station (PVNGS) Technical Specifications Section 3/4.3.1, "Reactor Protective Instrumentation," by changing Table 3.3-1 to add a new Action statement for the Excore Log Power and RPS Matrix Logic Channels.

Date of issuance: February 13, 1990

Effective date: February 13, 1990

Amendment Nos.: 46, 33 and 21

Facility Operating License Nos. NPF-41, NPF-51 and NPF-74: Amendments changed the Technical Specifications.

Date of initial notice in **Federal Register:** January 10, 1990 (55 FR 0928). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 13, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room location: Phoenix Public Library, Business and Science Division, 12 East McDowell Road, Phoenix, Arizona 85004.

Arizona Public Service Company, et al, Docket No. STN 50-528, Palo Verde Nuclear Generating Station, Unit 1, Maricopa County, Arizona

Date of application for amendment: October 25, 1989

Brief description of amendment: The amendment revised Surveillance Requirement 4.5.2.h of Technical Specifications 3/4.5.2, "Emergency Core Cooling systems," by specifying minimum flow requirements during simultaneous hot leg and cold leg injection. In addition, a maximum allowable pump flowrate was specified to ensure pump protection. Corresponding editorial changes were made to Bases 3/4.5.2, as well as correction of minor typographical errors.

Date of issuance: February 22, 1990

Effective date: February 22, 1990

Amendment No.: 47

Facility Operating License No. NPF-41: Amendment changed the Technical Specifications.

Date of initial notice in **Federal Register:** January 10, 1990 (55 FR 0928). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 22, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room location: Phoenix Public Library, Business and Science Division, 12 East McDowell Road, Phoenix, Arizona 85004.

Boston Edison Company, Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of application for amendment: December 7, 1989

Brief description of amendment: This amendment replaces the existing Pilgrim Technical Specification definition of surveillance frequency with a new definition which is consistent with the guidance provided in Generic Letter (GL) 89-14, "Line-Item Improvements in Technical Specifications - Removal of the 3.25 Limit on Extending Surveillance Intervals." The proposed change also moves the definition of an operating cycle currently included in the definition of surveillance frequency to the definition to surveillance interval. This places the definition under the proper heading and adds to the clarity of the definition of the surveillance frequency.

Date of issuance: February 12, 1990

Effective date: February 12, 1990 and shall be implemented within 30 days

Amendment No.: 123

Facility Operating License No. DPR-35: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 10, 1990 (55 FR 929). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 12, 1990.

No significant hazards consideration comments received: No

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Carolina Power & Light Company, et al., Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendments: October 26, 1988, as supplemented March 30, 1989, June 13, 1989 and August 4, 1989.

Description of amendments: The amendments revise the Technical Specifications (TS) Section 3/4 4.6, "Pressure/Temperature Limits," to modify the current TS wording, the Limiting Conditions for Operation, and Pressure/Temperature (P/T) Limit Curves to make them consistent with the guidance contained in Generic Letter 88-11, "NRC Position on Radiation Embrittlement of Reactor Vessel Materials and Its Impact On Plant Operations," dated July 12, 1988, which requires that the nil-ductility reference temperature of the reactor material be calculated based on Regulatory Guide 1.99, Revision 2. Repagination of TS Sections 3/4.4.6, 3/4.4.7, and 3/4.4.8, is included to accommodate the three additional pages resulting from this proposed amendment.

Date of issuance: February 15, 1990

Effective date: February 15, 1990

Amendment Nos.: 140 and 172

Facility Operating License Nos. DPR-71 and DPR-62. Amendments revise the Technical Specifications.

Date of initial notice in **Federal Register:** September 20, 1989 (54 FR 38760). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 15, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Carolina Power & Light Company, Docket No. 50-261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of application for amendment: August 4, 1989, as supplemented November 18, 1989.

Brief description of amendment: The amendment consists of changes to the Technical Specifications to increase the allowable fuel enrichment in the reactor, the new fuel storage racks and the spent fuel storage pit from 3.9 weight percent (w/o) to 4.2 plus 0.05 (nominal 4.2) w/o.

Date of issuance: February 9, 1990

Effective date: February 9, 1990

Amendment No. 125

Facility Operating License No. DPR-23. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** December 13, 1989 (54 FR 51253). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 9, 1990

No significant hazards consideration comments received: No

Local Public Document Room location: Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29535

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of application for amendment: September 30, 1988

Brief description of amendment: This amendment revises the Technical Specification Section 3/4.7.1.5 for the Ultimate Heat Sink to better reflect the

as-built conditions of the plant and the design basis.

Date of issuance: February 20, 1990

Effective date: February 20, 1990

Amendment No.: 51

Facility Operating License No. NPF-43. The amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** May 17, 1989 (54 FR 21303). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 20, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Duke Power Company, Dockets Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: September 15, 1989

Brief description of amendments: The amendments (1) make two changes to Technical Specification (TS) Table 3.3-4, Engineered Safety Features Actuation System Instrumentation Trip Setpoints, to correct and better define a trip setpoint and allowable value, and (2) change TS Table 3.3-5, Engineered Safety Features Response Times, to add appropriate response times to three items and revise the present value of the response time of a fourth item.

Date of issuance: February 10, 1990

Effective date: February 10, 1990

Amendments Nos.: 102, 84

Facility Operating Licenses Nos. NPF-9 and NPF-17: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 10, 1990 (55 FR 931). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 10, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

Duke Power Company, Dockets Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: October 30, 1989

Brief description of amendments: The amendments modify Technical Specifications (TSs) 4.9.8.1 and 4.9.8.2 and their associated Bases to: (1) reduce the required Residual Heat Removal system flow rate during Mode 6 (refueling) operation, when the Reactor Coolant System (RCS) is partially drained, from greater than or equal to 3000 gpm to greater than or equal to 1000 gpm, (2) add a Surveillance Requirement to ensure that the RCS temperature is maintained no more than 140° F, and (3) provide the technical justification for the revision in TS Bases 3/4.9.8.

Date of issuance: February 14, 1990

Effective date: February 14, 1990

Amendments Nos.: 103 and 85

Facility Operating Licenses Nos. NPF-9 and NPF-17: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 10, 1990 (55 FR 932). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 14, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

Duquesne Light Company, Docket No. 50-412, Beaver Valley Power Station, Unit No. 2, Shippingport, Pennsylvania

Date of application for amendment: August 25, 1989

Brief description of amendment: The amendment revises the Technical Specifications to delete all set point, operability and surveillance requirements on the steam/feedwater mismatch trip function.

Date of issuance: February 20, 1990

Effective date: February 20, 1990

Amendment No.: 27

Facility Operating License No. NPF-73. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 4, 1989 (54 FR 40927). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 20, 1990.

No significant hazards consideration comments received: No

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

GPU Nuclear Corporation, Docket No. 50-320, Three Mile Island Nuclear Station, Unit No. 2, (TMI-2), Dauphin County, Pennsylvania

Date of application for amendment: December 27, 1988, supplemented July 13, 1989

Brief description of amendment: The amendment modified Appendix A Technical Specifications relating to unit staff qualifications once the facility enters Mode 2.

Date of Issuance: February 21, 1990

Effective date: February 21, 1990

Amendment No.: 37

Facility Operating License No. DPR-73. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 29, 1989 (54 FR 49130). The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated February 21, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-424 and 50-425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of application for amendments: November 21, 1989

Brief description of amendments: The amendments enable non-borated chemical additions to be made to the Reactor Coolant System (RCS) under administrative control during Mode 5b (cold shutdown, loops not filled) and Mode 6 (refueling) using a flow path via the Reactor Makeup Water Storage Tank (RMWST).

Date of issuance: February 20, 1990

Effective date: February 20, 1990

Amendment Nos.: 28, 9

Facility Operating License Nos. NPF-68 and NPF-81: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 27, 1989 (54 FR 53205). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 20, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room location: Burke County Library, 412 Fourth Street, Waynesboro, Georgia 30830

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-424 and 50-425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of application for amendments: August 25, 1989.

Brief description of amendments: The amendments will revise the rod insertion limits to allow a withdrawn range of 222 steps to 231 steps. The change minimizes control rod wear

caused by fretting against upper internal control rod guide surfaces. Additionally, the amendments revise the TSs to allow the use of an absorber material of either hafnium or silver-indium-cadmium.

Date of issuance: February 20, 1990

Effective date: February 20, 1990

Amendments Nos.: 29, 10

Facility Operating Licenses Nos. NPF-68 and NPF-81: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 15, 1989 (54 FR 47602). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 20, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room location: Burke County Library, 412 Fourth Street, Waynesboro, Georgia 30830.

Gulf States Utilities Company, Docket No. 50-458, River Bend Station, Unit 1 West Feliciana Parish, Louisiana

Date of amendment request: November 17, 1989.

Brief description of amendment: The amendment modified Technical Specification 4.0.2 to remove the provision that limits the combined time interval for three consecutive surveillances to less than 3.25 times the specified interval. Bases Section 4.0.2 was also updated to reflect this change.

Date of issuance: February 22, 1990

Effective date: February 22, 1990

Amendment No.: 41

Facility Operating License No. NPF-47. The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 27, 1989 (54 FR 53206). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 22, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803.

Illinois Power Company, Docket No. 50-461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Date of application for amendment: June 30, 1989

Description of amendment request: The change revises the definition of Core Alteration to exclude the normal movement of LPRMs or the undervessel replacement of SRMs, IRMs, LPRMs, TIPs, or special moveable detectors from being considered a core alteration.

Date of issuance: February 22, 1990

Effective date: February 22, 1990

Amendment No.: 32

Facility Operating License No. NPF-62. The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 29, 1989 (54 FR 49131). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 22, 1990.

No significant hazards consideration comments received: No

Local Public Document Room location: The Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

Indiana Michigan Power Company, Dockets Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Units Nos. 1 and 2, Berrien County, Michigan

Date of application for amendments: May 30, 1986 and supplemented on June 23, 1986, February 25, March 2, and June 16, 1988, and January 23, 1989.

Brief description of amendments: These amendments would require portions of the system used to achieve safe shutdown (following a fire) via cross ties to be operable regardless of the unit's operating status, as long as the opposite unit is in Mode 1, 2, 3 or 4 (except for the auxiliary feedwater system which is not required to be operable in Mode 4).

The enclosed safety evaluation in support of the above amendments also provides approval for a proposed change to the TS Bases that would suspend the requirements for fire watch in areas where CO_2 discharge has occurred or is likely to occur.

Date of issuance: February 9, 1990

Effective date: February 9, 1990

Amendments Nos.: 131 and 116

Facility Operating Licenses Nos. DPR-58 and DPR-74. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 16, 1986 (51 FR 25770) and November 30, 1989 (54 FR 49369). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 9, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room location: Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Indiana Michigan Power Company, Dockets Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Units Nos. 1 and 2, Berrien County, Michigan

Date of application for amendments: February 6, 1989 (Revised November 10, 1989).

Brief description of amendments: The licensee proposes to modify fire protection technical specifications (TS) for Unit 1 and Unit 2 to provide alternatives for complying with TS action statements other than establishing a fire watch (e.g., reliance on sprinkler systems when detection instrumentation is inoperable and vice versa). Other changes as described in the Notice of Consideration of Issuance published on November 29, 1989 (54 FR 49131) would also be made.

Date of issuance: February 8, 1990

Effective date: February 8, 1990

Amendments Nos.: 130 and 115

Facility Operating Licenses Nos. DPR-58 and DPR-74. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 29, 1989 (54 FR 49131). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 8, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room location: Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Louisiana Power and Light Company, Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: August 23 and October 16, 1989

Brief description of amendment: The amendment revised the Technical Specifications by replacing references to Appendix A of 10 CFR Part 55 and the March 28, 1980 letter to licensees with a new reference to the current 10 CFR Part 55. The amendment also corrects several administrative mistakes and errors.

Date of issuance: February 21, 1990

Effective date: February 21, 1990

Amendment No.: 61

Facility Operating License No. NPF-38. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 18, 1989 (54 FR 42858) and November 29, 1989 (54 FR 49133).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 21, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

Philadelphia Electric Company, Docket No. 50-353, Limerick Generating Station, Unit 2, Montgomery County, Pennsylvania

Date of application for amendment: November 3, 1989

Brief description of amendment: This amendment revised the TSs in response to NRC Generic Letter (GL) 88-06 "Removal of Organization Charts from Technical Specification Administrative Control Requirements" to: (1) remove the onsite and offsite organizational charts from TS Section 6.2.1 and 6.2.2, respectively and (2) make certain miscellaneous administrative changes in Section 6 of the TSs (Administrative Control) related to revisions to the corporate organization.

Date of issuance: February 8, 1990

Effective date: February 8, 1990

Amendment No.: 2

Facility Operating License No. NPF-85. This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 13, 1989 (54 FR 51256). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 8, 1990.

No significant hazards consideration comments received: No

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Portland General Electric Company, Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon

Date of application for amendment: December 2, 1986, as supplemented December 19, 1986, January 15, 1988 and September 13, 1988.

Brief description of amendment: The amendment modified paragraph 2.D of the license to require compliance with the amended Physical Security Plan. This plan was amended to conform to the requirements of 10 CFR 73.55. Consistent with the provisions of 10 CFR 73.55, search requirements must be implemented within 60 days and miscellaneous amendments within 180 days from the effective date of this amendment.

Date of issuance: February 13, 1990

Effective date: February 13, 1990

Amendment No.: 157

Facilities Operating License No. NPF-1: Amendment revised the license.

Date of initial notice in **Federal Register:** September 6, 1989 (54 FR 37051). The Commission's related evaluation of the amendment is contained in a Safeguards Evaluation Report dated February 13, 1990.

No Significant hazards consideration comments received: No.

Local Public Document Room location: Portland State University Library, 731 S.W. Harrison St., Portland Oregon 97207

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: May 31, 1989

Brief description of amendment: The amendment modifies and updates Technical Specification Table 3.7-1, "Process Pipeline Penetrating Primary Containment," for clarity and to reflect the as-built condition of the plant.

Date of issuance: February 13, 1990

Effective date: February 13, 1990

Amendment No.: 150

Facility Operating License No. DPR-59: Amendment revised the Technical Specification.

Date of initial notice in **Federal Register:** The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 13, 1990.

No significant hazards consideration comments received: No

Local Public Document Room location: Penfield Library, State University College of Oswego, Oswego, New York.

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: May 31, 1989

Brief description of amendment: This amendment clarifies the required actions which must be performed when operating with the containment cooling subsystem in a degraded mode.

Date of issuance: February 15, 1990

Effective date: February 15, 1990

Amendment No.: 151

Facility Operating License No. DPR-59: Amendment revised the Technical Specification.

Date of initial notice in **Federal Register:** July 12, 1989 (54 FR 29409). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 15, 1990.

No significant hazards consideration comments received: No

Local Public Document Room location: Penfield Library, State University College of Oswego, Oswego, New York.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of application for amendment: November 20, 1989

Brief description of amendment: The change requested a revision to the Technical Specification 4.0.2 Surveillance Requirements to remove the 3.25 limit on extending surveillance intervals.

Date of issuance: February 12, 1990

Effective date: February 12, 1990

Amendment No.: 83

Facility Operating License No. NPF-12. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** December 27, 1989 (54 FR 53211). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 12, 1990.

No significant hazards consideration comments received: No

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of application for amendment: July 21, 1989, as supplemented September 21, 1989 and December 11, 1989.

Brief description of amendment: The amendment revised Technical Specification (TS) 3/4.8.1, A. C. Sources. This revision changes the required volume of oil stored for each emergency diesel generator to 47,100 gallons per fuel storage system while operating and to 33,200 gallons per fuel storage system while shutdown.

Date of issuance: February 12, 1990

Effective date: February 12, 1990

Amendment No.: 84

Facility Operating License No. NPF-12. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** January 10, 1990 (55 FR 938). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 12, 1990

No significant hazards consideration comments received: No

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of application for amendment: November 20, 1989

Brief description of amendment: This amendment deletes Item 14, "Reactor Building Level," from Tables 3.3-10 and 4.3-7 and modifies Item 13 to read "Reactor Building/RHR Sump Level."

Date of issuance: February 12, 1990

Effective date: February 12, 1990

Amendment No.: 85

Facility Operating License No. NPF-12. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** January 10, 1990 (55 FR 941). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 12, 1990.

No significant hazards consideration comments received: No

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of application for amendment: August 10, 1989, as supplemented December 11, 1989.

Brief description of amendment: The amendment renumbers Technical Specification 3/4.7.11, Area Temperature Monitoring, to 3/4 7.9.

Date of issuance: February 12, 1990

Effective date: February 12, 1990

Amendment No.: 86

Facility Operating License No. NPF-12. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** January 10, 1990 (55 FR 939). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 12, 1990.

No significant hazards consideration comments received: No

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of application for amendment: July 24, 1989, as supplemented October 27 and December 11, 1989 and January 5, 1990.

Brief description of amendment: The amendment revises the surveillance requirements of Technical Specification 3/4.4.5, Steam Generator, to extend the application of the F* tube plugging criterion for the life of the steam generator.

Date of issuance: February 23, 1990

Effective date: February 23, 1990

Amendment No.: 87

Facility Operating License No. NPF-12. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** October 18, 1989 (54 FR 42866). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 23, 1990. The supplemental submittals did not change the amendment request or affect the initial determination.

No significant hazards consideration comments received: No

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180.

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: October 5, 1989 (TS 89-39)

Brief description of amendments: These amendments modify Sections 1.0, Definitions, and 3/4.6.1, Primary Containment, of the Sequoyah Nuclear Plant (SQN), Units 1 and 2, Technical Specifications (TSs). These changes revise the definition of containment integrity and the Surveillance Requirements (SRs) 4.6.1.1.b and 4.6.1.2.f for containment air locks. The changes modify the requirements for containment air locks to be consistent with the NRC's NUREG-0452, "Standard Technical Specifications for Westinghouse Pressurized Water Reactors." The containment air locks would be required to be "in compliance with the requirements of Specification 3.6.1.3" instead of being required to be "operable per Specification 3.6.1.3."

Date of issuance: February 16, 1990

Effective date: February 16, 1990

Amendment Nos.: 130, 117

Facility Operating Licenses Nos. DPR-77 and DPR-79. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 1, 1989 (54 FR 46159). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 16, 1990.

No significant hazards consideration comments received: No

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: September 6, 1989

Brief description of amendment: The amendment relocated the existing procedural details of the current Radiological Effluent Technical Specifications (RETS) to the Offsite Dose Calculation Manual (ODCM), and procedural details for the solid radioactive wastes to the Process Control Program (PCP). The amendment also incorporates the respective programmatic controls into the Administrative Controls section of the Technical Specifications.

Date of issuance: February 12, 1990

Effective date: February 12, 1990

Amendment No.: 50

Facility Operating License No. NPF-30. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** Novmeber 1, 1989 (54 FR 46161). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 12, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251 and the John M. Olin Library, Washington University, Skinker and Lindell Boulevards, St. Louis, Missouri 63130.

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: November 30, 1989

Brief description of amendment: The modifications revised Technical Specifications 4.9.8.1 and 4.9.8.2 to decrease the required flow rate of the running Residual Heat Removal (RHR) pump. In addition, modifications revised Technical Specification 3.4.1.4.2 to change a note at the bottom of page 3/4.4-6 to add the additional criterion of ensuring the reactor vessel water level is above the vessel flange before the running RHR pump can be stopped in MODE 5 with the reactor loops not filled. Finally, modifications revised Technical Specification 3.5.4, changing the mode applicability so that the safety injection pumps would be immediately

available to the operators should RHR cooling be lost when the reactor coolant level is below the vessel flange.

Date of Issuance: February 21, 1990

Effective date: February 21, 1990

Amendment No.: 35

Facility Operating License No. NPF-42. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: January 10, 1990 (55 FR 9421). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 21, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room Location: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND FINAL DETERMINATION OF NO SIGNIFICANT HAZARDS CONSIDERATION AND OPPORTUNITY FOR HEARING (EXIGENT OR EMERGENCY CIRCUMSTANCES)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for a Hearing. For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendments. By April 6, 1990, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public

Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room for the particular facility involved.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (*Project Director*): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: February 5, 1990

Brief description of amendments: The amendments revise the allowable Lift Setting tolerance, for Catawba Unit 2, from 271% to 271.5% in TS Table 3.7-2 for the Steam Line Safety Valves until the first forced outage, reactor trip, or refueling outage. The requested revision resulted from the development of a new equipment constant by the vendor, Dresser Industries. Lift settings for Catawba Unit 1 safety valves were established using the new equipment constant during the refueling outage that began on January 26, 1990. Thus, Unit 1 is in compliance with the current TS requirements and is affected only administratively because it shares a common TS document with Unit 2

Date of issuance: February 15, 1990

Effective date: February 25, 1990

Amendments, Nos.: 70 and 64

Facility Operating Licenses Nos. NPF-35 and NPF-52. Amendments revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: No

The Commission's related evaluation of the amendments, finding of emergency circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated February 15, 1990.

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

NRC Project Director: David B. Matthews

Washington Public Power Supply System, Docket No. 50-397, Nuclear Project No. 2, Benton County, Washington

Date of amendment request: January 3, January 4 and February 2, 1990

Brief description of amendment: This amendment revises Technical Specification 3/4.8.1 "A.C. Sources" by adding a footnote to surveillance requirement 4.8.1.1.2.d.2 providing an alternative method of performing the surveillance until May 30, 1990. Prior to the amendment request, the fuel oil for the emergency diesel generators was sampled and tested for particulates at 92 day intervals in accordance with ASTM D2274-70. The amendment requires that the oil be sampled and tested at 31 day intervals in accordance with ASTM 2276-78, Method A.

Date of Issuance: February 22, 1990

Effective date: February 22, 1990

Amendment No.: 76

Facility Operating License No. NPF-21: Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: No.

The Commission's related evaluation of the amendment, finding of emergency circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated February 22, 1990.

Attorney for licensee: Nicholas S. Reynolds, Esq., Bishop, Cook, Purcell and Reynolds, 1400 L Street, NW, Washington, DC 20005-3502 and G. E. Doupe, Esq., Washington Public Power Supply System, P.O. Box 968, 3000 George Washington Way, Richland, Washington 99352

Local Public Document Room location: Richland City Library, Swift and Northgate Streets, Richland, Washington 99352.

NRC Project Director: Charles M. Trammell III, Acting

Washington Public Power Supply System, Docket No. 50-397, Nuclear Project No. 2 Benton County, Washington

Date of amendment request: February 14, 1990

Brief description of amendment: 3.4.2, "Safety Relief Valves" and to Tables

3.3.7.5-1, "Accident Monitoring Instrumentation Surveillance Requirements," to allow a single acoustic monitor on each of two SRVs to be inoperable until the plant shuts down for its next scheduled refueling outage or until the first forces outage of sufficient duration to effect repair, whiceve occurs first. The note on Table 4.3.7.5-1 specified additional compensatory sampling of the tailpipe temperature of the two affected valves prior to the amendment request.

Date of issuance: February 20, 1990

Effective date: February 20, 1990

Amendment No.: 75

Facility Operating License No. NPF-21: Amendment revised the Technical Specifications.

Public comments request as to proposed no significant hazards consideration: No

The Commission's related evaluation of the amendment, finding of emergency circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated February 20, 1990

Attorney for licensee: Nicholas S. Reynolds, Esq., Bishop, Cook, Purcell and Reynolds, 1400 L Street, NW, Washington, DC 20005-3502 and G. E. Doupe, Esq., Washington Public Power Supply System, P.O. Box 968, 3000 George Washington Way, Richland, Washington 99352.

Local Public Document Room location: Richland City Library, Swift and Northgate Streets, Richland, Washington 99352.

NRC Project Director: Charles M. Trammell, Acting

Dated at Rockville, Maryland, this 28th day of February, 1990.

For the Nuclear Regulatory Commission

Gus C. Lainas,

Acting Director, Division of Reactor Projects - I/II, Office of Nuclear Reactor Regulation

[Doc. 90-5030 Filed 3-6-90; 8:45 am]

BILLING CODE 7590-01-D

Advisory Committee on Reactor Safeguards Subcommittee on Severe Accidents; Meeting

The Subcommittee on Severe Accidents will hold a meeting on March 21, 1990, room P-422, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, March 21, 1990—8:30 a.m. until the conclusion of business.

The Subcommittee will discuss the staff's Severe Accident Research Plan (SARP).

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee along with any of their consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Dean Houston (telephone 301/492-9521) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days bebore the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: February 27, 1990.

Gary R. Quittschreiber,

Chief, Project Review Branch No. 2.

[FR Doc. 90-5123 Filed 3-6-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-395]

South Carolina Electric & Gas Co., South Carolina Public Service Authority; (Virgil C. Summer Nuclear Station, Unit No. 1); Exemption

I.

South Carolina Electric & Gas Company and South Carolina Public Service Authority (the licensees), are the holders of Facility Operating License No. NPF-12, which authorizes operation of the Virgil C. Summer Nuclear Station, Unit No. 1. The license provides, among other things, that the licensees are subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The facility consists of a pressurized water reactor at the licensees' site located in Fairfield County, South Carolina.

II.

By letter dated November 9, 1989 the licensees requested an exemption under 10 CFR 55.11 from 10 CFR 55.59(a) in order to extend the V.C. Summer Nuclear Station annual requalification examination from March 1990 to May 1990 and the end of the 24 month requalification program cycle from March 1991 to May 1991. Currently the annual requalification testing is required by March 1990 and the 24 month requalification program cycle ends in March 1991. The exemption was requested to align the Summer Station with the new NRC national examination schedule. Generic Letter 89-03, "Operating Licensing National Examination Schedule" provided an examination schedule for all licensees to equalize NRC examiners workload due to limited NRC resources. A November and May examination schedule was established for Summer. This one-time exemption will result in a permanent adjustment to the 24 month requalification cycle and the annual requalification examination.

III.

Pursuant to 10 CFR 55.11, "The Commission may, upon application by an interested person or upon its own initiative, grant such exemptions from the requirements of the regulations in this part (10 CFR part 55), as it determines are authorized by law, and will not endanger life or property and are otherwise in the public interest."

The proposed exemption would align the Summer requalification cycle and the annual requalification examination with the NRC national examination schedule. This exemption will not increase the risk of facility accidents. Thus, post-accident radiological release will not be greater than previously determined, nor does the proposed exemption otherwise affect the quantity of radiological plant effluents, nor result in any significant increase in occupational exposure. Likewise, the exemption does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant radiological or non-radiological environmental impacts associated with the proposed exemption.

IV.

Accordingly, the Commission has determined, pursuant to 10 CFR 55.11, that an exemption as described in section III is authorized by law, will not endanger life or property, and is otherwise in the public interest. Therefore, the Commission hereby grants the following exemption:

South Carolina Electric & Gas Company and South Carolina Public Service Authority are exempt from the requirements of 10 CFR 55.59(a) for a period of March 1990 to May 1990 with respect to the annual requalification examination and for a period of March 1991 to May 1991 with respect to the 24 month requalification program.

Pursuant to 10 CFR 51.32 the Commission determined that the granting of this exemption will not result in any significant environmental impact (55 FR 6849).

For further details with respect to his action, see the licensees' request dated November 9, 1989, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180.

This exemption is effective upon issuance.

Dated at Rockville, Maryland this 27th day of February, 1990.

For the Nuclear Regulatory Commission.

Gus C. Lainas,

Acting Director, Division of Reactor Projects I/II Office of Nuclear Reactor Regulation.

[FR Doc. 90-5159 Filed 3-6-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-361 and 50-362]

Southern California Edison Co. et al. Issuance of Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-10 and NPF-15, issued to Southern California Edison Company et al. (the licensee), for operation of the San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, located in San Diego County, California.

Identification of Proposed Action

The amendment would consist of an addition to the Technical Specifications (TS) that would authorize the storage capacity of the spent fuel pool at 1542 spent fuel assemblies.

The amendment to the TS is responsive to the licensee's application dated April 19, 1989, as supplemented by letters dated May 4, May 19, June 1, June 2, September 22, November 12, and November 9, 1989, January 18, February 9, and February 16, 1990. The NRC staff has prepared an Environmental Assessment of the proposed action, "Environmental Assessment by the Office of Nuclear Reactor Regulation Relating to the Expansion of the Spent Fuel Pool, Facility Operating License Nos. NPF-10 and NPF-15, Southern California Edison Company et al., San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, Docket Nos. 50-361 and 50-362.

Summary of Environmental Assessment

The "Final Generic Environmental Impact Statement (FGEIS) on Handling and Storage of Spent Fuel Water Power Reactor Fuel" (NUREG-0575), Volumes 1-3 (1979), concluded that the environmental impact of interim of spent fuel was negligible and the cost of the various alternatives reflects the advantage of continued generation of nuclear power with the accompanying spent fuel storage. Because of the differences in design, the FGEIS recommended evaluating spent fuel pool expansions on a case-by-case basis.

For SONGS 2/3, the spent fuel pool reracking will not create any significant additional radiological effects or non-radiological environmental impacts beyond those assessed in the Commission's Final Environmental Statement (FES) issued in April 1981 related to the operation of SONGS 2/3 and in the safety evaluation issued February 1981.

The occupational radiation dose for the proposed operation of the expanded spent fuel pool is estimated to be less than the average annual total occupational radiation exposure for this facility.

Finding of No Significant Impact

The staff has reviewed the proposed spent fuel expansion to the facility relative to the requirements set forth in 10 CFR Part 51. Based on this assessment, the staff concludes that there are no significant radiological or non-radiological impacts associated with the proposed action and that the issuance of the proposed amendment to the license will have no significant impact on the quality of the human environment. Therefore, pursuant to 10 CFR 51.31, no environmental impact statement needs to be prepared for this action.

For further details with respect to this action, see (1) the application for amendment dated March 10, 1989, as supplemented by letters dated April 19, May 4, May 19, June 1, June 2, September 22, November 2, and November 9, 1989, and January 18, February 9, and February 16, 1990; (2) the FGEIS on Handling and Storage of Spent Light Water Power Reactor Fueld (NUREG-0575); (3) the FES for SONGS 2/3 dated April 1981; and (4) the Environmental Assessment dated.

These documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555 and at the General Library, University of California, P.O. Box 19557, Irvine, California 92713.

Dated at Rockville, Maryland, this 27th day of February, 1990

For the Nuclear Regulatory Commission.

Charles M. Trammell III,

Acting Director, Project Directorate V Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 90-5158 Filed 3-6-90; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF THE TRADE REPRESENTATIVE

Generalized System of Preferences (GSP); Special Review for Bolivia, Colombia, Ecuador and Peru; Review of Product Petitions, Public Hearings and List of Articles To Be Sent to the U.S. International Trade Commission (USITC) for Review

AGENCY: Office of the United States Trade Representative.

SUMMARY: The purpose of this notice on the GSP Special Review for Bolivia, Colombia, Ecuador and Peru is (1) to announce the acceptance for review of petitions to modify the list of articles eligible for duty-free treatment under the GSP; (2) to announce the timetable for public hearings to consider petitions accepted for review; and (3) to announce that the list of articles herein will be sent by the United States Trade Representative to the USITC to seek advice with respect to modification of the list of eligible articles for GSP.

FOR FURTHER INFORMATION CONTACT: GSP Subcommittee, Office of the United States Trade Representative, 600 17th Street, NW., room 517, Washington, DC 20506. The telephone number is (202) 395-6971. Public versions of all documents are also available for review by appointment with the USTR Public Reading Room. Documents will be available in the reading room shortly after the filing deadlines. Appointments

may be made from 10 a.m. to noon and 1 p.m. to 4 p.m. by calling (202) 395-6186.

SUPPLEMENTARY INFORMATION:

I. Acceptance of Petitions for Review

Notice is hereby given of acceptance for review of petitions requesting modification of the list of articles eligible to receive duty-free treatment under the GSP, as provided for in Title V of the Trade Act of 1974, as amended (the Trade Act) (19 U.S.C. 2461-2465). These petitions were submitted, and will be reviewed, pursuant to regulations codified at 15 CFR 2007.

1. Requests to Modify Product Eligibility

Petitions have been submitted by the governments of Bolivia, Colombia, Ecuador and Peru (1) to designate additional articles as eligible for the GSP; or (2) to waive the competitive need limit for a specific beneficiary and product.

As in previous reviews, requests to add products to the list of articles eligible for GSP duty-free treatment will be evaluated in accordance with the "graduation" policy. In considering GSP eligibility for products, limitations on GSP benefits will be considered for beneficiary developing countries in specific products where it is determined that they have demonstrated sufficient competitiveness. Four criteria will be taken into account when any such graduation action is considered: The development level of individual beneficiary countries; their competitive position in the product concerned; the countries' practices relating to trade, investment and worker rights; and the overall economic interests of the United States.

Product designations announced at the conclusion of the review process, therefore, may be made on a differential basis. This means that certain beneficiary developing countries may not be designated for GSP benefits on certain products even though those countries are not excluded under the competitive need provisions set forth in section 504(c)(1) of the Trade Act.

2. Information Subject to Public Inspection

Information submitted in connection with the hearings will be subject to public inspection by appointment with the staff of the USTR Public Reading Room, except for information granted "business confidential" status pursuant to 15 CFR 2003.6 and 15 CFR 2006.10. Briefs or statements must be submitted in twenty copies in English. If the document contains business confidential information, twenty copies of a nonconfidential version of the submission along with twelve copies of the confidential version must be submitted. In addition, the document containing confidential information should be clearly marked "confidential" at the top and bottom of each page of the document. The version that does not contain business confidential information (the public version) should also be clearly marked at the top and bottom of each page (either "public version" or "non-confidential").

Acceptance for review of the petitions listed herein does not indicate any opinion with respect to a disposition on the merits of the petitions. Acceptance indicates only that the listed petitions have been found to be eligible for review by the GSP Subcommittee and the Trade Policy Staff Committee (TPSC), and that such review will take place.

II. Deadline for Receipt of Requests To Participate in the Public Hearings

The GSP Subcommittee of the TPSC invites submissions in support of or in opposition to any petition contained in this notice. All such submissions should conform to 15 CFR 2007, particularly §§ 2007.0, 2007.1(a)(1), 2007.1(a)(2), and 2007.1(a)(3). All submissions should identify the product of interest in terms of the current Harmonized System tariff nomenclature.

Hearings will be held on April 25-27, 1990, beginning at 10 a.m. in the U.S. International Trade Commission's Hearing Room, 7th and E Streets, SW., Washington, DC. The hearings will be open to the public and a transcript of the hearings made available for public inspection or purchase from the reporting company. No electronic media coverage will be allowed.

Requests to present oral testimony in connection with public hearings should be accompanied by twenty copies, in English, of all written briefs or statements and should be received by the Chairman of the GSP Subcommittee no later than 5 p.m. Wednesday, April 11. Oral testimony before the GSP Subcommittee will be limited to five minute presentations that summarize or supplement information contained in briefs or statements submitted for the record. All interested parties wishing to make an oral presentation at the hearings must submitt the name, address, and telephone number of the witness(es) representing their organization by 5 p.m. Wednesday, April 11. Parties not wishing to appear may submit post-hearing written briefs or statements. These submissions will be accepted if they conform with the regulations cited above and are submitted in twenty copies, in English, no later than 5 p.m. Wednesday, May 9. Rebuttal briefs should be submitted in twenty copies, in English, by 5 p.m. Wednesday, May 30.

An opportunity will be provided for the public to comment on nonconfidential USITC analysis in June 1990. Notice of the availability of this analysis and the timetable for comment will be published in the **Federal Register**.

III. List of Articles Which May Be Considered for Designation as Eligible Articles for Purposes of the GSP or for Waiver of the Competitive Need Limit and on Which the USITC Will be Asked To Provide Advice.

1. In conformity with sections 502(a) and 131(a) of the Trade Act (19 U.S.C. 2543(A) and 2151(A)), notice is hereby given that the articles listed herein may be considered for designation as eligible articles for purposes of the GSP, or for modification of their current GSP status.

An article which is determined to be import sensitive in the context of the GSP cannot be designated as an eligible article. Recommendations with respect to the eligibility of any listed article will be made after public hearings have been held and advice has been received from the USITC on the probable effects of the requested modification in the GSP on industries producing like or directly competitive articles and on consumers.

2. Advice of the USITC. On behalf of the President and in accordance with sections 503(A) and 131(A) of the Trade Act, the USITC is being furnished with the list of articles published herein for the purpose of securing from the USITC its advice on the probable economic effect on U.S. industries producing like or directly competitive articles, and on consumers, of the modification of the list of articles eligible for GSP. Also, on behalf of the President and in accordance with section 504(c)(3)(A)(i) of the Act, the USITC is being asked to furnish economic advice on the probable economic effect on U.S. industries producing like or directly competitive articles, and on consumers, of the granting of a waiver of competitive need limits for the product identified in section B of the lists which follow.

David A. Weiss,

Chairman, Trade Policy Staff Committee.

BILLING CODE 3190-01-M

Annex

Case No.	HTS Subheading	Article	Petitioner
		[The bracketed language in this list has been included only to clarify the scope of the numbered subheadings which are being considered, and such language is not itself intended to describe articles which are under consideration.]	
A.		Petitions to add products to the list of eligible articles for the Generalized System of Preferences.	
		Fish fillets and other fish meat (whether or not minced), fresh, chilled or frozen:	
		Fresh or chilled:	
SPAR-1	0304.10.20(pt.)	Hake (Urophycis spp.)	Government of Peru
		Frozen fillets:	
		[Skinned, whether or not divided into pieces, and frozen into blocks each weighing over 4.5 kg, imported to be minced, ground or cut into pieces of uniform weights and dimensions]	
		Other:	
SPAR-2	0304.20.40(pt.)	Hake (Urophycis spp.)	do.
		Crustaceans, whether in shell or not, live, fresh, chilled, frozen, dried, salted or in brine; crustaceans, in shell, cooked by steaming or by boiling in water, whether or not chilled, frozen, dried, salted or in brine:	
		Frozen:	
		Crabs:	
SPAR-3	0306.14.20	Crabmeat	Government of Colombia
		Not frozen:	
		Crabs:	
SPAR-4	0306.24.20	Crabmeat	do.
		Cut flowers and flower buds of a kind suitable for bouquets or for ornamental purposes, fresh, dried, dyed, bleached, impregnated or otherwise prepared:	
		Fresh:	
SPAR-5	0603.10.60	Roses	Government of Bolivia; Government of Ecuador
		Other vegetables, fresh or chilled:	
SPAR-6	0709.10.00	Globe artichokes	Government of Colombia
		Asparagus:	
SPAR-7	0709.20.10	Not reduced in size; entered during the period from September 15 to November 15, inclusive, in any year; and transported to the United States by air	Government of Colombia; Government of Ecuador; Government of Peru
SPAR-8	0709.20.90	Other	Government of Colombia; Government of Peru

1/ Harmonized Tariff Schedule of the United States.

Annex
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Case No.	HTS Subheading	Article	Petitioner
		[The bracketed language in this list has been included only to clarify the scope of the numbered subheadings which are being considered, and such language is not itself intended to describe articles which are under consideration.]	
A.		Petitions to add products to the list of eligible articles for the Generalized System of Preferences. (con.)	
		Vegetables (uncooked or cooked by steaming or boiling in water), frozen:	
		[Potatoes; Spinach, New Zealand spinach and orache spinach (garden spinach); Sweet corn]	
		Leguminous vegetables, shelled or unshelled:	
		Beans (Vigna spp., Phaseolus spp.):	
		Not reduced in size:	
		[Lima beans, if entered during the month of November 1 in any year to the following May 31, inclusive; Cowpeas (other than black-eye peas)]	
SPAR-9	0710.22.30	Other	Government of Ecuador; Government of Peru
		Other vegetables:	
		[Bamboo shoots or water chestnuts; Mushrooms; Tomatoes]	
		Other:	
		Reduced in size:	
		[Brussels sprouts]	
		Other:	
		[Broccoli; cauliflower; okra]	
SPAR-10	0710.80.9510	Asparagus	Government of Colombia; Government of Peru
SPAR-11	0710.80.9550	Other	do.
		Mixtures of vegetables:	
		[Mixtures of pea pods and water chestnuts]	
SPAR-12	0710.90.90	Other	Government of Peru
		Vegetables provisionally preserved (for example, by sulfur dioxide gas, in brine, in sulfur water or in other preservative solutions), but unsuitable in that state for immediate consumption:	
		Olives:	
		Not pitted:	
SPAR-13	0711.20.15	Described in additional U.S. note 5 to chapter 7 of the HTS	do.
SPAR-14	0711.20.25	Other	do.

1/ Harmonized Tariff Schedule of the United States.

Annex
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Case No.	HTS Subheading	Article	Petitioner
		[The bracketed language in this list has been included only to clarify the scope of the numbered subheadings which are being considered, and such language is not itself intended to describe articles which are under consideration.]	
A.		Petitions to add products to the list of eligible articles for the Generalized System of Preferences, (con.)	
		Cassava (manioc), arrowroot, salep, Jerusalem artichokes, sweet potatoes and similar roots and tubers with high starch or inulin content, fresh or dried, whether or not sliced or in the form of pellets; sago pith:	
SPAR-15	0714.10.00	Cassava (manioc)	Government of Colombia
		Dates, figs, pineapples, avocados, guavas, mangoes and mangosteens, fresh or dried:	
		Pineapples:	
		Not reduced in size:	
		[In bulk]	
SPAR-16	0804.30.40	In crates or other packages	do.
		Guavas, mangoes and mangosteens:	
		Fresh:	
		[If entered during the period from September 1, in any year, to the following May 31, inclusive]	
SPAR-17	0804.50.60	If entered at any other time	do.
		Melons (including watermelons) and papayas (papaws), fresh:	
SPAR-18	0807.20.00	Papayas (papaws)	do.
		Other fruit, fresh:	
		Strawberries:	
SPAR-19	0810.10.20	If entered during the period from June 15 to September 15, inclusive, in any year	do.
SPAR-20	0810.10.40	If entered at any other time	do.
		Fruit and nuts, uncooked or cooked by steaming or boiling in water, frozen, whether or not containing added sugar or other sweetening matter:	
		[Strawberries]	
		Raspberries, blackberries, mulberries, loganberries, black, white or red currants and gooseberries (other than kiwi fruit):	
		[Raspberries, loganberries, black currants and gooseberries (other than kiwi fruit)]	
SPAR-21	0811.20.40	Other	do.

1/ Harmonized Tariff Schedule of the United States.

Annex
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Case No.	HTS Subheading	Article	Petitioner
		[The bracketed language in this list has been included only to clarify the scope of the numbered subheadings which are being considered, and such language is not itself intended to describe articles which are under consideration.]	
A.		Petitions to add products to the list of eligible articles for the Generalized System of Preferences. (con.)	
		Fruit and nuts, uncooked or cooked by, etc. (con.):	
		Other:	
		[Bananas and plantains; Blueberries; Boysenberries; Cashew apples, mameys colorados, sapodillas, soursops and sweetsops; Coconut meat; Cranberries (Vaccinium macrocarpum); Papayas; Melons]	
SPAR-22	0811.90.50	Pineapple	Government of Colombia; Government of Peru
		Other:	
		[Cherries]	
SPAR-23	0811.90.6080	Other	do.
		Cereal flours other than of wheat or meslin:	
		[Rye flour; Corn (maize) flour; Rice flour]	
		Other:	
		[Buckwheat flour]	
SPAR-24	1102.90.40	Other	Government of Peru
		Cereal grains otherwise worked (for example, hulled, rolled, flaked, pearled, sliced or kibbled), except rice of heading 1006; germ of cereals, whole, rolled, flaked or ground:	
		[Rolled or flaked grains]	
		Other worked grains (for example, hulled, pearled, sliced or kibbled):	
SPAR-25	1104.22.00	Of oats	Government of Colombia
SPAR-26	1104.23.00	Of corn (maize)	Government of Ecuador
		Locust beans, seaweeds and other algae, sugar beet and sugar cane, fresh or dried, whether or not ground; fruit stones and kernels and other vegetable products (including unroasted chicory roots of the variety Cichorium intybus sativum) of a kind used primarily for human consumption, not elsewhere specified or included:	
		Other:	
SPAR-27	1212.92.00	Sugar cane	do.
		Soybean oil and its fractions, whether or not refined, but not chemically modified:	
		[Crude oil, whether or not degummed]	
		Other:	
		[Pharmaceutical Grade meeting FDA requirements for use in intravenous fat emulsions, valued over $5 per kg]	
SPAR-28	1507.90.40	Other	Government of Bolivia

1/ Harmonized Tariff Schedule of the United States.

Annex
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Case No.	HTS Subheading	Article	Petitioner
		[The bracketed language in this list has been included only to clarify the scope of the numbered subheadings which are being considered, and such language is not itself intended to describe articles which are under consideration.]	
A.		Petitions to add products to the list of eligible articles for the Generalized System of Preferences. (con.)	
		Animal or vegetable fats and oils and their fractions, partly or wholly hydrogenated, interesterified, reesterified or elaidinized, whether or not refined, but not further prepared:	
SPAR-29	1516.10.00	Animal fats and oils and their fractions	Government of Peru
		Prepared or preserved fish; caviar and caviar substitutes prepared from fish eggs:	
		Fish, whole or in pieces, but not minced:	
		Sardines, sardinella and brisling or sprats:	
		[In oil, in airtight containers]	
		Other:	
SPAR-30	1604.13.40	In immediate containers weighing with their contents under 225 grams each	do.
		Other:	
		[In tomato sauce, in immediate containers with their contents 225 grams or more, but not over 7 kg each]	
SPAR-31	1604.13.50	Other	do.
		Crustaceans, molluscs and other aquatic invertebrates, prepared or preserved:	
		Crab:	
		[Products containing fish meat; prepared meals]	
		Other:	
		Crabmeat:	
SPAR-32	1605.10.20	In airtight containers	Government of Colombia
		Vegetables, fruit, nuts and other edible parts of plants, prepared or preserved by vinegar or acetic acid:	
		Other:	
		Other:	
		Vegetables:	
SPAR-33	2001.90.25	Artichokes	do.

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Case No.	HTS Subheading	Article	Petitioner
		[The bracketed language in this list has been included only to clarify the scope of the numbered subheadings which are being considered, and such language is not itself intended to describe articles which are under consideration.]	
		A. Petitions to add products to the list of eligible articles for the Generalized System of Preferences. (con.)	
		Tomatoes prepared or preserved otherwise than by vinegar or acetic acid:	
SPAR-34	2002.10.00	Tomatoes, whole or in pieces	Government of Peru
	or	or	
		Tomatoes, whole or in pieces:	
SPAR-35	2002.10.0020	In containers holding less than 1.4 kg	Government of Ecuador
		Other:	
SPAR-36	2002.10.0050	In airtight containers	do.
SPAR-37	2002.10.0090	Other	do.
SPAR-38	2002.90.00	Other	Government of Peru
	or	or	
		Other:	
		Paste:	
SPAR-39	2002.90.0010	In containers holding less than 1.4 kg	Government of Ecuador
		Puree:	
SPAR-40	2002.90.0030	In containers holding less than 1.4 kg	do.
SPAR-41	2002.90.0040	Other	do.
		Other vegetables prepared or preserved otherwise than by vinegar or acetic acid, frozen:	
		[Potatoes]	
		Other vegetables and mixtures of vegetables:	
		[Antipasto; Beans]	
		Other:	
		[Carrots; Peas]	
SPAR-42	2004.90.9040	Sweet corn	do.
SPAR-43	2004.90.9080	Other, including mixtures	Government of Colombia
		Other vegetables prepared or preserved otherwise than by vinegar or acetic acid, not frozen:	
SPAR-44	2005.20.00	Potatoes	do.
SPAR-45	2005.60.00	Asparagus	Government of Colombia; Government of Peru
		Fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included:	
		[Nuts, peanuts (ground-nuts) and other seeds, whether or not mixed together; Pineapples; Pears; Apricots; Cherries; Peaches; Strawberries]	
		Citrus fruit:	
		Pulp:	
		[Orange]	
SPAR-46	2008.30.37	Other	Government of Peru

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Case No.	HTS Subheading	Article	Petitioner
		[The bracketed language in this list has been included only to clarify the scope of the numbered subheadings which are being considered, and such language is not itself intended to describe articles which are under consideration.]	
A.		Petitions to add products to the list of eligible articles for the Generalized System of Preferences. (con.)	
		Fruit, nuts and other edible parts of, etc. (con.):	
		Other, including mixtures other than those of subheading 2008.19:	
		[Palm hearts; Mixtures]	
		Other:	
		[Apples; Avocados; Bananas; Berries; Cashew apples, mameyes colorados, sapodillas, soursops and sweetsops; Dates; Figs; Grapes; Guavas; Lychees and longans; Mangoes; Nectarines; Plums (including prune plums and sloes); Soybeans; Sweet ginger; Yucca]	
		Papayas:	
SPAR-47	2008.99.45	Pulp	Government of Peru
		Other:	
SPAR-48	2008.99.80	Pulp	do.
		Fruit juices (including grape must) and vegetable juices, unfermented and not containing added spirit, whether or not containing added sugar or other sweetening matter:	
		Orange juice:	
SPAR-49	2009.11.00	Frozen	Government of Bolivia
		Juice of any other single citrus fruit:	
		Lime:	
		Unfit for beverage purposes:	
SPAR-50	2009.30.1020	Not concentrated	Government of Peru
SPAR-51	2009.30.1040	Concentrated	do.
		Other:	
SPAR-52	2009.30.2020	Not concentrated	do.
SPAR-53	2009.30.2040	Concentrated	do.
		Sauces and preparations therefor; mixed condiments and mixed seasonings; mustard flour and meal and prepared mustard:	
		Tomato ketchup and other tomato sauces:	
		[Tomato ketchup]	
SPAR-54	2103.20.40	Other	Government of Ecuador; Government of Peru

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Case No.	HTS Subheading	Article	Petitioner
		[The bracketed language in this list has been included only to clarify the scope of the numbered subheadings which are being considered, and such language is not itself intended to describe articles which are under consideration.]	
A.		Petitions to add products to the list of eligible articles for the Generalized System of Preferences. (con.)	
		Undenatured ethyl alcohol of an alcoholic strength by volume of less than 80 percent vol.; spirits, liqueurs and other spirituous beverages; compound alcoholic preparations of a kind used for the manufacture of beverages:	
		Compound alcoholic preparations of a kind used for the manufacture of beverages:	
SPAR-55	2208.10.30	Containing not over 20 percent of alcohol by weight	Government of Colombia
SPAR-56	2208.10.60	Containing over 20 percent but not over 50 percent of alcohol by weight	do.
SPAR-57	2208.10.90	Containing over 50 percent of alcohol by weight	do.
SPAR-58	2208.40.00	Rum and tafia	do.
	or	or	
		Rum and tafia:	
SPAR-59	2208.40.00(pt.)	Aguardiente	do.
		Provitamins and vitamins, natural or reproduced by synthesis (including natural concentrates), derivatives thereof used primarily as vitamins, and intermixtures of the foregoing, whether or not in any solvent:	
		Vitamins and their derivatives, unmixed:	
SPAR-60	2936.28.00	Vitamin E (Tocopherols and related compounds with Vitamin E activity) and its derivatives	do.
		Medicaments (excluding goods of heading 3002, 3005 or 3006) consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses or in forms or packings for retail sale:	
		[Containing penicillins or derivatives thereof, with a penicillanic acid structure, or streptomycins or their derivatives; Containing other antibiotics; Containing hormones or other products of heading 2937 but not containing antibiotics; Containing alkaloids or derivatives thereof but not containing hormones, other products of heading 2937 or antibiotics]	
		Other medicaments containing vitamins or other products of heading 2936:	
		Containing vitamins synthesized wholly or in part from aromatic or modified aromatic industrial organic compounds:	
SPAR-61	3004.50.30	Vitamin E	do.

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Case No.	HTS Subheading	Article	Petitioner
		[The bracketed language in this list has been included only to clarify the scope of the numbered subheadings which are being considered, and such language is not itself intended to describe articles which are under consideration.]	
A.		Petitions to add products to the list of eligible articles for the Generalized System of Preferences. (con.)	
		Wadding, gauze, bandages and similar articles (for example, dressings, adhesive plasters, poultices), impregnated or coated with pharmaceutical substances or put up in forms or packings for retail sale for medical, surgical, dental or veterinary purposes:	
		Adhesive dressings and other articles having an adhesive layer:	
		[Coated or impregnated with pharmaceutical substances]	
SPAR-62	3005.10.50	Other	Government of Bolivia
		Other:	
		[Coated or impregnated with pharmaceutical substances]	
SPAR-63	3005.90.50	Other	do.
		Mixtures of odoriferous substances and mixtures (including alcoholic solutions) with a basis of one or more of these substances, of a kind used as raw materials in industry:	
		Of a kind used in the food or drink industries:	
		Containing alcohol:	
SPAR-64	3302.10.20	Containing not over 20 percent of alcohol by weight	Government of Peru
		Insecticides, rodenticides, fungicides, herbicides, antisprouting products and plant-growth regulators, disinfectants and similar products, put up in forms or packings for retail sale or as preparations or articles (for example, sulfur-treated bands, wicks and candles, and flypapers):	
		Fungicides:	
		[Containing any aromatic or modified aromatic fungicide]	
		Other:	
SPAR-65	3808.20.20	Containing any fungicide which is a thioamide, thiocarbamate, dithiocarbamate, thiuram or isothiocyanate	Government of Colombia

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Case No.	HTS Subheading	Article	Petitioner
		[The bracketed language in this list has been included only to clarify the scope of the numbered subheadings which are being considered, and such language is not itself intended to describe articles which are under consideration.]	
A.		Petitions to add products to the list of eligible articles for the Generalized System of Preferences. (con.)	
		Other plates, sheets, film, foil and strip, of plastics: Cellular: Of polymers of vinyl chloride: Combined with textile materials: [Products with textile components in which man-made fibers predominate by weight over any other single textile fiber]	
SPAR-66	3921.12.19	Other	Government of Colombia
		Plywood, veneered panels and similar laminated wood: Plywood consisting solely of sheets of wood, each ply not exceeding 6 mm in thickness: With at least one outer ply of the following tropical woods: Dark Red Meranti, Light Red Meranti, White Lauan, Sipo, Limba, Okoume', Obeche, Acajou d'Afrique, Sapelli, Baboen, Mahogany (Swietenia spp.), Palissandre du Bresil or Bois de Rose femelle: Not surface covered, or surface covered with a clear or transparent material which does not obscure the grain, texture or markings of the face ply: [With a face ply of birch (Betula spp.)]	
SPAR-67	4412.11.20	Other	Government of Ecuador
SPAR-68	4412.11.50	Other	do.
		Other, with at least one outer ply of nonconiferous wood: Not surface covered, or surface covered with a clear or transparent material which does not obscure the grain, texture or markings of the face ply: [With a face ply of birch (Betula spp.); With a face ply of Spanish cedar (Cedrela spp.) or walnut (Juglans spp.)]	
SPAR-69	4412.12.20	Other	do.
SPAR-70	4412.12.50	Other	do.

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Case No.	HTS Subheading	Article	Petitioner
		[The bracketed language in this list has been included only to clarify the scope of the numbered subheadings which are being considered, and such language is not itself intended to describe articles which are under consideration.]	
A.		Petitions to add products to the list of eligible articles for the Generalized System of Preferences. (con.)	
		Plywood, veneered panels and similar, etc. (con.):	
		Other, with at least one outer ply of nonconiferous wood:	
		[Containing at least one layer of particle board]	
		Other:	
		Plywood:	
		Not surface covered or surfaced covered with a clear or transparent material which does not obscure the grain, texture or markings of the face ply:	
		[With a face ply of birch (Betula spp.)]	
SPAR-71	4412.29.30	Other	Government of Ecuador
SPAR-72	4412.29.40	Other	do.
		Other:	
		[Containing at least one layer of particle board]	
		Other:	
		Plywood:	
		[Not surface covered or surface covered with a clear or transparent material which does not obscure the grain, texture or markings of the face ply]	
SPAR-73	4412.99.50	Other	do.

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Case No.	HTS Subheading	Article	Petitioner
		[The bracketed language in this list has been included only to clarify the scope of the numbered subheadings which are being considered, and such language is not itself intended to describe articles which are under consideration.]	
A.		Petitions to add products to the list of eligible articles for the Generalized System of Preferences. (con.)	
		Other articles of wood:	
		[Clothes hangers]	
		Other:	
		Toothpicks, skewers, candy sticks, ice cream sticks, tongue depressors, drink mixers and similar small wares:	
SPAR-74	4421.90.50	Toothpicks	Government of Colombia
SPAR-75	4421.90.60	Other	do.
		Carpets and other textile floor coverings, woven, not tufted or flocked, whether or not made up, including "Kelem", "Schumacks", "Karamanie" and similar hand-woven rugs:	
		["Kelem", "Schumacks", "Karamanie" and similar hand-woven rugs; Floor coverings of coconut fibers (coir); Other, of pile construction, not made up; Other, of pile construction, made up; Other, not of pile construction, not made up]	
		Other, not of pile construction, made up:	
		[Of wool or fine animal hair; Of man-made textile materials]	
		Of other textile materials:	
		[Of cotton]	
SPAR-76	5702.99.20	Other	Government of Bolivia
		Textile fabrics impregnated, coated, covered or laminated with plastics, other than those of heading 5902:	
		With polyvinyl chloride:	
SPAR-77	5903.10.10	Of cotton	Government of Colombia
		[With polyurethane]	
		Other:	
SPAR-78	5903.90.10	Of cotton	do.

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Case No.	HTS Subheading	Article	Petitioner
		[The bracketed language in this list has been included only to clarify the scope of the numbered subheadings which are being considered, and such language is not itself intended to describe articles which are under consideration.]	
A.		Petitions to add products to the list of eligible articles for the Generalized System of Preferences. (con.)	
		Parts of footwear; removable insoles, heel cushions and similar articles; gaiters, leggings and similar articles, and parts thereof:	
		Uppers and parts thereof, other than stiffeners:	
		[Formed uppers]	
		Other:	
		[Of rubber or plastics; Of leather; Of textile materials of which 50 percent of the external surface area (including any leather accessories or reinforcements such as mentioned in 4(a) to chapter 64 of the HTS) is leather]	
		Other:	
		Of cotton:	
SPAR-79	6406.10.7530	Uppers of which less than 50 percent of the external surface area (including any leather, rubber or plastics accessories or reinforcements such as mentioned in note 4(a) to chapter 64 of the HTS) is textile materials	Government of Colombia
		Other:	
SPAR-80	6406.10.8015	Uppers of which less than 50 percent of the external surface area (including any leather, rubber or plastics accessories or reinforcements such as mentioned in note 4(a) to chapter 64 of the HTS) is textile materials	do.
		Unglazed ceramic flags and paving, hearth or wall tiles; unglazed ceramic mosaic cubes and the like, whether or not on a backing:	
		[Tiles, cubes and similar articles, whether or not rectangular, the largest surface area of which is capable of being enclosed in a square the side of which is less than 7 cm]	
SPAR-81	6907.90.00	Other	do.

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Case No.	HTS Subheading	Article	Petitioner
		[The bracketed language in this list has been included only to clarify the scope of the numbered subheadings which are being considered, and such language is not itself intended to describe articles which are under consideration.]	
A.		Petitions to add products to the list of eligible articles for the Generalized System of Preferences, (con.)	
		Glazed ceramic flags and paving, hearth or wall tiles; glazed ceramic mosaic cubes and the like, whether or not on a backing:	
		Tiles, cubes and similar articles, whether or not rectangular, the largest surface area of which is capable of being enclosed in a square the side of which is less than 7 cm:	
		[Having not over 3229 tiles per square meter, most of which have faces bounded entirely by straight lines]	
		Other:	
		[The largest surface area of which is less than 38.7 cm^2]	
SPAR-82	6908.10.50	Other	Government of Colombia
SPAR-83	6908.90.00	Other	Government of Colombia; Government of Peru
		Drawn glass and blown glass, in sheets, whether or not having an absorbent or reflecting layer, but not otherwise worked:	
		[Glass, colored throughout the mass (body tinted), opacified, flashed or having an absorbent or reflecting layer]	
		Other glass:	
		In rectangular shape:	
SPAR-84	7004.90.25	Measuring over 2 but not over 3.5 mm in thickness	Government of Colombia
		Measuring over 3.5 mm in thickness:	
SPAR-85	7004.90.30	Measuring not over 0.65/m^2 in area	do.
SPAR-86	7004.90.40	Measuring over 0.65/m^2 in area	do.

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Case No.	HTS Subheading	Article	Petitioner
		[The bracketed language in this list has been included only to clarify the scope of the numbered subheadings which are being considered, and such language is not itself intended to describe articles which are under consideration.]	
A.		Petitions to add products to the list of eligible articles for the Generalized System of Preferences, (con.)	
		Glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than that of heading 7010 or 7018):	
		[Of glass-ceramics]	
		Drinking glasses, other than of glass-ceramics:	
		[Of lead crystal]	
		Other:	
		[Pressed and toughened (specially tempered)]	
		Other:	
SPAR-87	7013.29.10	Valued not over $0.30 each	Government of Colombia
SPAR-88	7013.29.20	Valued over $0.30 but not over $3 each	do.
		Valued over $3 each:	
		Cut or engraved:	
SPAR-89	7013.29.30	Valued over $3 but not over $5 each	do.
SPAR-90	7013.29.40	Valued over $5 each	do.
		Other:	
SPAR-91	7013.29.50	Valued over $3 but not over $5 each	do.
SPAR-92	7013.29.60	Valued over $5 each	do
		Glassware of a kind used for table (other than drinking glasses) or kitchen purposes other than that of glass-ceramics:	
		[Of lead crystal; Of glass having a linear coefficient of expansion not exceeding 5 x 10^{-6} per Kelvin within a temperature range of 0°C to 300°C]	
		Other:	
		[Pressed and toughened (specially tempered)]	
		Other:	
SPAR-93	7013.39.20	Valued not over $3 each	do.
		Valued over $3 each:	
		Cut or engraved:	
SPAR-94	7013.39.30	Valued over $3 but not over $5 each	do.
SPAR-95	7013.39.40	Valued over $5 each	do.

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Case No.	HTS Subheading	Article	Petitioner
		[The bracketed language in this list has been included only to clarify the scope of the numbered subheadings which are being considered, and such language is not itself intended to describe articles which are under consideration.]	
		A. Petitions to add products to the list of eligible articles for the Generalized System of Preferences. (con.)	
		Glassware of a kind used for table, etc. (con.):	
		Glassware of a kind used for table, etc. (con.):	
		Other (con.):	
		Other (con.):	
		Valued over $3 each (con.):	
		Other:	
SPAR-96	7013.39.50	Valued over $3 but not over $5 each	Government of Colombia
SPAR-97	7013.39.60	Valued over $5 each	do.
		Other glassware:	
		[Of lead crystal]	
		Other:	
		[Glassware decorated with metal flecking, glass pictorial scenes, or glass thread- or ribbon-like effects, any of the foregoing embedded or introduced into the body of the glassware prior to its solidification; millefiori glassware; glassware colored prior to solidification, and characterized by random distribution of numerous bubbles, seeds, or stones, throughout the mass of the glass; Pressed and toughened (specially tempered)]	
		Other:	
		[Smokers' articles; perfume bottles fitted with ground glass stoppers; Votive-candle holders]	
		Other:	
SPAR-98	7013.99.40	Valued not over $0.30 each	do.
SPAR-99	7013.99.50	Valued over $0.30 but not over $3 each	do.
		Valued over $3 each:	
		Cut or engraved:	
SPAR-100	7013.99.60	Valued over $3 but not over $5 each	do.
SPAR-101	7013.99.70	Valued over $5 each	do.
		Other:	
SPAR-102	7013.99.80	Valued over $3 but not over $5 each	do.
SPAR-103	7013.99.90	Valued over $5 each	do.

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Case No.	HTS Subheading	Article	Petitioner
		[The bracketed language in this list has been included only to clarify the scope of the numbered subheadings which are being considered, and such language is not itself intended to describe articles which are under consideration.]	
A.		Petitions to add products to the list of eligible articles for the Generalized System of Preferences. (con.)	
		Flat-rolled products of iron or nonalloy steel, of a width of 600 mm or more, cold-rolled (cold-reduced), not clad, plated or coated:	
		In coils, not further worked than cold-rolled (cold-reduced), of high-strength steel:	
SPAR-104	7209.11.00	Of a thickness of 3 mm or more	Government of Colombia
SPAR-105	7209.12.00	Of a thickness exceeding 1 mm but less than 3 mm	do.
SPAR-106	7209.13.00	Of a thickness of 0.5 mm or more but not exceeding 1 mm	do.
SPAR-107	7209.14.00	Of a thickness of less than 0.5 mm	do.
		Not in coils, not further worked than cold-rolled (cold-reduced), of high-strength steel:	
SPAR-108	7209.32.00	Of a thickness exceeding 1 mm but less than 3 mm	do.
		Screws, bolts, nuts, coach screws, screw hooks, rivets, cotters, cotter pins, washers (including spring washers) and similar articles, of iron or steel:	
		Threaded articles:	
		[Coach screws]	
SPAR-109	7318.12.00	Other wood screws	do.
		Unwrought lead:	
		[Refined lead]	
		Other:	
SPAR-110	7801.91.00	Containing by weight antimony as the principal other element	Government of Peru
		Unwrought zinc:	
SPAR-111	7901.20.00	Zinc alloys	do.

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Case No.	HTS Subheading	Article	Petitioner
		[The bracketed language in this list has been included only to clarify the scope of the numbered subheadings which are being considered, and such language is not itself intended to describe articles which are under consideration.]	
A.		Petitions to add products to the list of eligible articles for the Generalized System of Preferences. (con.)	
		Knives with cutting blades, serrated or not (including pruning knives), other than knives of heading 8208, and blades and other base metal parts thereof:	
		[Sets of assorted articles]	
		Other:	
		Table knives having fixed blades, and parts thereof:	
		Knives with stainless steel handles:	
		With handles containing nickel or containing over 10 percent by weight of manganese:	
SPAR-112	8211.91.20	Valued under 25¢ each, not over 25.9 cm in overall length	Government of Colombia
SPAR-113	8211.91.25	Other	do.
		Other:	
SPAR-114	8211.91.30	Valued under 25¢ each, not over 25.9 cm in overall length	do.
SPAR-115	8211.91.40	Other	do
		Spoons, forks, ladles, skimmers, cake-servers, fish-knives, butter-knives, sugar tongs, and similar kitchen or tableware; and base metal parts thereof:	
		[Sets of assorted articles containing at least one article plated with precious metal]	
SPAR-116	8215.20.00	Other sets of assorted articles	do.
		Other:	
		[Plated with precious metal]	
		Other:	
		Forks:	
		With stainless steel handles:	
		With handles containing nickel or containing over 10 percent by weight of manganese:	
SPAR-117	8215.99.01	Valued under 25¢ each, not over 25.9 cm in overall length	do.
SPAR-118	8215.99.05	Other	do.
		Other:	
SPAR-119	8215.99.10	Valued under 25¢ each	do.
SPAR-120	8215.99.15	Other	do.
		Spoons and ladles:	
		With stainless steel handles:	
SPAR-121	8215.99.30	Spoons valued under 25¢ each	do.
SPAR-122	8215.99.35	Other	do.

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Case No.	HTS Subheading	Article	Petitioner
		[The bracketed language in this list has been included only to clarify the scope of the numbered subheadings which are being considered, and such language is not itself intended to describe articles which are under consideration.]	
A.		Petitions to add products to the list of eligible articles for the Generalized System of Preferences, (con.)	
		Padlocks and locks (key, combination or electrically operated), of base metal; clasps and frames with clasps, incorporating locks, of base metal; keys and parts of any of the foregoing articles, of base metal:	
		Padlocks:	
		Of cylinder or pin tumbler construction:	
SPAR-123	8301.10.60	Not over 3.8 cm in width	Government of Peru
		Bicycles and other cycles (including delivery tricycles), not motorized:	
		Bicycles having both wheels exceeding 65 cm in diameter:	
SPAR-124	8712.00.20	If weighing less than 16.3 kg complete without accessories and not designed for use with tires having a cross-sectional diameter exceeding 4 cm	Government of Colombia
		Parts and accessories of vehicles of headings 8711 to 8713:	
		[Of motorcycles (including mopeds); Of invalid carriages]	
		Other:	
		Frames and forks, and parts thereof:	
SPAR-125	8714.91.10	Frames	do.
		[Sets of steel tubing cut to exact length and each set having the number of tubes needed for the assembly (with other parts) into the frame and fork of one bicycle]	
SPAR-126	8714.91.90	Other	do.
		Dolls representing only human beings and parts and accessories thereof:	
		Dolls, whether or not dressed:	
		[Stuffed]	
		Other:	
SPAR-127	9502.10.40	Not over 33 cm in height	do.
		Other:	
		[Capable of electromechanical movement of body parts activated by, and synchronized with, an integral or accompanying cassette tape player or microprocessor]	
SPAR-128	9502.10.80	Other	do.

1/ Harmonized Tariff Schedule of the United States.

Annex
-20-

Case No.	HTS Subheading	Article	Petitioner
		[The bracketed language in this list has been included only to clarify the scope of the numbered subheadings which are being considered, and such language is not itself intended to describe articles which are under consideration.]	
B. Petition for waiver of competitive need limit for a product on the list of eligible products for the Generalized System of Preferences.			
		Stranded wire, cables, plaited bands and the like, including slings and similar articles, of copper, not electrically insulated:	
		Not fitted with fittings and not made up into articles:	
SPAR-129	7413.00.10 (Peru)	Stranded wire	Government of Peru

1/ Harmonized Tariff Schedule of the United States.

[FR Doc. 90-5124 Filed 3-6-90; 8:45 am]
BILLING CODE 3190-01-C

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash (202) 272-2142

Upon Written Request Copy Available From: Securities and Exchange Commission, Public Reference Branch, Washington, DC 20549-1002.

Extension

Regulation C, File No. 270-68

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 2501 *et seq.*), the Securities and Exchange Commission (the "Commission") has submitted for OMB approval extention of Regulation C. Regulation C provides standard instructions to guide persons filing registration statements under the Securities Act of 1933.

The Commission believes that it is appropriate to compute the total respondent burden associated with preparation of each of the registration forms, rather than attempting to isolate the impact of the procedural instructions in Regulation C, which impose burdens only in the context of the preparation of registration statements on various forms. As a matter of administrative convenience, the Commission has assigned one hour of professional time as the estimate of annual burden imposed by Regulation C. The actual burden hours should be derived from the Paperwork Reduction Act submissions made to OMB pertaining to each individual Securities Act registration form. The estimate burden hours are made solely for purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the costs of the Commission's rules and forms. Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with the Securities and Exchange Commission rules and forms to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and Gary Waxman, Clearance Officer, Office of Management and Budget (Paperwork Reduction Project 3235-0074, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: March 1, 1990.

Jonathan G. Katz,

Secretary

[FR Doc. 90-5189 Filed 3-6-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-27744; File No. SR-ICC-89-4]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the Intermarket Clearing Corporation Relating to Member Net Capital Requirements

February 27, 1990.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on November 29, 1989, the Intermarket Clearing Corporation ("ICC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change [3] that would increase initial and maintenance adjusted net capital requirements imposed by ICC on its members.[4] To reflect these increases, the proposal also would amend ICC's rule regarding restrictions on member distributions. On December 13, 1989, the Commission temporarily approved ICC's proposal on an accelerated basis.[5] This order approves the proposal on a permanent basis.

I. Description of the Proposal

As noted above, the proposal would increase ICC's initial and maintenance adjusted net capital requirements.[6] Currently, to become an ICC member, an applicant must have initial adjusted net capital equal to at least $150,000. That level must be maintained by the applicant for the lesser of three months after its admission as a clearing member or twelve months after it commenced doing business subject to Commission or CFTC regulation, after which the member must maintain adjusted net capital equal to at least $100,000. Under the proposal, a member's initial adjusted net capital requirement would be increased to $1 million, and its maintenance adjusted net capital requirement would be increased to $750,000. ICC represents that all of its members currently have adjusted net capital meeting the proposed requirements.

The proposal also would amend ICC's rule regarding restrictions on member distributions. Currently, ICC's rules prohibit a member from effecting a withdrawal or payment to shareholders, partners, or employees if that withdrawal or payment would reduce the member's adjusted net capital below $150,000. The proposal would prohibit a member distribution if the effect of the distribution would reduce the member's net capital below $1 million.

ICC does not believe the proposed rule change would have any material impact on competition. Written comments were not and are not intended to be solicited by ICC with respect to the proposal and none have been received by ICC.

II. ICC's Rationale for the Proposed Rule Change

ICC believes the proposal is consistent with the purposes and requirements of section 17A of the Act.[7] Specifically, ICC believes the proposed net capital increases promote the continued financial integrity of ICC's clearance and settlement system, particularly in light of events surrounding the October 1987 market break ("Market Break"). ICC further believes the proposal brings ICC financial requirements in line with those of other commodity clearing organizations.[8]

III. Discussion

The Commission believes the proposal is consistent with section 17A of the Act and therefore is approving the proposal. Specifically, the Commission believes the proposal is designed to implement post-Market Break recommendations that clearing agencies update their net capital requirements to reflect current market conditions, particularly increased market volatility.[9] The

[1] 15 U.S.C. 78s(b)(2) (1982).

[2] 17 CFR 240.19b-4 (1989).

[3] The proposal was originally filed pursuant to section 19(b)(3)(A) of the Act. At the request of Commission staff, ICC refiled the proposal pursuant to section 19(b)(2) of the Act, requesting accelerated approval of the proposal.

[4] ICC's proposed net capital requirements have been approved by the Commodity Futures Trading Commission ("CFTC"). *See* Letter from John C. Lawton, Associate Director, CFTC, to James C. Yong, Assistant Secretary, ICC, dated October 12, 1989. The Commission has approved similar net capital requirement changes for ICC's parent, the Options Clearing Corporation. *See* Securities Exchange Act Release No. 26840 (May 19, 1989), 54 FR 23004.

[5] *See* Securities Exchange Act Release No. 27534 (December 13, 1989), 54 FR 52864.

[6] ICC adjusted net capital requirement are computed in accordance with CFTC Regulation 1.17. *See* 17 CFR 1.17 (1989).

[7] 15 U.S.C. 78q-1 (1982).

[8] Board of Trade Clearing Corporation members must maintain $1.5-3.5 million in net capital if they are firms and $500,000 in net capital if they are individuals. Chicago Mercantile Exchange clearing members must maintain $1.5 million in net capital. *See* R. Rutz, Clearance, Payment, and Settlement Systems in the Futures, Options, and Stock Markets (February 24, 1989) at 16.

[9] *See* Division of Market Regulation, the October 1987 Market Break (February 1988) ("Market Break Report"), and Interim Report of the Working Group on Financial Markets (May 16, 1988) ("Working Group Report").

proposal is designed to achieve that goal without inhibiting broad market participant access to ICC services.

In its Market Break Report, the Commission's Division of Market Regulation ("Division") encouraged clearing agencies to consider increasing member net capital requirements. Specifically, the Division noted:

> In light of the failures experienced by a number of clearing member customers during the market break and the apparent increased risk caused by market volatility, clearing agencies should consider strengthening their member net capital standards or instituting additional financial requirements * * *[10]

The Commission believes re-examination and strengthening of clearing agency rules establishing member net capital requirements serve as a further layer of protection against member default.

The Interim Report of the Working Group on Financial Markets ("Working Group Report") made a similar recommendation.[11] The Working Group Report noted clearing agency progress in evaluating the adequacy of member capital and specifically cited clearing agency plans to increase member net capital requirements. The Working Group also encouraged the Commission, clearing agencies, and other self-regulatory organizations to continue to evaluate the adequacy of member capital and find ways to improve existing practices and requirements.[12]

Post-Market Break studies also suggested that clearing agencies analyze negative aspects of increased member net capital requirements. For example, the Division cautioned:

> Although increased capital requirements for clearing members could strengthen clearing member financial positions and decrease default risk, especially during periods of high market volatility, such requirements also would have other effects * * * [I]ncreased clearing agency requirements could decrease the number of broker-dealers eligible for clearing agency membership and increase costs for broker-dealers that cannot maintain membership.[13]

The Commission believes clearing agencies, in adopting increased net capital requirements, should strike a prudent balance between their need to ensure member creditworthiness and their responsibility to provide broad market participant access to clearing services.

The Commission believes the proposal, consistent with post-Market Break recommendations, is designed to update ICC net capital requirements to reflect current market conditions. ICC net capital requirements are designed to ensure that members initially and throughout their membership have sufficient liquid assets to meet their obligations to ICC. ICC has not increased these requirements since it commenced operations in 1985,[14] despite increased market volume, complexity, and volatility. The Commission believes the proposed initial and maintenance net capital requirements are designed to reflect market developments and ensure ICC member creditworthiness in the current market environment. The Commission further notes that the proposed amendment to the rule regarding restrictions on member distributions conforms to proposed initial and maintenance adjusted net capital increases and, therefore, is designed to reflect current market conditions and facilitate effective risk management. Moreover, the fact that all ICC members have adjusted net capital levels meeting the proposed requirements indicates the proposal is not designed to inhibit broad market participant access to ICC services.

On December 13, 1989, the Commission temporarily approved ICC's proposal on an accelerated basis to give interested persons the opportunity to comment on the proposal.[15] Neither ICC nor the Commission has received any comments. In addition, no applicant for ICC membership has been rejected for membership because of its inability to meet ICC's net capital requirements.[16] Thus, for the reasons described above, the Commission finds that ICC's proposal is consistent with section 17A.

IV. Conclusion

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act, That the proposed rule change (SR-ICC-89-4) be, and hereby is, approved on a permanent basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. 17 CFR 200.30-3.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-5185 Filed 3-6-90; 8:45 am]

BILLING CODE 8010-01-M

[10] *See* Market Break Report, *supra* note 8, at 10-27.

[11] *See* Working Group Report, *supra* note 8, at 15.

[12] *Id.* Other self-regulatory organizations have increased their net capital requirements in response to post-Market Break suggestions. For example, on May 6, 1988, the Commission approved, on an accelerated basis, a New York Stock Exchange ("NYSE") proposal increasing minimum net capital requirements for NYSE specialists. *See* Securities Exchange Act Release No. 25677 (May 6, 1988), 53 FR 17288.

[13] *See* Market Break Report, *supra* note 8, at 10-27. The Working Group also encouraged clearing agencies to analyze the costs and benefits of net capital increases. *See* Working Group Report, *supra* note 8, at 15.

[14] *See* Securities Exchange Act Release No. 21706 (February 4, 1985), 50 FR 5341.

[15] *See* note 5, *supra*.

[16] Telephone conversation between James C. Young, Deputy General Counsel, ICC, and Ross Pazzol, Staff Attorney, Division of Market Regulation, Commission, on February 13, 1990.

[Rel. No. 34-27752; File No. SR-MSTC-89-05]

Self-Regulatory Organizations; the Midwest Securities Trust Company; Order Approving a Proposed Rule Change Establishing the Institutional Participant Services Program Until January 31, 1991

On July 31, 1989, the Midwest Securities Trust Company ("MSTC") filed a proposed rule change with the Commission pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act")[1] that establishes an Institutional Participant Services Program. Notice of the proposal was published in the **Federal Register** on August 11, 1989, to solicit comments from interested persons.[2] On November 3, 1989, December 18, 1989 and March 1, 1990, MSTC submitted amendments to its proposal.[3] No comments were received. As discussed below, the Commission is approving the amended proposal until January 31, 1991.

I. Description of the Proposal

MSTC's proposal establishes an Institutional Participant Services Program ("Program"), and sets forth the rules and procedures governing participants in the Program ("Institutional Participant"). Under these rules, entities that meet certain membership criteria will have direct access to MSTC services. To encourage these entities to become Institutional Participants, MSTC will offer new services designed solely for such Participants.

Under MSTC's proposal, membership in the Program will be limited to state supervised or regulated insurance companies and investment companies registered with the Commission ("Institutions"). Also, each Institution applying for membership in the Program must meet certain financial and operational requirements. For example, Institutions subject to state, federal or

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] *See* Securities Exchange Act Release No. 27131 (August 11, 1989), 54 FR 34277.

[3] *See* letters from Jeffrey E. Lewis, Associate Counsel, MSTC, to Jonathan Kallman, Assistant Director, Division of Market Regulation, Commission, dated November 3, 1989, December 18, 1989 and March 1, 1990.

other governmental regulation must provide MSTC with copies of all financial reports submitted to regulatory authorities. Institutions that are not required to file such financial statements must provide MSTC with quarterly unaudited financial statements and annual audited financial statements.[4] An investment company must have and maintain a minimum of $50 milion in net assets (either directly or under management). In addition, an insurance company must be rated "A" or "A+" by Best's Insurance Rating Service and have at least $5 million in adjusted policyholders' surplus. Any Institution that suffers a decrease of 10% or more in its net assets, revenue or income must notify MSTC immediately.

Each Institution also must demonstrate to MSTC's satisfaction that it has sufficient operational capability to utilize MSTC's services and sufficient personnel and physical facilities necessary to meet its obligations to MSTC. An Institution must have an established business history of one year or personnel with sufficient operational experience to ensure its ability to conduct business with MSTC.

Once an Institution is admitted to the Program, it will be entitled to use all of the services currently offered by MSTC. These services include transactions processing (*e.g.*, the National Institutional Delivery Service, physical security movements, securities lending,[5] etc.), security custody and settlement, data communication links, and position reporting. MSTC also is introducing new customer support services for Institutional Participants. MSTC will assign an account administrator to each Institutional Participant who will act as a liaison between the Institutional Participant and MSTC. The account administrator will be responsible for monitoring the Institution's account activity and addressing its day to day concerns. MSTC also will design a comprehensive training program for each Institutional Participant and provide it with assistance in implementing the Program. In addition, MSTC will provide each Institutional Participant with an annual operational review, which will analyze the effectiveness of depository usage by the Institutional Participant and, if appropriate, make cost reduction and securities processing recommendations.

MSTC's proposal makes one substantive change to its rules to facilitate the entry of Institutions into the Program. Under MSTC's current rules, MSTC may recover a loss that exceeds a defaulting member's contribution to the Participant's Fund[6] from the amount remaining in the Participant's Fund, the Contingency Reserve Fund[7] or MSTC's existing undivided profits and retained earnings. MSTC's proposal changes this rule by charging losses resulting from a default by an Institutional Participant only against the Participant's Fund contributions of non-defaulting Institutional Participants, and by charging losses resulting from a default by a non-Institutional Participant only against the Participant's Fund contributions of non-defaulting non-Institutional Participants. MSTC, however, may charge losses arising out of transactions involving Institutional and non-Institutional Participants to the Participant's Fund as a whole.

Finally, MSTC's proposal sets forth a proposed fee schedule for the Program. MSTC's proposed fees are designed to cover MSTC's cost of developing the Program and will be charged uniformly based on an Institutional Participant's activity within MSTC. These fees also are designed to compensate MSTC for the increased amount of monitoring and training services provided in Institutional Participants.

II. Rationale

MSTC believes that the proposed rule change is consistent with Section 17A of the Act[8] because it encourages registered investment companies and insurance companies to participate directly in MSTC. MSTC believes that direct depository participation by these Institutions will promote the prompt and accurate clearance and settlement of securities transactions by these institutions.

III. Discussion

The Commission believes that MSTC's proposed rule change is consistent with the Act, and in particular, with Section 17A. For the reasons discussed below, the Commission is approving the proposal.

Section 17A of the Act provides that, subject to certain exceptions, the rules of a clearing agency must allow Institutions to become participants in the clearing agency.[9] Although MSTC's rules allow Institutions to participate directly in MSTC, most Institutions participate indirectly through correspondent relationships with broker-dealers or other Institutions.

MSTC believes that one of the reasons for the lack of direct depository participation by Institutions is that they are generally unfamiliar with the depository environment. For example, until recently, some states have prohibited state-chartered insurance companies from holding the securities in which they invest in an out-of-state depository.[10] In addition, many investment companies were unfamiliar with the depository environment until clearing agencies initiated programs allowing for the transfer of mutual fund shares through the facilities of a depository.[11] Moreover, Institutions with essentially a "buy and hold" trading strategy may be reluctant to participate in a system which would require them to mutualize risk with entities that have different trading strategies and investment horizons. In an effort to encourage Institutions to participate directly in MSTC, MSTC has designed a Program which attempts to familiarize Institutions with the benefits of direct participation in a depository while, at the same time, ensuring that they mutualize their risk only with Institutions that are likely to subscribe to a similar investment strategy.

The Commission believes that MSTC's proposal promotes the prompt and accurate clearance and settlement of securities transactions by increasing

[4] MSTC may require Institutions to provide financial statements on a more frequent basis and may request other financial information from Institutions as it deems necessary.

[5] Each Institutional Participant will be required to submit quarterly reports concerning its stock loan activity to MSTC. These reports must describe the aggregate amount of securities subject to securities loans that are processed through MSTC, and whether these loans are fully collateralized. MSTC may require Institutional Participants to submit more detailed information as it deems necessary. *See* letter from Jeffrey E. Lewis, Associate Counsel, MSTC, to Jonathan Kallman, Assistant Director, Division of Market Regulation, Commission, dated December 18, 1989.

[6] "Participant's Fund" is MSTC's term for its clearing fund. *See* MSTC Rules, Article VI, Rule 2.

[7] The Contingency Reserve Fund is a funded reserve maintained by MSTC whose assets are segregated from all other MSTC assets. The dollar amount of the Contingency Reserve Fund is set by MSTC's Board of Directors, and, at the end of 1989, contained $1,139,102. *See* MSTC Rules, Article VII, Rule 7. MSTC may satisfy losses caused by member default out of the Contingency Reserve Fund to the extent that such loss is not fully recovered through insurance. *See* MSTC Rules, Article VI, Rule 2, Section 4.

[8] 15 U.S.C. 78q-1 (1982).

[9] *See* 15 U.S.C. 78q-1(b)(3)(B) (1982).

[10] For example, in 1985, eight states restricted insurance company usage of depositories. Currently, only two states have such restrictions.

[11] For example, the Midwest Clearing Corporation, a MSTC affiliate, recently instituted a service for the automated order entry, confirmation, settlement and registration of transactions in mutual fund shares. *See* Securities Exchange Act Release No. 26506 (January 31, 1989), 54 FR 6051. *See also* Securities Exchange Act Release No. 24088 (February 2, 1987), 52 FR 5228 [order approving a similar service offered by the National Securities Clearing Corporation ("NSCC")]

the number of securities that are immobilized in a depository and transferred by book-entry.[12] Moreover, MSTC has taken steps to ensure that the introduction of new participants in the depository does not disrupt its transaction processing procedures or settlement time frames by providing Institutions with individual guidance about proper usage of depository facilities.[13]

The Commission also believes that MSTC's proposal will assist MSTC in fulfilling its statutory obligation to safeguard funds and securities that are in its possession or control. MSTC currently assesses the risks posed by its clearing members' trading activity and sets its financial and operational safeguards accordingly. In making this assessment, MSTC does not "look through" its clearing members to analyze the trading activities of those institutions which gain access to MSTC's services and facilities via correspondent relationships with MSTC clearing members. By encouraging those institutions that are currently "invisible" to MSTC's risk assessment analysis to become direct depository participants, MSTC's risk assessment process will become more transparent and comprehensive.

The Commission notes that although MSTC will be offering Institutional Participants essentially the same services it presently offers to its other participants, MSTC has modified the manner in which it assesses its Participant's Fund contributions. In the event of a default, MSTC only will apply the Participant's Fund contribution of Institutional Participants to cover losses caused by Institutional Participants, and only will apply the Participant's Fund contributions of non-Institutional Participants to cover losses caused by non-Institutional Participants.

The purpose of a Participant's Fund is to provide the clearing corporation with a readily-accessible liquid pool of assets to draw upon in the event of member default.[14] As explained in the Division of Market Regulation's standards for review of clearing agency applications ("Standards"),[15] the appropriate level of Participant's Fund contributions should be based, among other things, on an assessment of the risks to which the clearing agency is subject.[16] Neither the Act nor the Standards, however, require clearing agencies to mutualize default risks associated with particular services among all users. In fact, the Commission has approved limitations on mutualization of risk where the circumstances have so warranted.[17]

The Commission believes that MSTC's proposal to preclude mutualization of risk between Institutional Participants and non-Institutional Participants is consistent with section 17A. MSTC's Participant's Fund contribution formula is configured in such a manner so that the portion of clearing fund available to satisfy losses caused by defaulting Institutional and non-Institutional Participants, respectively, adequately protects MSTC.[18] In addition, MSTC has a number of resources to draw upon in the event of a default between two Institutional Participants. For example, MSTC has the authority to reverse the transaction between these two participants.[19] MSTC may also apply the defaulting participant's Participant's Fund contribution to satisfy any loss.[20] If this amount is insufficient, MSTC may then satisfy the loss out of the Participant's Fund contributions of other Institutional Participants,[21] its Contingency Reserve Fund, or its retained earnings.[22] Moreover, MSTC's proposal is limited in scope. To the extent that a member default involves both an Institutional Participant and a non-Institutional Participant, the total assets of the Participant's Fund will be available to MSTC to satisfy the resulting losses.

The Commission also notes that MSTC's financial criteria for eligible insurance companies are based primarily on an assessment of these companies by an insurance rating concern. Although these criteria may provide some insight into an insurance company's financial situation, the Commission believes that these criteria should be further refined. To give MSTC an opportunity to develop more specific criteria, the Commission is approving MSTC's proposal until January 31, 1991.[23]

Finally, MSTC has included in its proposal a fee schedule for the Program. Under Section 17A, the rules of a clearing agency must provide for the equitable allocation of fees among its participants.[24] The Commission has reviewed MSTC's proposed fee schedule and believes that the proposed fees are reasonable in relation to the services provided under the Program. Accordingly, the Commission believes

[12] *See* Securities Exchange Act Release No. 20221 (September 23, 1983), 48 FR 45167 (order granting MSTC full registration as a clearing agency).

[13] MSTC also has made the following representations to the Commission regarding the impact of the Program on its operations and computer security: (i) Implementation of the Program will not have an adverse effect on MSTC's existing operations or current processing time frames; (ii) MSTC has adequate security procedures in place to prevent unauthorized access to its computer systems; (iii) MSTC has adequate procedures in place to protect the physical security of its automated systems against physical threats and other external factors; and (iv) MSTC has tested its automated systems to determine whether they are adequate to handle the projected increase in volume attributable to the Program and has determined that they are more than adequate in that respect. *See* letter from Jeffrey E. Lewis, Associate Counsel, MSTC, to Jonathan Kallman, Assistant Directory, Division of Market Regulation, Commission, dated March 1, 1990.

[14] *See* Securities Exchange Act Release No. 19999 (July 21, 1983), 48 FR 34554.

[15] *See* Securities Exchange Release No. 16900 (June 17, 1980), 45 FR 41920.

[16] Id. at 41929.

[17] *See, e.g.*, Securities Exchange Act Release No. 18015 (August 6, 1981), 46 FR 40849, in which the Commission approved the Options Clearing Corporation's ("OCC") proposal to establish a separate non-equity securities clearing fund to satisfy the losses caused by defaulting members who trade only non-equity securities options. In approving this proposal, the Commission noted that the size of OCC's clearing funds (*i.e.*, its equity clearing fund and non-equity securities clearing fund) appeared to be reasonably designed to meet their objectives. The Commission also emphasized that the equity clearing fund and non-equity securities clearing fund would serve as a back-up source of funds in the event that the resources of either of those funds were insufficient to cover a loss arising from member default. *See also* Securities Exchange Act Release No. 26377 (December 20, 1988), 53 FR 52546, in which the Commission approved NSCC's proposal to establish a separate clearing fund for those NSCC members who limit their participation in NSCC to NSCC's Mutual Fund Settlement, Entry and Registration Verification Service. In approving this proposal, the Commission stated that it was not improper for NSCC to limit the use of clearing fund contributions to satisfying losses arising from a particular service in light of the fact that the clearing funds designated for different services independently satisfied the statutory requirements and Standards by adequately protecting participants and the clearing agency from potential losses arising from use of those services.

[18] MSTC requires each participant to contribute three percent of its daily average cash settlement amount to the Participant's Fund. Telephone conversation between Jeffrey E. Lewis, Associate Counsel, MSTC, and Ross Pazzol, Attorney, Division of Market Regulation, Commission, on January 23, 1990. In addition, all MSTC participants must maintain a minimum Participant's Fund deposit of $5,000. *See* MSTC Rules, Article VI, Rule 2, section 1.

[19] *See* MSTC Rules, Article III, Rule 1, Section 2.

[20] *See* MSTC Rules, Article VI, Rule 2, section 3.

[21] The Commission notes that under MSTC's proposal, MSTC would not be able to satisfy a loss arising from a transaction between two Institutional Participants out of the Participant's Fund contributions of non-Institutional Participants.

[22] *See* MSTC Rules, Article VI, Rule 2, section 4. On December 31, 1989, MSTC had $1,139,102 in its Contingency Reserve Fund and had $3,522,000 in retained earnings.

[23] MSTC has represented that it will submit a new rule filing for the Program by October 1, 1990 that sets foth more definitive standards for insurance company participation. *See* letter for Jeffrey E. Lewis, Associate Counsel, MSTC, to Jonathan Kallman, Assistant Director, Division of Market Regulation, Commission, dated March 1 1990.

[24] *See* 15 U.S.C. 781-1(b)(3)(D) (1982).

that MSTC's proposed fee schedule is consistent with section 17A of the Act.

IV. Conclusion

For the reasons stated above, the Commission believes that MSTC's proposal is consistent with section 17A of the Act.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR-MSTC-89-95) be, and hereby is, approved until January 31, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

March 1, 1990.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-5183 Filed 3-6-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-27751; File No. SR-MSRB-89-9 Amdt. No. 1]

Self-Regulatory Organizations; Notice of Amendment of Proposed Rule Change by the Municipal Securities Rulemaking Board; Relating to the Delivery of Official Statements and Recordkeeping

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on February 27, 1990, the Municipal Securities Rulemaking Board ("Board") filed with the Securities and Exchange Commission a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory Organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Municipal Securities Rulemaking Board (the "Board") is filing amendments to proposed rule G-36, regarding the delivery of official statements and other information to the Board or its designee, and a stated policy, pursuant to proposed rule G-36, regarding a public access facility for official statements acquired pursuant to that rule.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On November 13, 1989, the Board filed the proposed rule change, SR-MSRB-89-9, which is intended to begin the collection process for documents to be included in the Municipal Securities Information Library ("MSIL"), an electronic repository for official statements and other documents that would function much like a public library that stores and indexes the documents and provides copies of the documents to parties requesting them for a fee. Rule G-36 would require underwriters of certain municipal securities issues to provide to the Board or its designee a copy of the final official statement and a completed Form G-36.

The Commission staff, after reviewing SR-MSRB-89-9, suggested that the Board provide access to the public to official statements collected pursuant to rule G-36 prior to the time such documents are available from MSIL. In response to this suggestion, the Board has adopted, and hereby amends its filing to incorporate, the changes described below:

a. Public access facility

The public access facility would be at the Board's offices and available to the public from 9:00 a.m. to 4:30 p.m., local time, when the Board's offices are open. The official statements would be available no later than one business day after receipt by the Board. A photocopy machine also would be available for members of the public to copy official statements, with a per page charge of $.20. In addition, a list of official statements obtained by the Board, by issue and by dated date, would be made available at the Board's offices. Members of the public also may telephone the Board's offices to inquire if an official statement for an identified issue currently is available from the public access facility.

Under proposed rule G-36, underwriters would be required to mail official statements to the Board within one business day after receipt from the issuer for issues subject to SEC rule 15c2-12. Official statements for those issues must be sent no later than 10 business days after the date of the final agreement to purchase, offer or sell the municipal securities. For issues not subject to rule 15c2-12, underwriters must mail official statements to the Board within one business day of closing of the issue. Under Board and SEC rules, however, underwriters are required to provide official statements to customers and potential customers, upon request. In addition, any organization that provides a useful service to dealers should be able to obtain official statements voluntarily from dealers. Official statements, therefore, should be publicly available prior to the time they are received by the Board. Thus, the Board believes that making official statements available to the public access facility no later than the next business day after receipt at the Board's offices should be sufficient to provide whatever additional access is needed.

b. Technical amendments to proposed rule G-36

One copy of the official statement received by the Board pursuant to proposed rule G-36 must be handled only by the MSIL personnel for inclusion in the electronic library because excessive handling reduces the quality of the electronic image. Thus, the Board has revised the proposed rule change to require underwriters to provide two copies of the official statements to the Board, along with two copies of Form G-36. This should ensure that a complete set of documents is available from the public access facility without causing the documents that are to be included in MSIL to be handled excessively.

In addition, in response to a commentator, the Board has revised proposed rule G-36(c)(1), with regard to certain issues not subject to rule 15c2-12, to clarify that Form G-36 must be sent to the Board only when an official statement in final form is prepared.

The Board has adopted the proposed rule change pursuant to section 15B(b)(2)(C) of the Securities Exchange Act of 1934, as amended, which authorizes the Board to adopt rules designed to prevent fraudulent and manipulative acts and practices, to foster cooperation and coordination with persons engaged in regulating transactions in municipal securities and, in general, to protect investors and the public interest. An official statement repository will significantly increase the scope of information concerning municipal securities made available to the general public and market participants in furtherance of the Board's rulemaking purposes. In addition, a repository would allow the Board to consider possible rulemaking initiatives to ensure that customers have complete information regarding municipal securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change would impose any burden on competition since it applies equally to all brokers, dealers and municipal securities dealers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Board did not solicit comment on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference section. Copies of such filing also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by March 28, 1990.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 1, 1990.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-5184 Filed 3-6-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-27754; File No. NSCC-89-13]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Extending Temporary Approval on an Accelerated Basis of a Proposed Rule Change Concerning the Automated Settlement of Mutual Fund Dividends

March 1, 1990.

The National Securities Clearing Corporation ("NSCC"), on August 14, 1989, filed a proposed rule change with the Securities and Exchange Commission ("Commission" or "SEC") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] The rule change modifies NSCC's Rules to provide for the automated settlement of mutual fund dividends through NSCC's Networking Service. Notice of this proposal was published in the **Federal Register** on September 8, 1989, to solicit comments from interested persons.[2] No comments were received. On September 29, 1989, the Commission granted accelerated approval of the proposal on a temporary basis through December 31, 1989,[3] and on December 29, 1989, the Commission granted an order extending the approval through February 28, 1990.[4] On February 27, 1990, NSCC requested that the temporary approval be extended for at least six months.[5] The instant order extends the temporary approval of this proposal for an additional eight months, *i.e.*, through October 31, 1990.

I. Description of the Proposal

The rule change amends NSCC's Rule 52, section 17 (captioned "Networking").[6] Rule 17, prior to this proposal, had authorized NSCC's member broker-dealers and Fund members to use NSCC's Networking Service for the transmission among themselves of mutual fund customer account data. NSCC notes that Networking's "initial phase" provided NSCC members with a centralized data communications system for the exchange of customer information and securities positions.[7]

The proposed rule changes to Rule 17 (which NSCC terms Networking's "second phase") provide for the establishment of a Networking dividend service and the automated settlement of cash dividends paid by mutual funds on mutual fund holdings maintained in Networking accounts. The transmission of mutual fund distribution information through Networking predates this proposal, but the actual payment of the mutual fund distributions (except as authorized by this proposal) still occurs directly between the Fund member and each broker that holds units of the mutual fund. This proposal enables a Fund member (*i.e.*, a mutual fund) to make only one distribution payment to NSCC, instead of separate payments to each broker. NSCC then distributes the Fund's distribution payment through the Networking Service to the brokers.[8]

Under the proposal, NSCC provides to broker-dealer and Fund members using Networking a new file termed the Networking Settlement Summary File ("Summary File"). The Summary File consists of two sub-files: (1) The Networking Settlement Summary Detail Output Record ("Output Record"), and (2) the Networking Settlement Summary Trailer Record ("Trailer Record").

The Output Record details on a daily basis for each Fund member and each broker as of the day before a distribution's payable date ("Payable-1"): (1) The payable and settlement dates,[9] (2) the settlement amounts, and

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] *See* Securities Exchange Act Release No. 27199 (August 30, 1989), 54 FR 37395.

[3] *See* Securities Exchange Act Release No. 27324 (September 29, 1989), 54 FR 41707. The Commission found "good cause" for granting accelerated approval under section 19(b)(2) of the Act inasmuch as NSCC members: Had administered training to personnel, had equipment in place, and were scheduled to commence operations with the new system on September 29, 1989. Accordingly, the Commission concluded that it would be burdensome on NSCC's members to stand down and renew their phase-in operations at a later time. *Id.*

[4] NSCC requested that the temporary approval order be extended for an additional two months through February 28, 1990. *See* letter from Alison Hoffman, Associate Counsel, NSCC, to Jonathan G. Katz, Secretary, SEC, dated December 22, 1989.

[5] *See* letter from Alison N. Hoffman, Associate Counsel, NSCC, to Thomas C. Etter, Attorney, SEC, dated February 27, 1990.

[6] "Networking" is an NSCC mutual fund service, provided on a subscription basis, that permits automated transmission of mutual fund customer account data among NSCC broker-dealers and Fund members. *See* Securities Exchange Act Release No. 26376 (December 20, 1988), 53 FR 52544 [File No. SR-NSCC-88-08].

[7] *See* NSCC Important Notice No. A3232, dated August 10, 1989.

[8] NSCC states in its filing that a valid payable date for this purpose will be defined as any date on which New York banks are open for business.

[9] Under the proposal, payable dates and settlement dates ordinarily will be the same. But a Fund member could report its dividend payable information after the payable date. In that case, the settlement date would be the date on which the information was reported. *See* NSCC's Important Notice No. A3232, dated August 10, 1989.

(3) all dividend updates (*i.e.*, additions and corrections) up to and including Payable–1. The Trailer Record details the identical information on a daily basis as of settlement date. NSCC makes the Summary File available at approximately 11 a.m. (EST) daily.

Under the proposal, Fund members must pay their cash dividend settlement figures in same-day funds, via Fedwire,[10] no later than NSCC's close of business on the payable date.[11] NSCC pays its broker members in next-day funds at approximately 3 p.m. daily. Inasmuch as NSCC is paid in same-day funds but pays its members in next-day funds, it credits its broker members with interest earned on those funds.

Under the proposal, the Fund members' dividend payments constitute independent obligations of the Fund members. Accordingly, NSCC ordinarily will not net these payment against the Funds members' other settlement balances. If, however, as a result of Networking dividend corrections and reversals, a Fund member's settlement figure results in a credit balance, NSCC will repay the balance in next-day funds.[12]

II. NSCC's Rationale for the Proposal

NSCC states that the proposed rule change is consistent with section 17A of the Act inasmuch as automating the settlement of mutual fund dividends would promote the prompt and accurate clearance and settlement of securities transactions.

III. Discussion

The Commission believes that the proposal is consistent with the Act. The Commission notes, moreover, that section 17A(a)(1) of the Act expressly encourages the user of automated systems to make the processing of securities transactions more prompt and more efficient.

This proposal permits the automated settlement of mutual fund distributions. That is, for a mutual fund participating in NSCC's Fund/Serv, dividend payments to many broker-dealers can be reduced to only one dividend payment to one clearing agency, NSCC; and NSCC then distributes the dividends to the broker via its Networking Service in next-day funds.

Nevertheless, the Commission believes that it needs further statistical information about the operation of the proposed service, including the record for timely vs. late payment to NSCC. The Commission also is interested in precisely what financial safeguards NSCC has in place—or intends to put in place—to protect itself in event of payment default by a mutual fund. Accordingly, in order to assess further the benefits, costs, and risks associated with this service, the Commission is extending its temporary approval of this proposal for an additional eight months through October 31, 1990. During this period, the Commission understands that NSCC will collect payment data over a six month period and provide monthly reports on such data to the Commission.[13]

The Commission finds good cause for approving the proposed rule change on a temporary accelerated basis prior to the thirtieth day after the date of publication of notice of filing inasmuch as: (1) This order merely is extending for an additional period a prior temporary approval order by the Commission;[14] and (2) the NSCC proposal in question constitutes an ongoing operation that is being monitored by the Commission to determine whether it merits permanent approval.

IV Conclusion.

For the reasons discussed in this order, the Commission believes that the proposal is consistent with the requirements of the Act, particularly section 17A of the Act and the rules and regulations thereunder. Nonetheless, the Commission desires further information about this proposal before granting permanent approval.

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act, That the above-mentioned proposed rule change (SR–NSCC–89–13) be, and hereby is, approved on a temporary basis through October 31, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority (17 CFR 200.3(a)(12)).

Jonathan G. Katz,

Secretary.

[FR Doc. 90–5186 Filed 3–6–90; 8:45 am]

BILLING CODE 8010–01–M

[10] "Fedwire" is an acronym for the Federal Reserve System wire facility which provides a system for transferring funds among all 12 Federal Reserve Banks, their 24 branches, the Federal Reserve offices in Washington, DC and Chicago, and the Commercial Credit Corporation. *See* Division of Market Regulation, Securities and Exchange Commission, *The October 1987 Market Break*, at 1–12 (1988).

[11] The original proposal applied a payment deadline of 1 p.m. on settlement date. For technical reasons involving the routine of Fedwire transmissions, the 1 p.m. deadline proved unworkable. Accordingly, the proposal, as amended, has adopted a close-of-business deadline. *See* letter from Alison N. Hoffman, Associate Counsel, NSCC, to Thomas C. Etter, Attorney, SEC, dated February 21, 1990.

[12] NSCC notes in its filing that the dividend payments will not be a guaranteed service: If NSSC were to credit a broker with a dividend and not receive the corresponding debit from the Fund member, the credit would be subject to reversal.

[13] These reports should: (1) Measure lateness as of the NSCC's closer of business on settlement date, and (2) exclude those mutual funds that have experience of less than 30 days with this program.

[14] *See, supra*, note 3.

[Rel. No. 34–27749; SR–OCC–90–02 and SR–ICC–90–01]

Self-Regulatory Organizations; the Options Clearing Corporation and the Intermarket Clearing Corporation; Proposed Rule Changes Relating to OCC/ICC Cross-Margining

February 28, 1990.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 8, 1990, the Options Clearing Corporation ("OCC") and the Intermarket Clearing Corporation ("ICC") filed with the Securities and Exchange Commission ("Commission") the proposed rule changes as described in Items I, II and III below, which Items have been prepared by the self-regulatory organizations. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organizations' Statement of the Terms of Substance of the Proposed Rule Changes

File No. SR–OCC–90–02 and File No. SR–ICC–90–01 propose rule changes which would permit pairs of affiliates, one of which is a clearing member of OCC and one of which is a clearing member of the ICC to participate in OCC's cross-margining program with ICC.

II. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In their filings with the Commission, the self-regulatory organizations included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organizations have prepared summaries, set forth in section (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organizations' Statements of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

OCC-ICC cross-margining is currently available only to OCC clearing members that are also clearing members of ICC ("Joint Clearing Members"). The purpose of the proposed rule changes is to make OCC's cross-margining program with ICC, originally proposed by OCC in File No. SR-OCC-86-17, available to pairs of affiliates, one of which is a clearing member of OCC and one of which is a clearing member of ICC.[1] OCC's cross-margining program with the Chicago Mercantile Exchange ("CME") is currently available to pairs of affiliates, and the proposed rule changes would therefore make OCC-ICC cross-margining available to the same types of affiliated entities to which OCC-CME cross-margining is currently available.

OCC-ICC cross-margining would work for pairs of affiliated clearing members exactly as it does for Joint Clearing Members. The pair of affiliated clearing members would submit a "notice of election" to OCC and ICC. Like the notice of election currently submitted by Joint Clearing Members, the notice of election would also constitute a security agreement. The security agreement for pairs of affiliated clearing members would differ only in that the OCC clearing member, not the Joint Clearing Member, would assign all of its right, title and interest in long options positions subject to cross-margining to ICC as security for the obligations of the OCC clearing member and the ICC clearing member in respect of all positions subject to cross-margining.

The proposed rule changes would make a few changes to OCC's and IC's By-Laws that are not directly related to the purpose of the proposed rule change described above. Clarifying changes would be made to the definition of "Joint Clearing Member." In addition, a phrase would be added to clarify that the termination of the intermarket cross-margining agreement between OCC and ICC (described below), or the suspension by IC of its cross-margining procedures in accordance with its rules, would have the effect of terminating all cross-margining requests submitted by clearing members.

OCC-ICC cross-margining is governed by an intermarket cross-margining agreement ("Agreement") between OCC and ICC. Under the proposals, the Agreement would be amended and restated to accommodate participation by pairs of affiliated clearing members in the cross-margining program. A copy of the amended and restated Agreement, marked to show the changes from the existing Agreement, is attached to the filing.

A few of the changes to the Agreement would not be directly related to accommodating participation by pairs of affiliated clearing members in cross-margining. Section 5 would be amended to clarify, in conformance with ICC's Rule 513(b), that upon the suspension by OCC of a clearing member participating in OCC-ICC cross-margining, or upon the suspension by ICC of a clearing member participating in cross-margining, ICC shall have the right, but shall not be obligated, to liquidate the affected cross-margined positions. Stylistic and clarifying changes would be made to paragraphs 7(b) and 7(c). A new paragraph 7(d) would be added to make explicit that the Agreement will terminate automatically upon the occurrence of certain events, and a phrase would be added to section 2 to confirm that termination of the Agreement would terminate all clearing member cross-margining requests then in effect. A phrase would be added to section 10 to make clear that the prior version of the Agreement is terminated.

The proposed rule changes are consistent with the purposes and requirements of section 17A of the Act because they make the OCC-ICC cross-margining program, which has the capacity to enhance the safety of the clearing system while providing lower clearing margin costs to clearing members, available to additional participants.

B. Self-Regulatory Organizations' Statement on Burden on Competition

OCC and ICC do not believe that the proposed rule changes would impose any burden on competition.

C. Self-Regulatory Organizations' Statement on Comments on the Proposed Rule Changes Received from Members, Participants or Others

Written comments were not and are not intended to be solicited by OCC and ICC with respect to the proposed rule changes and none have been received by OCC or ICC.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for finding, or (ii) as to which the self-regulatory organizations consent, the Commission will:

(A) By order approve such proposed rule changes, or,

(B) Institute proceedings to determine whether the proposed rule changes should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof wih the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal offices of the above-mentioned self-regulatory organizations. All submissions should refer to the file numbers SR-OCC-90-02 and SR-ICC-90-01 and should be submitted by March 27 , 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-5187 Filed 3-6-90; 8:45 am]

BILLING CODE 8010-01-M

[1] File No. SR-OCC-86-17 was approved by the Commission in Release No. 26153 (October 3, 1988). The Commission noted, in footnote 16 of that Release, that "CFTC customer segregation requirements prohibit co-mingling [security] options and futures positions in the same account," that some firms "conduct their options and futures trading activities through separate corporate entities," and that these firms "would not be eligible for cross-margining at this time." Although these proposed rule changes would expand the OCC-ICC cross-margining program to permit participation by affiliated pairs of firms, the rule changes specify that the firms must be non-customers of each other. Thus, the proposed rule changes are therefore consistent with existing CFTC customer segregation requirements.

[Rel. No. 34-27750; File No. SR-PSE-90-1]

Self-Regulatory Organizations; Pacific Stock Exchange; Order Approving Proposed Rule

On January 9, 1990, the Pacific Stock Exchange ("PSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2] a proposed rule change to delete section 10(a) from Exchange Rule IX.

The proposed rule change was published for comment in Securities Exchange Act Release No. 27655 (January 30, 1990), 55 FR 4299 (February 7, 1990). No comments were received on the proposal.

The PSE has proposed to delete section 10(a), entitled *Transaction Charges,* from Rule IX of the Exchange's Rules of the Board of Governors. Section 10(a) sets forth the Exchange's monthly fee schedule for exchange transactions which are computed based up the dollar value of members' exchange transactions.[3] Section 10(a) also sets the requirements that a specialist must pay to the Exchange a monthly fee of 1½% on specialist's commission income.[4] Finally, section 10(a) states that exchange transaction and transaction fees are computed monthly by the Exchange.[5]

The Exchange states that the transaction charges currently existing in section 10(a) are also contained in a separate publication setting forth the rates and fees applicable to doing transactions on the Exchange, entitled "PSE Schedule of Rates and Fees." [6] For reference purposes, the PSE considers it more efficient to have the transaction charges listed only in the PSE Schedule of Rates and Fees.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of section 6(b)(5). [7] Specifically, the Commission believes that the proposal is consistent with the section 7(b)(5) requirement that the rules of an exchange be designed to facilitate transactions in securities and to perfect the mechanism of a free and open market in exchange-list securities because the deletion of the transaction charges from section 10(a) of Exchange Rule IX will serve to simplify and streamline the PSE rules in this area. Under the PSE proposal, the transaction fees will be contained in only one publication, the PSE Schedule of Rates and Fees, thereby avoiding having the transaction schedule set forth in two separate places.[8]

In addition, the Commission believes that having the different fees charged members in one place will facilitate reference to the fees by Exchange members, staff, and other interested parties. Finally, the Exchange's proposal to delete the transaction fees from section 10(a) will serve to eliminate confusion regarding Exchange fees.

It Is Therefore Ordered, purusuant to section 19(b)(2) of the Act,[9] That the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Jonathan G. Katz,

Secretary.

[FR Doc. 90-5188 Filed 3-6-90; 8:45 am]

BILLING CODE 8010-01-M

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1989).

[3] These rates are as follows:

Dollar value of exchange	Rate per thousand cents
$0-$10,000,000	16.0
Over $10,000,000 to and including $50,000,000	13.0
Over 50,000,000	10.0

Under this section, exchange transactions include the dollar value of a member's purchase and/or sales effected on the Exchange. In addition, if a "give-up" is involved, 40% of the dollar value of such transaction shall be considered "Exchange Transactions" for the firm receiving the give-up, and 60% of the dollar value of such transactions shall be considered "Exchange Transactions" for the firm paying the give-up.

[4] The specialist fee is payable to the Exchange on or before the 15th day of each month and must be accompanied by a report of net commissions *See* section 10(a)(3).

[5] *See* section 10(a)(4).

[6] Section 10(a) was recently amended to reflect new equity transaction rates. *See* Securities Exchange Act Release No. 27570 (December 27, 1989), 55 FR 381 (January 4, 1990) (File No. SR-PSE-89-30).

[7] 15 U.S.C. 78f (1982).

[8] Of course, any changes to the transaction fees still would have to be filed with the Commission as a proposed rule change under section 19b of the Act.

[9] 15 U.S.C. 78s(b)(2) (1982).

[10] 17 CFR 200.20-3(a)(12) (1989).

[Rel. No. IC—17361; 812-7084]

Emerald Funds; Application

March 1, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for Exemption under the Investment Company Act of 1940 ("1940 Act").

APPLICANTS: Emerald Funds, Emerald Asset Management, Inc., Concord Holding Corporation and Barnett Banks Trust Company, N.A.

RELEVANT 1940 ACT SECTIONS: Exemption requested under section 6(c) from sections 18(f), 18(g) and 18(i).

SUMMARY OF APPLICATION: Applicants seek an order to permit Emerald Funds (the "Trust"), a registered open-end investment company, to issue and sell separate classes of securities representing interests in its Treasury Fund, Prime Fund and Tax-Exempt Fund investment portfolios (and the allocation of voting rights thereto and payment of dividends thereon) in the manner described below.

FILING DATES: The application was filed on July 28, 1988, and amendments to the application were filed on July 11, August 11, and September 29, 1989, and February 28, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 2, 1990 and should be accompanied by proof of service on the Applicants, in the form of an affidavit, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC 450 5th Street, NW., Washington, DC 20549. The Trust, Emerald Asset Management, Inc., and Concord Holding Corporation, 156 West 56th Street, 19th Floor, New York, New York 10019; Barnett Banks Trust Company, N.A., 9000 Southside Boulevard, Building 100, 6th Floor, Jacksonville, Florida 32203.

FOR FURTHER INFORMATION CONTACT: H.R. Hallock, Jr., Special Counsel, at (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be

contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. The Trust is a Massachusetts business trust registered under the 1940 Act as an open-end management investment company. It has six separate investment portfolios: Treasury Trust Fund; Prime Trust Fund; Tax-Exempt Trust Fund; Treasury Fund; Prime Fund; and Tax-Exempt Fund. The Trust commenced operations on December 7, 1988.

2. The Treasury Trust Fund, Prime Trust Fund and Tax-Exempt Trust Fund (together, the "Trust Portfolios") have been organized for bank customers for whom Barnett Banks Trust Company, N.A. ("Barnett") or an affiliate of Barnett provides advisory or other fiduciary services. Because the Trust intends to offer only one class of shares in each of the Trust Portfolios, the requested exemptive relief will not extend to them.

3. The Treasury Fund, Prime Fund and Tax-Exempt Fund (the "Portfolios;" the inital classes of shares in the Portfolios currently offered by the Trust referred to as the "Initial Shares") are each money market portfolios that have been organized for all customer accounts maintained at Barnett or an affiliate bank (other than accounts investing in the Trust Portfolios), as well as customer accounts maintained at Barnett's correspondent banks (such correspondent banks, together with Barnett and its affiliated banks, called the "Banks"). It is also anticipated that these investment portfolios will be offered to customers of other affiliated and unaffiliated financial institutions, broker/dealers and securities professionals, as well as to the general public.

4. Shares of each Portfolio are sold and redeemed daily at net asset value without a sales or redemption charge. The net investment income of each Portfolio is declared daily and paid monthly to shareholders.

5. The Portfolios pay advisory fees to Barnett and administration fees to Concord Holding Corporation ("Concord"). No compensation is now paid by the Trust to Emerald Asset Management, Inc. ("EAM"), the Trust's distributor. Pursuant to the order requested by the application, however, each Portfolio would in the future make the "Plan Payments," as defined in paragraph 11 below, to EAM and other entities for distribution and other services that are not now provided to the Trust.

6. In order to broaden its range of services and to expand its marketing alternatives, the Trust is contemplating the creation of two additional classes of shares in each Portfolio. One class (the "non-12b-1 Shares") will be offered in connection with a Shareholders Services Plan not adopted under Rule 12b-1 (the "non-12b-1 Plan"). The second class (the "12b-1 Shares") will be offered in connection with a combined Distribution and Shareholder Service Plan adopted in accordance with Rule 12b-1 (the "Combined Plan").[1] The 12b-1 Shares and non-12b-1 Shares are jointly referred to as the "New Shares." The non-12b-1 Plan and Combined Plan are jointly referred to as the "Plans."

7. The non-12b-1 Plan will establish procedures whereunder servicing agreements will be entered into with Banks or other institutions ("Service Organizations") concerning the provision of support services to the customers ("Customers") of the Service Organizations who from time to time beneficially own the non-12b-1 Shares covered by the Plan. The a purpose of the non-12b-1 Plan will be to provide essential support services to Customers of financial institutions who are the beneficial owners of Shares in the Portfolios.

8. The Combined Plan will provide for payments by the Trust to EAM, and will consist of two parts. The first part (which will be subject to the provisions of Rule 12b-1) will provide for payments by the Trust for expenses incurred in connection with the distribution of 12b-1 Shares in the Portfolios. These expenses may include advertising and marketing expenses, printing costs for new prospectuses and sales literature and payment to broker/dealers and others for distribution and/or support assistance. The second part of the Combined Plan will provide for payments by the Trust for non-distribution-related services that are rendered in connection with the 12b-1 Shares. These services include the development and monitoring of various programs that are offered from time to time in connection with the 12b-1 Shares but not in connection with the Initial or non-12b-1 Shares, such as IRA's and other ERISA options, automatic deposit and withdrawal programs, check writing privileges, audio response services, dividend options permitting payment in automated clearing house funds, lock box facilities and direct deposit programs. In addition, EAM will be required to provide under this part of the Combined Plan oversight and other support services that are intended to ensure the delivery of quality service to public investors who hold 12b-1 Shares.

9. Under the non-12b-1 Plan, a Portfolio will pay Service Organizations an amount not to exceed .35% (on an annualized basis) of the average daily net asset value of the Portfolio's non-12b-1 Shares that are outstanding from time to time. Payments by a Portfolio under the Combined Plan will not exceed .50% (on an annualized basis) of the average daily net asset value of the Portfolio's outstanding 12b-1 Shares. That part of the proposed Combined Plan for 12b-1 Shares that relates to the payment of distribution expenses, as well as any related agreements (within the meaning of Rule 12b-1), will be subject to all of the provisions of Rule 12b-1. The second part of the Combined Plan, which relates to non-distribution services, and the non-12b-1 Plan will be adopted by the Trust's Board pursuant to procedures offering the major protections to investors provided by Rule 12b-1.

10. If New Shares are created and Plans adopted as described above, the expense of the payments made with respect to a particular class of a Portfolio's New Shares should be appropriately borne by the shareholders of such class since the benefits of the Plans will accrue to them. The Trust's distributor believes, however, that it will be inefficient, and in some instances economically or operationally unfeasible, to organize a separate investment portfolio for each class of New Shares to be created. Not only would the Trust incur unnecessary accounting and bookkeeping costs in organizing and operating such new portfolios, but the Trust's management of the new portfolios, as well as its existing Portfolios, might be hampered.

11. In order to obviate such risks, the New Shares would represent interests in the same Portfolios as the Initial Shares. Each New and Initial Share in a particular Portfolio, regardless of class, would represent an equal pro rata interest in the Portfolio and would have identical voting, dividend, liquidation and other rights, preferences, powers, restrictions, limitations, qualifications, designations and terms and conditions, except that: (1) Each class of New Shares and Initial Shares would have different class designations; (2) each class of New Shares offered in connection with a Plan would bear the expenses incurred pursuant to the terms of that Plan ("Plan Payments"); and (3) only the holders of the shares of the class or classes involved would be entitled to vote on matters pertaining to the first part of the Combined Plan, and

[1] Neither Barnett nor its affiliated Banks will invest the assets of their discretionary customer accounts in either of the two classes of New Shares.

any related agreements, relating to such class or classes (for example, the adoption, amendment or termination of such part) in accordance with the provisions of Rule 12b–1. The New and Initial Shares of a Portfolio would also differ with respect to exchange privileges established by the Board of Trustees. New Shares of one Portfolio offerred in connection with a particular Plan would be exchangeable only for New Shares of another Portfolio that are offered in connection with the same Plan and Initial Shares of one Portfolio would be exchangeable only for Initial Shares of another Portfolio.

12. The net asset value of all outstanding shares representing interests in the same Portfolio would be computed on the same days and at the time same times by adding the value of all portfolio securities and other assets belonging to the Portfolio involved, subtracting the liabilities charged to such Portfolio and dividing the result by the number of that Portfolio's outstanding shares. Further, the gross income of a Portfolio would be allocated on a pro-rata basis to each outstanding share in the Portfolio regardless of class, and all expenses incurred by the Portfolio would be borne on a pro-rata basis by such outstanding shares, except for the payments that are made under a Plan that has been adopted in connection with a class of shares.

13. Because of the Plan Payments that will be borne by particular classes of shares, the net income of (and dividends payable to) one class will differ from the net income of the other classes of shares in the same Portfolio.

Applicants' Legal Analysis

1. Applicants request an exemptive order because the proposed issuance and sale of Initial, non-12b–1 and 12b–1 Shares might be deemed: (1) To result in a "senior security" within the meaning of section 18(q) of the 1940 Act and to be prohibited by section 18(g) of the 1940 Act and to be prohibited by section 18(f)(1) of the 1940 Act: and (2) to violate the equal voting provisions of section 19(i) of the 1940 Act. The proposed allocation of expenses and voting rights in the manner described is equitable and would not discriminate against any group of shareholders. Investors purchasing New Shares and receiving the services provided under a Plan would bear the costs associated with such services, but would also enjoy exclusive shareholder voting rights with respect to matters affecting the Plan. Conversely, investors purchasing Initial Shares would not bear those expenses, receive the service benefits of such Plans, or enjoy those voting rights.

2. The proposed arrangement does not involve borrowings and does not affect the Trust's existing assets or reserves. Nor will the proposed arrangement increase the speculative character of the shares in a Portfolio, since all shares—Initial, non-12b–1, 12b–1—will participate pro rata in all of the Portfolio's income and all of the Portfolio's expenses (with the exception of the Plan Payments). The requested exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

Applicants' Conditions

Applicants agree that the following conditions may be imposed in any order of the SEC granting the requested relief:

1. The only differences between each class of shares representing interests in the same Portfolio will relate solely to: (a) Priorities with respect to the payment of dividends, and such priorities will reflect only the impact of Plan Payments and any other incremental expenses subsequently identified that should be properly allocated to one class and whch are approved by the SEC pursuant to an amended order; and (b) voting rights on matters which pertain to Plans and related agreements, which rights will be granted solely to the two classes of New Shares.[2]

2. The first part of the Combined Plan which provides for payments by the new class of 12b–1 Shares of each Protfolio for expenses incurred in connection with the distribution of 12b–1 Shares in the Portfolios, and related agreements relating to the 12b–1 Shares, will be approved and reviewed annually by the Trust's Board of Trustees (including a majority of the independent trustees) in accordance with the procedures set forth in Rule 12b–1 (as currenty in effect and as that Rule may be modified in the future) and, in addition, the first part of the Combined Plan will be approved by the shareholders of the new class of 12b–1 Shares in each Portfolio in accordance with the procedures set forth in Rule 12b–1 (as currently in effect and as that Rule may be modified in the future.).

3. The non-12b–1 Plan and the second part of the Combined Plan (that is, the part of the Combined Plan which provides for payments by the new class of 12b–1 Shares for non-distribution-related services that are rendered in connection with the 12b–1 Shares) will be approved annually the by Trust's Board of Trustees (including a majority of the independent trustees) only after a thorough examination of all relevant facts. In evaluatng the non-12b–1 Plan and the second part of the Combined Plan (the "Service Plans"), the trustees will specifically consider whether (a) the Service Plans are in the best interest of each class of New Shares covered by the particular Service Plan, (b) the services to be performed pursuant to the Service Plans are required for the operations of each of the new classes of New Shares of the Portfolios, (c) Service Organizations and EAM can provide the services the nature and quality of which are at least equal to those provided by others, including the Trust, offering the same of similar services, and (d) the fees for such services are fair and reasonable in light of the usual and customary charges made by other entities, especially nonaffilated entities for services of the same nature and quality.

4. In voting on the plans and related agreements, the trustees will exercise reasonable business judgment in light of their fiduciary duties under state law and under sections 36(a) and (b) of the 1940 Act. The minutes of the meetings of the Trust's Board of Trustees regarding such deliberations and approvals will describe the factors considered and the basis for the decisions. Such minutes will be maintained for a period of not less than six years, the first two years in an easily accessible place, and will be made readily available for inspection by the SEC staff. Similarly, each Plan, and the related agreements, will be preserved for a period of not less than six years from the date of such Plan (or agreements), the first two years in an easily accessible place, and will be made readily available for inspection by the SEC staff.

5. On an ongoing basis, the trustees of the Trust, pursuant to their fidiciary responsibilities under the 1940 Act and otherwise, will monitor each Portfolio for the existence of any material conflicts among the interests of the various classes of shares. The trustees, including a majority of the independent trustees, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. The Trust agrees to take the actions necessary to ensure that Barnett, EAM, Concord, the Service Organizations and any other service providers any potential or existing conflicts to the trustees. If a conflict arises, Barnett, EAM, and Concord at their own cost will resolve such conflict with an appropriate remedy, up to and includng

[2] Also, the designation of each class of shares in a Portfolio will be different and each class will be accorded different exchange privileges by the Trust's Board of Trustees.

establishing new and separate registered management investment companies.

6. Each prospectus relating to a class or classes of shares will describe the services provided under the Service Plans with respect to each such class or classes and the payments to be borne by each such class or classes for such services. In addition, each agreement entered into with a Service Organization will contain a representation by the Service Organization involved that any compensation payable to the Service Organization by its Customers in connection with the investment of their assets in New Shares; (i) Will be disclosed by it to its Customers; (ii) will be authorized by its Customers; and (iii) will not result in an excessive fee to the Service Organization.

7. Any servicing agreement with Service Organizations shall provide that, in the event an issue pertaining to the non-12b–1 Plan is submitted for shareholder approval, the Service Organization shall vote non-12b–1 Shares held for its account in the same proportion as the vote of the non-12b–1 Shares held for its Customers' benefit.

8. The Trust's Board of Trustees will receive quarterly and annual statements of the amounts expended under the Plans and related agreements and the purposes for which such expenditures were made. In the statements, only expenditures properly attributable to the New Shares covered by a Plan, and the related agreements relating to such shares, will be used to justify the payments made under such Plan and related agreements. The Plans and the related agreements will not be operated in such a manner as to cause payments thereunder to subsidize the servicing of the shares of another class of the same Portfolio.

9. Dividends paid by the Trust with respect to each class of shares of a Portfolio will be calculated in the same manner and will be in the same per share amount, and will be calculated at the same time and on the same day, as dividends paid by the Trust with respect to each other class of shares in the same Portfolio, except that any Plan Payments relating to a class of shares will be borne exclusively by that class.

10. The methodology and procedures for calculating the net asset value and dividend/distributions of the various classes and the proper allocation of expenses among the classes has been reviewed by an expert (the "Expert") who has rendered a report to the Trust, which has been provided to the SEC's staff, that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner. On an ongoing basis, the Expert, or an appropriate substitute Expert, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually a report to the Trust that the calculations and allocations are being made properly. The reports of the Expert will be filed as part of the periodic reports filed with the SEC pursuant to sections 30(a) and 30(b)(1) of the 1940 Act and the work papers of the Expert with respect to such reports, following request by the Trust which the Trust agrees to provide, will be available for inspection by the SEC staff upon written request by a senior member of the Division of Investment Management or of a regional office of the Commission. Authorized staff members would be limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director, and any Regional Administrators or Associate or Assistant Regional Administrators. The initial report of the Expert is a "Special Purpose" report on the "Design of a System" and the ongoing reports will be "Special Purpose" reports on the "Design of a System and Certain Compliance Tests" as defined and described in Statement of Auditing Standards No. 44 of the American Institute of Certified Public Accountants ("AICPA"), as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

11. The Trust has adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividend/distributions of the various classes of shares and the proper allocation of expenses among the classes of shares. This representation has been concurred with by the Expert in the initial report referred to in Condition 10 above and will be concurred with by the Expert or an appropriate substitute Expert on an ongoing basis at least annually in the ongoing reports referred to in that condition. The Trust agrees to take immediate corrective action if the Expert, or appropriate substitute Expert, does not so concur in the ongoing reports.

12. If sales personnel or other persons become entitled to receive a portion of a distribution or servicing fee which differs based upon the class of shares so purchased, the applicable prospectuses will include a statement to that effect.

13. All purchases of shares of the Portfolios by the trustees made after the issuance of the New Shares will be equally divided among the two classes of New Shares and the Initial Shares. Over time, the actual holdings of the Initial and the two classes of New Shares would differ to a minor degree if a trustee elects to have dividends reinvested.

14. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the trustees of the Trust with respect to the multi-class system will be set forth in guidelines which will be furnished to the trustees.

15. Each of the Portfolios will disclose the respective expenses, performance data, distribution arrangements, services, fees, sales loads, deferred sales loads, and exchange privileges applicable to its Initial Shares, non-12b-1 Shares, and 12b-1 Shares in every prospectus, regardless of whether all classes of shares are offered through each prospectus. Each of the Portfolios will disclose the respective expenses and performance data applicable to all classes of shares in every shareholder report. To the extent any advertisement or sales literature describes the expenses or performance data applicable to any class of shares, it will also disclose the respective expenses and/or performance data applicable to all classes of shares. The information provided by Applicants for publication in any newspaper or similar listing of a Portfolio's net asset value and public offering price will present each class of shares separately.

16. The trust will operate a Portfolio issuing Initial Shares, non-12b–1 Shares and 12b–1 Shares only when and for so long as such Portfolio declares a daily dividend, accrues its Plan Payments daily, and has received undertakings from Service Organizations and EAM waiving such portion of any such Plan Payments to the extent necessary to assure that the Plan Payments required to be accrued by any class of New Shares on any day does not exceed the income to be accrued to such class of New Shares on that day. In this manner, the net asset value per share for all shares of a Portfolio will remain the same.

17. The Applicants acknowledge that the grant of the requested exemptive order does not imply SEC approval, authorization or acquiescence in any particular level of payments that the Trust may make pursuant to the Plans in reliance on the exemptive order.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-5190 Filed 3-6-90; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area No. 2405]

Alabama; Declaration of Disaster Loan Area

St. Clair County and the contiguous Counties of Blount, Calhoun, Etowah, Jefferson, Shelby, and Talladega in the State of Alabama constitute a disaster area as a result of damages from a tornado which occurred February 3, 1990. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on April 16, 1990 and for economic injury until the close of business on November 13, 1990 at the address listed below:

Disaster Area 2 Office, Small Business Administration, 120 Ralph McGill Blvd., 14th Floor, Atlantia, GA 30308.

or other locally announced locations.

The interest rates are:

	Percent
For physical damage:	
Homewoners with credit available elsewhere	8.000
Homeowners without cresit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	9.250
For economic injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 240512 and for economic injury the number is 6983 for the State of Alabama.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: February 13, 1990.

Susan Engeleiter,

Administrator.

[FR Doc. 90-5168 Filed 3-6-90; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 2406]

American Samoa; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on February 9, 1990, I find that the Territory of American Samoa constitutes a disaster area as a result of damages caused by Hurricane Ofa on February 2, 1990. Applications for loans for physical damage may be filed until the close of business on April 11, 1990, and for economic injury until the close of business on November 9, 1990, at the address listed below:

Disaster Area 4 Office, Small Business Administration, P.O. Box 13795, Sacramento, CA 95853-4795.

or other locally announced locations.

The interest rates are:

	Percent
For physical damage:	
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
Others (including non-profit organizations) with credit available elsewhere	9.250
For economic injury:	
Business and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage for the Territory of American Samoa is 240608, and for economic injury the number is 698400.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: February 16, 1990.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 90-5169 Filed 3-6-90; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 02407]

Colorado; Declaration of Disaster Loan Area

Boulder County and the contiguous Counties of Adams, Gilpin, Grand, Jefferson, Larimer, and Weld in the State of Colorado constitute a disaster area as a result of damages from a fire at the Stratford West Condominium Complex in Boulder, Colorado which occurred on December 11, 1989.

Applications for loans for physical damage as a result of this disaster may be filed until the close of business on April 23, 1990 and for economic injury until the close of business on November 20, 1990 at the address listed below:

Disaster Area 4 Office, Small Business Administration, P.O. Box 13795, Sacramento, CA 95853-4795.

or other locally announced locations.

The interest rates are:

	Percent
For physical damage:	
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
Others (including non-profit organizations) with credit available elsewhere	9.250
For economic injury:	
Business and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 240705 and for economic injury the number is 698500 in the State of Colorado.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: February 20, 1990.

Susan Engeleiter,

Administrator.

[FR Doc. 90-5170 Filed 3-6-90; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 2400]

Florida; Amendment No 2; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended, in accordance with the notice by the Federal Emergency Management Agency dated January 31, 1990, to included the counties of Charlotte, DeSoto, Glades, Hardee, Highlands, Indian River, Manatee, Martin, Okeechobee, St. Lucie, and Sarasota as a result of damages caused by a severe freeze on December 23 through 25, 1989.

All other information remains the same; i.e., for physical damage, the filing deadline is March 16, 1990, and for economic injury the filing deadline is until the close of business on October 16, 1990.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: February 16, 1990.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 90-5171 Filed 3-6-90; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 2403]

Louisiana; Declaration of Disaster Loan Area

The Parishes of Livingston and Washington and the contiguous Parish of Ascension, East Baton Rouge, St. Helena, St. John the Baptist, St. Tammany and Tangipahoa in the State of Lousiana and the contiguous Counties of Marion, Pearl River, Pike and Walthall in the State of Mississippi constitute a disaster area as a result of damages from heavy rains and flooding which occurred between January 24, 1990 through January 31, 1990.

Applications for loans for physical damage as a result of this disaster may be filed until the close of business on April 16, 1990 and for economic injury until the close of business on November 13, 1990 at the address listed below:

Disaster Area 3 Office, Small Business Administration, 4400 Amon Carter Blvd., suite 102, Ft. Worth, TX 76155.

or other locally announced locations.

The interest rates are:

	Percent
For physical damage:	
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 organizaitons without credit available elsewehere	4.000
Others (including non-Profit organizations) with credit available elsewhere	9.250
For economic injury:	
Businesses and small agricultural cooperatives without credit available elswhere	4.000

The number assigned to this disaster for physical damage is 240306 and for economic injury the number is 698100 in the State of Lousiana. In the State of Mississippi, the number for physical damage is 240406 and for economic injury the number is 6982.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: February 13, 1990.

Susan Engeleiter,

Administrator.

[FR Doc. 90-5172 Filed 3-6-90; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 2402]

Pennsylvania; Declaration of Disaster Loan Area

Dauphin County and the contiguous Counties of Cumberland, Lancaster, Lebanon, Northumberland, Perry, Schuylkill, and York in the State of Pennsylvania constitute a disaster area as a result of damages from a fire in the Vernon Street area of the City of Harrisburg on January 23, 1990.

Applications for loans for physical damage as a result of this disaster may be filed until the close of business on April 13, 1990 and for economic injury until the close of business on November 13, 1990 at the address listed below:

Disaster Area 2 Office, Small Business Administration, 120 Ralph McGill Blvd., 14th Floor, Atlanta, GA 30308.

or other locally announced locations.

The interest rates are:

	Percent
For physical damage:	
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
Others (including non-profit organizations) with credit available elsewhere	9.250
For economic injury:	
Business and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 240205 and for economic injury the number is 698000 in the State of Pennsylvania.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: February 12, 1990.

Susan Engeleiter,

Administrator.

[FR Doc. 90-5173 Filed 3-6-90; 8:45 am]

BILLING CODE 8025-01-M

[License No. 02/02-0534]

Creditanstalt Capital Corporation; Issuance of a Small Business Investment Company License

On October 5, 1989, a notice was published in the **Federal Register** (P. 41208) stating that an application has been filed by Creditanstalt Capital Corporation, New York, New York with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1989)), for a license to operate as a small business investment company.

Interested persons were given until close of business November 5, 1989 to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 02/02-0534 on December 21, 1989, to Creditanstalt Capital Corporation to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: February 21, 1990.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 90-5174 Filed 3-6-90; 8:45 am]

BILLING CODE 8025-01-M

[License No. 05/05-0212]

Polaris Capital Corp.; Issuance of a Small Business Investment Company License

On September 12, 1989, a notice was published in the **Federal Register** (54 FR 37756) stating that an application has been filed by Polaris Capital Corp., One Park Plaza, 11270 W. Park Place, suite 320, Milwaukee, Wisconsin 53224 with the Small Business Administration (SBA) pursuant to § 107.103 of the Regulations governing small business investment companies (13 CFR 107.103 (1989)), for a license to operate as a small business investment company.

Interested persons were given until close of business October 12, 1989 to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 05/05-0212 on February 9, 1990 to Polaris Capital Corp.

to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: February 27, 1990.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 90-5175 Filed 3-6-90; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Radio Technical Commission for Aeronautics (RTCA); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92-463; 5 U.S.C. App. I), notice is hereby given for the fourteenth meeting of RTCA Special Committee 159 on Minimum Operational Performance Standards for Supplemental Airborne Navigation Equipment Using Global Positioning System (GPS) to be held March 27-28, 1990, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., suite 500, Washington, DC 20005, commencing at 9:30 a.m.

The agenda for this meeting is as follows: (1) Chairman's Remarks: (2) Approval of Minutes of the Thirteenth Meeting Held October 16-18, 1989, RTCA Paper No. 443-89/SC159-219 (previously distributed); (3) Briefing on Comparison of Wide and Narrow Band GIC; (4) Reports of Working Group Activities on Integrity Implementation, Operations, and Test Requirements; (5) Review of EUROCAE and Other Comments; (6) Integration of Integrity Requirements into Committee Report; (7) Working Groups Meet in Separate Sessions; (8) Assignment of Tasks; (9) Other Business; and (10) Date and Place of Next Meeting.

Attendence is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on March 1, 1990.

Geoffrey R. McIntyre,

Designated Officer.

[FR Doc. 90-5147 Filed 3-6-90; 8:45 am]

BILLING CODE 4910-43-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: March 1, 1990.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512-0001.

Form Number: ATF F 1600.1 and ATF F 1600.8.

Type of Review: Extension.

Title: Requisition for Forms or Publications; Requisition for Firearms/Explosives Forms.

Description: Forms are used by the general public to request or order forms or publications from the ATF Distribution Center. These forms notify ATF of the quantity required by the respondent and provide a guide as to annual usage of ATF forms and publications by the general public.

Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 30,000.

Estimated Burden Hours Per Response: 3 hours, 45 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 1,725 hours.

OMB Number: 1512-0467.

Form Number: ATF F 5000.24.

Type of Review: Revision.

Title: Excise Tax Return.

Description: ATF F 5000.24 is completed by persons who owe tax on distilled spirits, beer, wine, cigars, cigarettes, cigarette papers and tubes, chewing tobacco and/or snuff. The return is prescribed by law for the collection of these taxes. ATF uses the form to identify the taxpayer, the premises and period covered by the tax return, taxpayer's liability, and adjustments affecting the amount paid.

Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 2,115.

Estimated Burden Hours Per Response: 42 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 27,049 hours.

OMB Number: 1512-0497.

Form Number: ATF F 5000.25.

Type of Review: Extension.

Title: Excise Tax Return—Alcohol and Tobacco (Puerto Rico).

Description: ATF F 5000.25 is completed by persons in Puerto Rico who ship alcohol, tobacco products and cigarette papers and tubes to the U.S. for consumption/sale. The return, prescribed by law, identifies taxpayer, tax liability, return period, type of payment, adjustments, and taxes for cover over into the Treasury of Puerto Rico.

Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 21.

Estimated Burden Hours Per Response: 15 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 131 hours.

Clearance Officer: Robert Masarsky (202) 566-7077, Bureau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Avenue, NW., Washington, DC 20226.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 90-5098 Filed 3-6-90; 8:45 am]

BILLING CODE 4810-31-M

Public Information Collection Requirements Submitted to OMB for Review

Date: March 1, 1990.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the

submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515–0128.

Form Number: None.

Type of Review: Extension.

Title: Request for Temporary Identification Card.

Description: Cartmen, lightermen, and airport employers may request a temporary identification card to be issued to their employees if they can show that a hardship to their business would result pending the issue of a permanent identification card.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents: 150.

Estimated Burden Hours Per Response: 30 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 300 hours.

Clearance Officer: Dennis Dore (202) 535–9267, U.S. Customs Service, Paperwork Management Branch, Room 6316, 1301 Constitution Avenue, NW., Washington, DC 20229.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 90–5099 Filed 3–6–90; 8:45 am]

BILLING CODE 4820–02–M

DEPARTMENT OF VETERANS AFFAIRS

Medical Research Service Merit Review Boards; Meetings

The Department of Veterans Affairs gives notice under the Federal Advisory Committee Act, 5 U.S.C. App., of the meetings of the following Federal Advisory Committees.

Merit Review Board for:	Date	Time	Location
Nephrology	March 22, 1990	8 a.m. to 5 p.m.	Radisson [1].
Do	March 23, 1990	do	Do.
Hematology	March 26, 1990	do	Do.
Infectious Diseases	March 29, 1990	do	Do.
Do	March 30, 1990	do	Do.
Basic Sciences	March 30, 1990	do	Do.
Do	March 31, 1990	do	Do.
Do	April 1, 1990	do	Do.
Gastroenterology	April 2, 1990	do	Do.
Do	April 3, 1990	do	Do.
Immunology	April 5, 1990	do	Do.
Do	April 6, 1990	do	Do.
Surgery	April 7, 1990	do	Do.
Respiration	April 8, 1990	2 p.m. to 10 p.m.	Do.
Do	April 9, 1990	8 a.m. to 5 p.m.	Do.
Endocrinology	April 16, 1990	8 a.m. to 5 p.m.	Do.
Do	April 17, 1990	do	Do.
Cardiovascular Studies	April 17, 1990	do	Do.
Do	April 18, 1990	do	Do.
Mental Health and Behavioral Studies	April 17, 1990	do	Do.
Do	April 18, 1990	do	Do.
Alcoholism and Drug Dependence	April 20, 1990	do	Do.
Oncology	April 23, 1990	do	Do.
Do	April 24, 1990	do	Do.
Neurobiology	April 23, 1990	do	Do.
Do	April 24, 1990	do	Do.
Do	April 25, 1990	do	Do.

[1] Radisson Park Terrace Hotel, 1515 Rhode Island Avenue, NW, Washington, DC 20005.

These meetings will be for the purpose of evaluating the scientific merit of research conducted in each specialty by Department of Veterans Affairs (VA) investigators working in VA Medical Centers and Clinics.

These meetings will be open to the public up to the seating capacity of the rooms at the start of each meeting to discuss the general status of the program. All of the Merit Review Board meetings will be closed to the public after approximately one-half hour from the start, for the review, discussion and evaluation of initial and renewal projects.

The closed portion of the meeting involves: discussion, examination, reference to, and oral review of site visits, staff and consultant critiques of research protocols, and similar documents. During this portion of the meeting, discussion and recommendations will deal with qualifications of personnel conducting the studies, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, as well as research information, the premature disclosure of which woud be likely to significantly frustrate implementation of proposed agency action regarding such research projects. As provided by subsection 10(d) of Pub. L. 92–463, as amended by Pub. L. 94–409, closing poritons of these meetings is in accordance with 5 U.S.C., 552b(c) (6) and (9) (B). Because of the limited seating capacity of the rooms, those who plan to attend should contact Dr. LeRoy Frey, Chief, Program Review Division, Medical Research Service, Department of Veterans Affairs, Washington, DC, (202) 233–5065 at least five days prior to each meeting. Minutes of the meetings and rosters of the members of the Boards may be obtained from this source.

Dated: March 1, 1990.

Sylvia Chavez Long,

Committee Management Officer.

[FR Doc. 90–5113 Filed 3–6–90; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 55, No. 45
Wednesday, March 7, 1990

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).

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

March 1, 1990

TIME AND DATE: 10:00 a.m., Thursday, March 8, 1990.

PLACE: Room 600, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Ozark-Mahoning Company*, Docket No. LAKE 88-128-RM (Issues include whether the judge erred in finding Ozark-Mahoning violated 30 CFR § 57.12016.)

2. *Donald F. Denu v. Amax Coal Company*, Docket No. LAKE 88-123-D (Issues include whether the judge erred in finding that the complainant was discriminated against in violation of Section 105(c)(1) of the Mine Act. 30. U.S.C. § 815(c)(1).)

STATUS: Closed [Pursuant to 5 U.S.C. § 552b(c)(10)]

3. *Consolidation Coal*, WEVA 89-234-R, etc. (Issues include consideration of a petition for interlocutory review by Consolidation Coal Company.

It was determined by a unanimous vote of Commissioners that this portion of the meeting be closed.

Any person intending to attend the open portion of this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR § 2706.150(a)(3) and § 2706.160(d).

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 653-5629 / (202) 708-9300 for TDD Relay 800-877-8339 for Toll Free.

Jean H. Ellen,
Agenda Clerk.

[FR Doc. 90-5299 Filed 3-5-90; 10:54 am]

BILLING CODE 6735-01-M

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

March 2, 1990.

DATE AND TIME:
March 19, 1990, 1:00 p.m.-5:30 p.m.
March 20, 9:00 a.m.-5:30 p.m.
March 21, 9:00 a.m.-12:30 p.m.

PLACE:
Orange County Public Library, Orlando, Florida, Monday, March 19, 1990
Langford Hotel, Winter Park, Florida, Tuesday, March 20, 1990
Rollins College Library, Orlando, Florida, Wednesday, March 21, 1990

STATUS: Open.

MATTERS TO BE DISCUSSED:
Open Remarks, Chairman
Approval of Agenda
Approval of 12/11-12, 1989 Minutes
Executive Dicrector's Report
NCLIS Goals and Structure
NCLIS Program Directions
Recognition Award
Guest Speaker: Barratt Wilkins, State Librarian of Florida
White House Conference on Library and Information Services
Hearings, Library Needs of the American Indian

Special provisions will be made for handicapped individuals by calling Barbara Whiteleather (202) 254-3100, no later than one week in advance of the meeting.

FOR FURTHER INFORMATION CONTACT: Susan K. Martin, NCLIS Executive Director, 1111 18th Street, NW., Suite 310, (202) 254-3100, Washington, DC 20036.

Dated: March 5, 1990.

Susan K. Martin,
NCLIS Executive Director.

[FR Doc. 90-5358 Filed 3-5-90; 1:29 pm]

BILLING CODE 7527-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m. Tuesday, March 13, 1990.

PLACE: Board Room, Eighth Floor, 800 Independence Avenue, SW., Washington, DC 20594.

STATUS: The first two items are open to the public. The last three items are closed under Exemption 10 of the Government in Sunshine Act.

MATTERS TO BE CONSIDERED:

1. Railroad Accident Report: Rear-End Collision of NYCTA Trains, New York, New York, March 10, 1989.

2. Marine Accident Report: Ramming of the U.S. Navy YFU-97 by the Panamanian Passenger Vessel VIKING PRINCESS, in the Port of Palm Beach, Florida, on February 15, 1989.

3. Opinion and Order: Petition of Himburg, Docket SM-3683; disposition of Administrator's appeal.

4. Opinion and Order: Administrator v. Jones, Docket SE-8936; disposition of the Administrator's appeal.

5. Opinion and Order: Administrator v. Anderson, Docket SE-8883; disposition of Administrator's appeal.

NEWS MEDIA PLEASE CONTACT: Melba Moye (202) 382-6600.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382-6525.

Dated: March 2, 1990.

Bea Hardesty,
Federal Register Liaison Officer.

[FR Doc. 90-5275 Filed 3-5-90; 8:52 am]

BILLING CODE 7533-01-M

RESOLUTION TRUST CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that on Thursday, March 1, 1990, at 4:05 p.m., the Board of Directors of the Resolution Trust Corporation met in closed session to consider certain matters relating to the resolution of a thrift institution.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Director M. Danny Wall, (Director of the Office of Thrift Supervision), and 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)(8), (c)(9)(A)(ii) and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b).

The meeting was held in the Board Room of the FDIC Building located at 550 17th Street NW., Washington, DC.

Dated: March 2, 1990.

Resolution Trust Corporation.

John M. Buckley, Jr.,
Executive Secretary.

[FR Doc. 90-5274 Filed 3-5-90; 8:52 am]

BILLING CODE 6714-01-M

RESOLUTION TRUST CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Board of Directors of the Resolution Trust Corporation will meet in open session at 2:00 p.m. on Tuesday, March 6, 1990 to consider policies with respect to entering into case resolutions with: (a) Institutions in which the FDIC or FSLIC ownership interests, and/or (b) institutions that have financial assistance agreements that the Financial Institution Reform, Recovery, and Enforcement Act of 1989 requires be reviewed by the RTC.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. John M. Buckley, Jr., Executive Secretary of the Resolution Trust Corporation, at (202) 898-3604.

Dated: March 2, 1990.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Executive Secretary.

[FR Doc. 90-5354 Filed 3-5-90; 1:27 am]

BILLING CODE 6714-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meeting during the week of March 5, 1990.

A closed meeting will be held on Tuesday, March 6, 1990, at 2:30 p.m.

The Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Fleischman, duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Tuesday, March 6, 1990, at 2:30 p.m., will be:

Institution of injunctive actions.

Settlement of administrative proceeding of an enforcement nature.

Settlement of injunctive actions.

Institution of administrative proceeding of an enforcement nature.

Formal order of investigation.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Amy Kroll at (202) 272-2200.

Dated: March 1, 1990.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-5355 Filed 3-5-90; 1:28 pm]

BILLING CODE 8010-01-M

Corrections

Federal Register
Vol. 55, No. 45
Wednesday, March 7, 1990

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.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 272, 273, 274 and 276

[Amdt. No. 318]

Food Stamp Program; Food Stamp Issuance and Issuance Liability Rule

Correction

In rule document 89-29219 beginning on page 51349 in the issue of Friday, December 15, 1989, make the following correction:

On page 51350, in the third column, in the fourth complete paragraph, in the 14th line, the CFR citation should read "7 CFR 273.21(c)(7)".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6765

[OR-943-00-4214-10; GPO-084; OR-21768 (WASH), OR-21783 (WASH)]

Partial Revocation of the Secretarial Order Dated December 26, 1913, and the Bureau of Land Managment Order Dated June 18, 1947; Washington

Correction

In rule document 90-3202 appearing on page 4838 in the issue of Monday, February 12, 1990, make the following correction:

On page 4838, in the second column, under the first heading "**Willamette Meridian**", the sixth line should read "Sec. 26, W½SW¼ and SE¼;".

BILLING CODE 1505-01-D

federal register

Wednesday
March 7, 1990

Part II

Environmental Protection Agency

40 CFR Part 61

National Emission Standards for Hazardous Air Pollutants; Benzene Emissions From Chemical Manufacturing Process Vents, Industrial Solvent Use, Benzene Waste Operations, Benzene Transfer Operations, and Gasoline Marketing System; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[AD-FRL-3706-1]

RIN 2060-AC68

National Emission Standards for Hazardous Air Pollutants; Benzene Emissions From Chemical Manufacturing Process Vents, Industrial Solvent Use, Benzene Waste Operations, Benzene Transfer Operations, and Gasoline Marketing System

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: National emission standards limiting emissions of benzene from industrial solvent use, benzene waste operations, benzene transfer operations, and the gasoline marketing system were proposed in the **Federal Register** on September 14, 1989 (54 FR 38083). The EPA proposed not to regulate the chemical manufacturing process vent source category.

This action promulgates the standards for benzene waste operations and benzene transfer operations that were proposed on September 14, 1989. These standards implement section 112 of the Clean Air Act (CAA) and are based on the Administrator's determination that benzene emissions from these source categories present a significant risk to human health. The intended effect of the standards is to require all existing, new, modified, or reconstructed sources to reduce emissions to a level which provides an ample margin of safety to protect public health.

For the reasons stated in section IV of **SUPPLEMENTARY INFORMATION** of this rule, the Administrator is withdrawing the standards proposed for the industrial solvent use and gasoline marketing source categories.

This action also serves as notice of the Administrator's final determination not to regulate the chemical manufacturing process vent source category.

DATES: *Effective Date:* March 7, 1990.

Judicial Review: Under Section 307(b)(1) of the CAA, judicial review of NESHAP is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of these rules. Under section 307(b)(2) of the CAA, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Incorporation by Reference: The incorporation by reference of certain publications in these standards is approved by the Director of the Office of the Federal Register as of March 7, 1990.

ADDRESSES: *Dockets.* Docket No. OAQPS 79-3 (part I) contains information considered in determining health effects, listing, and regulating benzene. Docket Nos. A-89-03, A-89-05, and A-89-07 contain information considered in the decisions not to regulate chemical manufacturing process vents, industrial solvent use and the gasoline marketing system; Docket Nos. A-89-04 and A-89-06 contain supporting information used in the development of the standards for benzene transfer operations and benzene waste operations, respectively. These dockets are available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at the EPA's Air Docket Section, Waterside Mall, Room M1500, 1st Floor, 401 M Street SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For information on benzene emissions and regulations, contact either Mr. Doug Bell at (919) 541-5568, or Dr. Janet Meyer at (919) 541-5254, Standards Development Branch, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711. For information concerning the health effects of benzene and the risk assessment, contact Mr. Scott Voorhees at (919) 541-5348, Pollutant Assessment Branch, Emission Standards Division (MD-13), at the above address.

SUPPLEMENTARY INFORMATION: The information presented in this preamble is organized as follows:

I. Acronyms
II. Summary of Final Standards and Impacts
  A. Benzene Transfer Operations
  B. Gasoline Marketing System
  C. Benzene Waste Operations
  D. Industrial Solvent Use
  E. Chemical Manufacturing Process Vents
III. Background
  A. Regulatory/Legal Framework
  B. Public Participation
IV. Significant Comments, Responses, and Changes
  A. Legal Comments and Responses
  B. Policy- and Administrative-Related Comments and Responses
  C. Risk Assessment Comments and Responses
  D. Technical Comments, Responses, and Changes Since Proposal
V. Administrative Requirements
  A. Paperwork Reduction Act
  B. Regulatory Flexibility Act
  C. Docket
  D. Executive Order 12291
  E. Miscellaneous

I. Acronyms

AML—Acute Myelogenous Leukemia
API—American Petroleum Institute
ARAR—applicable or relevant and appropriate requirement
BID—background information document
BDAT—best demonstrated available technology
CAA—Clean Air Act
CERCLA—Comprehensive Environmental Response, Compensation, and Liability Act
CMA—Chemical Manufacturers Association
CRA—compression-refrigeration-absorption
CRC—compression-refrigeration-condensation
CTAC—Chemical Transportation Advisory Committee
CTG—control techniques guidelines
EB/S—ethylbenzene/styrene
EPA—Environmental Protection Agency
FDA—Food and Drug Administration
FID—Flame Ionization Detection
FWPCA—Federal Water Pollution Control Act
HEM—Human Exposure Model
ISC-LT—Industrial Source Complex Long-Term (dispersion model)
LDR—land disposal restrictions
LOA—lean oil absorption
MIR—maximum individual lifetime risk
NAAQS—National Ambient Air Quality Standards
NCP—National Contingency Plan
NDIR—Non-Dispersive Infrared Radiation
NESHAP—national emission standards for hazardous air pollutants
NIOSH—National Institute for Occupational Safety and Health
NSPS—new source performance standard
NTIS—National Technical Information Service
OMB—Office of Management and Budget
OSHA—Occupational Safety and Health Administration
OSW—Office of Solid Waste
OW—Office of Water
POTW—publicly owned treatment work
ppmw—parts per million by weight
PRA—Paperwork Reduction Act
RCRA—Resource Conservation and Recovery Act
RIA—Regulatory Impact Analysis
RFA—Regulatory Flexibility Analysis
SAB—Science Advisory Board
SARA—Superfund Amendment and Reauthorization Act
SBA—Small Business Administration
SIC—Standard Industrial Classification
SIP—State Implementation Plan
SRI—Stanford Research Institute
SWMU—solid waste management unit
TFE—thin-film evaporation
TSCA—Toxic Substances Control Act
TSDF—treatment, storage, and disposal facility
TSDR—treatment, storage, disposal and recycling facility
URE—unit risk estimate
VOC—volatile organic compound
VOL—volatile organic liquid

II. Summary of Final Standards and Impacts

A. Benzene Transfer Operations

Summary of Standards

The format for the final standard is a weight-percent reduction and a limitation of loading to only vapor-tight tank trucks, railcars or marine vessels. The final standard applies to all loading racks where benzene is loaded into tank trucks, railcars or marine vessels at each production facility and each bulk terminal. The standard exempts those facilities that load only liquids containing less than 70 weight-percent benzene, or at which less than 1.3 million liters of 70 or more weight-percent benzene are loaded annually, from the collection and control provisions of the standard. These affected facilities must file a report documenting the throughput and concentration of benzene loaded in the first year of the standard.

The standard requires those facilities that load 1.3 million liters per year or more of liquids containing 70 weight-percent or more benzene to equip each loading rack with a vapor collection system and to route emissions from the collection system to a 98 percent efficient control device. The standard also requires that the loading of 70 weight-percent or more benzene at affected facilities be limited to vapor-tight tank trucks, railcars, or marine vessels. These requirements are discussed below.

The final standard requires that each loading rack at which at least 1.3 million liters per year of liquids containing at least 70 weight-percent benzene are loaded be equipped with a vapor collection system to prevent the vapors displaced during loading from passing into the atmosphere uncontrolled, either directly or through another rack. Additionally, the standard requires that the loading of benzene be limited to those tank trucks, railcars, and marine vessels equipped with vapor collection equipment compatible with the vapor collection system at the loading rack, and to those times when the two vapor collection systems are connected. Further provisions of the standard are designed to ensure that the pressure during loading will not cause pressure-vacuum vents to open, and that inspections for leaks and repair of identified leaks are conducted in a timely manner.

The final standard requires that the owner or operator of each affected facility obtain a copy of the vapor-tightness documentation prior to the loading of a liquid containing 70 weight-percent or more benzene into any tank truck, railcar, or marine vessel. The test date on the documentation must be within the preceding 12 months, the affected facility must retain a copy of the test documentation, and the documentation must be updated at least once annually. The standard requires that tank trucks and railcars be tested for vapor tightness using method 27 of 40 CFR part 60, appendix A, and marine vessels be tested using method 21 of appendix A to document the vapor-tightness.

The standard further provides that if a marine vessel owner or operator cannot produce the appropriate documentation, the owner or operator of an affected facility may still load the vessel, if a vapor-tightness test meeting the requirements of method 21 is conducted during the final 20 percent of loading. A copy of this test must be kept with the vessel, and a copy must be retained in the affected facility's documentation file. If the vessel fails the vapor-tightness test, the facility retains documentation that the vessel failed the test, and the owner or operator of the facility may not load the vessel again until documentation of repairs, or proof that repairs cannot be completed unless the vessel is dry-docked, is provided. In the case where repairs cannot be completed unless the vessel is dry-docked, the standard requires these repairs be made the first time the vessel is dry-docked. The standard also requires that the vapor-tightness test be performed during the final 20 percent of loading during the first loading subsequent to documented repairs. If this test is successful, the documentation is retained in the affected facility's file, and would exempt the vessel from further testing for a full year.

The standard also provides an additional vapor-tightness test in § 61.304(f) that may be used in lieu of test method 21. This test involves pressurizing the vessel with dry air or an inert gas and determining the pressure change over time. The advantage of this test is that no benzene will be in the tank, and therefore cannot be emitted to the atmosphere during testing.

In lieu of the vapor-tightness documentation, marine vessels may be loaded at negative pressure, i.e., with a benzene product tank below atmospheric pressure. Under § 61.302(e)(1), vessels loaded at negative pressure would be considered to be vapor-tight for the purposes of this standard.

The final standard requires that all vapors collected during loading of liquids containing 70 weight-percent benzene or more be routed to a control device capable of reducing benzene emissions to the atmosphere by 98 weight-percent. The 98 percent value is based on the typical performance of an incinerator or a flare, which are universally applicable to facilities expected to be subject to this standard. Available test data indicate that properly designed, operated, and maintained incinerators or flares can achieve at least a 98 weight-percent reduction of organic compounds. Although the standard is based on the use of an incinerator or flare, any control device may be used as long as a 98 weight-percent reduction is achieved.

The standard contains provisions for performance testing and monitoring of specific parameters for flares, boilers, process heaters, incinerators, steam generating units and carbon adsorption systems. If an owner or operator wishes to use a control device other than those specifically mentioned for compliance purposes, the standard allows the owner or operator to submit information to the Administrator describing the operation of the control device and those parameters that would indicate proper operation and maintenance of the device. The control device must be able to produce a 98 weight-percent reduction in the benzene emissions routed through it.

Records of all performance tests and monitoring results must be maintained for at least two years and be readily available for inspection. The standard requires that the vapor-tightness documentation for all tank trucks, railcars, and marine vessels be maintained in a permanent file and be available for inspection. Additionally, the standard requires the information in the file be updated at least once annually. The standard also requires quarterly reports of the following information: (1) Each exceedance of monitored parameters, (2) all periods when the vent stream is diverted from the control device, (3) all periods when a steam generating unit or process heater was not operating, when the control device used is a steam generating unit or a process heater, (4) if a flare is used as a control device, all periods when the pilot flame was absent, and (5) all times when maintenance is performed on car-sealed valves, when the car seal is broken, and when the car-sealed valve position is changed. The initial quarterly report would be filed within 90 days of the effective date of the standard, or 90 days after the startup date, if the startup date is after the effective date of the standard.

The standard requires that all tank truck and railcar loading racks at each affected facility be in compliance with the standard within 90 days of the effective date of the standard, or obtain a waiver of compliance as provided for in § 61.11 of the General Provisions. The final standard requires marine vessels to be in compliance by February 28, 1991. The one-year general waiver for marine vessels is necessary for the installation of controls.

Summary of the Environmental, Health, and Energy Impacts

Benzene emissions from this source category will be reduced from 4,500 megagrams/year at baseline to an estimated 270 megagrams/year, a reduction of approximately 94 percent. The residual incidence of leukemia from exposure to benzene emissions after application of this standard is estimated to be approximately 0.02 case/year, and the MIR is predicted to be approximately 4×10^{-5}. This can be compared with an incidence of 1 case/year and a MIR of 6×10^{-3} under baseline conditions.

Potential environmental impacts of this standard depend on the control device selected by each facility to attain compliance. Incinerators and flares are not expected to produce any wastewater or solid waste impacts. However, if carbon adsorbers are used, some minor wastewater and solid waste impacts can be expected from desorption of the carbon beds with steam, and then the final disposal of spent carbon. Because it is not known how many benzene transfer facilities will employ carbon adsorbers, rather than incinerators or flares, to comply with the standard, the wastewater and solid waste impacts of this standard cannot be quantified at this time. However, in light of existing regulatory controls, regulations being developed under other acts such as RCRA, and those regulations being considered for benzene waste, these impacts are expected to be small. No changes in energy use are predicted.

Summary of the Cost and Economic Impacts

National capital costs of control associated with achieving the standard are $167 million (in 1987 dollars). The nationwide annual cost is $30 million/year (in 1987 dollars). No major adverse economic impacts are anticipated as a result of these standards.

B. Gasoline Marketing System

The Administrator is withdrawing the standards proposed for the three gasoline marketing source categories. Since publication of the proposed rule in September 1989, EPA has evaluated the public comments and reexamined the proposed regulation of these source categories. After extensive review of facts relevant to these categories, EPA concludes that application of the NESHAP policy described in the September 14, 1989, rule for various source categories of benzene (54 FR 38044) does not mandate establishing NESHAP for the gasoline marketing source categories in order to protect public health because the baseline emissions are already within a safe range, and additional controls are unnecessary to provide an ample margin of safety.

As described in the proposal, the baseline MIR for each source category is as follows: 5×10^{-5} for bulk gasoline terminals; 1×10^{-5} for bulk gasoline plants; and 5×10^{-6} for service station storage tanks. Accordingly each of these source categories falls below the presumptive acceptable risk benchmark of approximately 10^{-4} MIR.

The EPA did not rest its acceptable risk judgment on these numbers alone. In addition, the incidence reduction for each of the categories would be very low, in the range of 0.03 to 0.07 case/year. Finally, EPA estimates that without regulation the vast majority of the population exposed to these sources is already protected to a level of 10^{-6} or lower.

In considering whether further regulation would be necessary in order to provide an ample margin of safety, EPA reviewed the control costs and emission reductions associated with a number of alternative control levels for each source category. For the three categories, capital cost would be approximately $1 billion, with annualized costs of $130 million. In addition, EPA considered qualitative information on risk distribution, the number of relevant facilities and their proximity to residential areas, and the potential population at risks greater than 10^{-6}. The details of those alternatives are explained fully in section IV-D-5 of this notice.

In determining that the existing emission levels for bulk gasoline terminals provide an ample margin of safety, EPA considered the fact that incidence reduction for the alternatives proposed would be relatively small. It was also recognized that the majority of the risk reduction would occur in the population exposed at risks below 10^{-6}. The cost of the alternative control measures were judged to be high relative to achievable risk reduction. Finally, it was recognized that as all new and modified facilities must meet the NSPS, the risk and emissions from this source category will be reduced over time.

Likewise, for bulk gasoline plants for the control options considered, EPA found a small incidence reduction at a high relative cost, and the vast majority of the population exposed to risks below 10^{-6}.

For service station storage vessels, although specific estimates of persons exposed at different risk levels could not be developed, the incidence reduction was considered small. The cost of additional control was considered disproportionately high, relative to the small health benefits.

For these reasons, as described in detail in section IV, EPA determined that for all three source categories of gasoline marketing, the baseline emissions provided an ample margin of safety.

It should be noted that the decisions not to regulate these source categories under section 112 at this time does not preclude controls on benzene emissions occurring through different means in the future. For example, EPA plans within the next several months to issue an Advance Notice of Proposed Rulemaking for the control of air toxics, including benzene specifically, through gasoline and diesel reformulation. In addition, several proposed amendments to the CAA, if enacted, would authorize additional benzene controls. For example, the Administration's proposed amendments to the CAA include a major new initiative on alternative fuels under which the Administrator would set performance standards for clean-fuel vehicles designed, among other things, to reduce toxic air emissions, such as benzene emissions. The Administration's proposed amendments would also require that service station owners in certain parts of the country install systems for Stage II gasoline vapor recovery of emissions including benzene emissions from the refueling of vehicles. Finally, the Administration's proposed amendments would authorize a study and regulation of air toxic emissions from mobile sources. Thus, further benzene controls may be provided for under a new CAA, as well.

C. Benzene Waste Operations

Summary of Standards

Applicability. The final standards for benzene waste operations are applicable to owners or operators of chemical plants, petroleum refineries, and coke by-product recovery plants. The standards also apply to owners or operators of TSDF that receive wastes from chemical plants, petroleum

refineries, or coke by-product recovery plants. The standards require that all benzene-containing wastes generated by chemical plants, petroleum refineries, and coke oven by-product plants be managed to reduce benzene emissions unless it is demonstrated that the amount of benzene in the waste is below specified levels.

Certain wastes are specifically excluded from all aspects of the standards. These are: In-process recycle streams, segregated stormwater runoff, and process offgases.

The regulatory approach used in the final standards is illustrated in Figure 1. Each facility subject to the standards must perform an initial determination of the total amount of benzene contained in the wastes managed at the facility. This determination may be made through waste testing or through "knowledge of the waste" that is documented by the owner or operator. Any benzene in waste streams containing less than 10 percent water is excluded from this determination.

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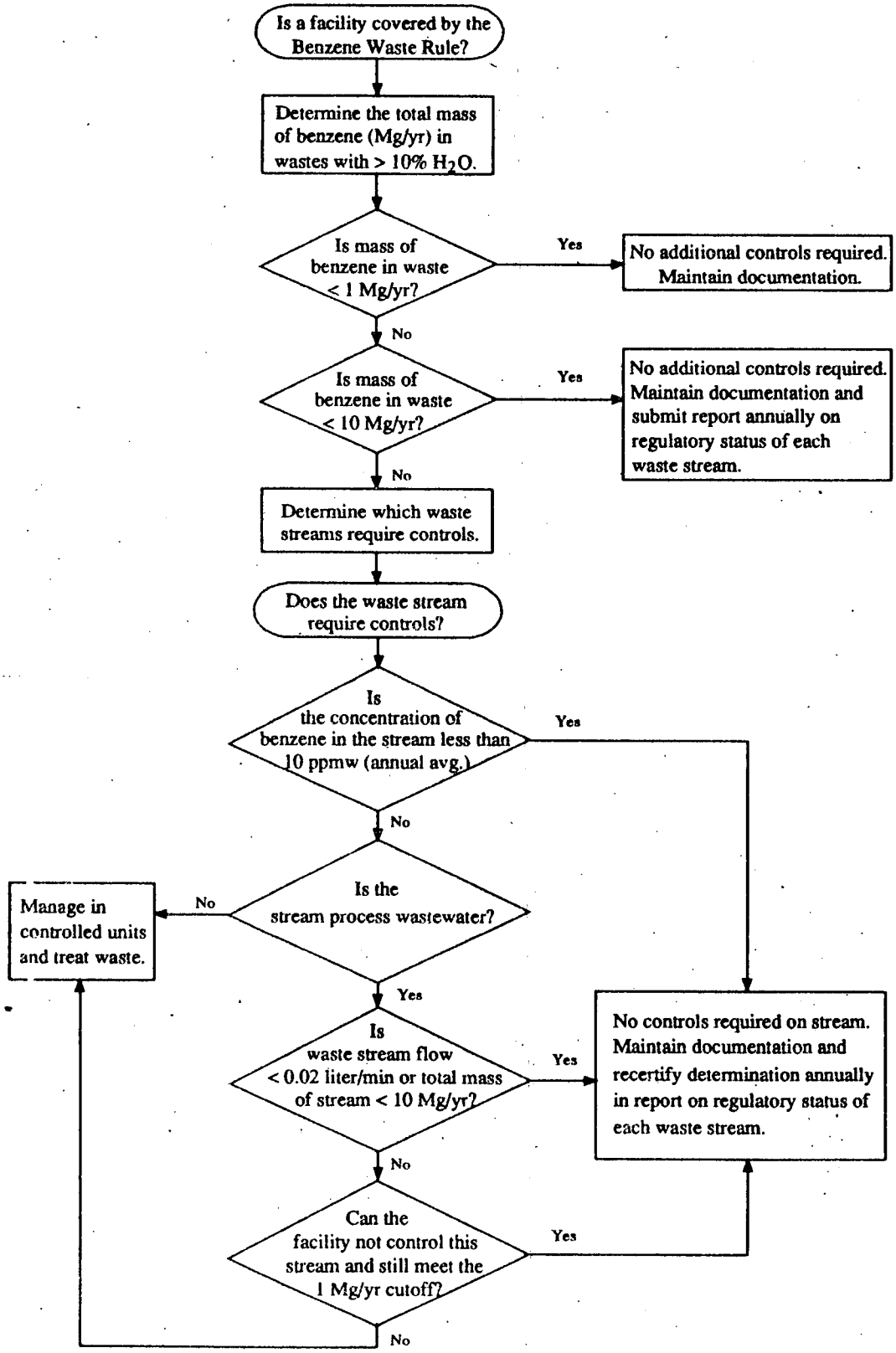

Figure 1. Regulatory approach for benzene waste operations.

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If the initial determination shows the total benzene in the waste is less than 10 megagrams/year, no benzene controls are required by the standards. Owners or operators of facilities where the total benzene in the waste managed is less than 1 megagram/year must submit a report and maintain a record of the initial determination. No further action to comply with the standards is required of these facilities unless a process change occurs that could cause the amount of benzene in the waste managed to increase to 1 megagram/year or more, in which case a repeat determination is required. Owners or operators of facilities that contain 1 megagram/year or more total benzene in their wastes must submit an initial report describing the regulatory status of each waste stream, maintain a record of the documentation on which the report is based, and update and resubmit the report annually. Owners and operators of facilities where the amount of benzene in the waste managed is 10 megagrams/year or greater must comply with the specific equipment, operational, and performance requirements set forth in the standards.

Specific Equipment, Operational, and Performance Requirements. All benzene-containing waste streams must be treated prior to discharge from the facility and units in which the waste is managed before treatment must be equipped with air emission controls. Waste streams exempted from control (in addition to those identified earlier that are not covered by these standards) are (1) waste streams demonstrated to have a concentration of benzene less than 10 parts per million on an annual average basis, and (2) waste streams with a flow rate less than 0.02 liters per minute or a total mass of waste less than 10 megagrams/year. Knowledge of the waste or waste testing may be used to demonstrate that a waste stream meets either of these exemption requirements. An additional option is provided in the final rule by which other process wastewater streams may be exempt from control even though they contain greater than 10 parts per million of benzene. Under this option, an owner or operator must treat a sufficient number of process wastewater streams such that the total benzene in both the untreated and treated process wastewater is less than 1 megagram/year. Treated process wastewater streams must meet the treatment requirements specified by this rule.

Under the final rule, treatment technologies that remove benzene from the waste must either (1) reduce the concentration of benzene in the waste to a level less than 10 parts per million, or (2) reduce the concentration of benzene in the waste by 99 percent or greater. Stream stripping, TFE, waste incineration, or other treatment technologies may be used to meet this requirement. Waste incineration and other treatment technologies involving waste destruction must destroy 99 percent or greater of the benzene in the waste. Engineering calculations or waste testing may be used to demonstrate initial compliance with these performance requirements. Monitoring of process parameters indicative of treatment device performance is also required to indicate that the device is properly operated and maintained to meet these standards. Several other equivalent treatment alternatives are identified in the standards based on the waste treatment requirements of other regulatory programs that should meet or exceed the level of air emission protection provided by these standards. Dilution is not allowed as a means of complying with the treatment requirements of the standards. However, mixing of waste streams to facilitate treatment is allowed, provided that the provisions of the standards applicable to waste mixing are met.

Units in which wastes are managed prior to treatment must be controlled for air emissions as follows: Tanks, surface impoundments, and oil-water separators must be equipped with a cover (such as a fixed roof or enclosure) vented to a closed vent system and control device. Containers must be covered and submerged fill loading must be used for pumpable wastes. Containers in which waste treatment is performed must also be vented to a closed vent system and control device. Individual drain systems must be completely closed and equipped with a closed vent system and control device. As an alternative, individual drain systems can comply with both the control requirements of the NSPS for petroleum refinery wastewater systems (40 CFR part 60, subpart QQQ) and control junction boxes either by installing water seals to isolate the junction boxes or by venting the junction box to a closed vent system and control device. Control devices must be designed and operated to remove or destroy 95 percent of the organics in the vent stream. Either engineering calculations or emission testing may be used to demonstrate initial compliance with this performance requirement. Monitoring of control devices is also required to indicate that the devices are being properly operated and maintained. Covers and closed vent systems must be operated with "no detectable emissions," which means the instrument reading using EPA Method 21 must be below 500 parts per million above background. Measurement for detectable emissions must be conducted initially and annually. Visual inspections of covers must be conducted initially and quarterly.

Reporting and Recordkeeping Requirements. Within 90 days of today's date, owners or operators of facilities subject to these standards must complete the initial determination of the amount of benzene managed at each facility and also determine which waste streams must be controlled. The results of these determinations must be included in an initial report, to be submitted to EPA or the appropriate designated authority within 90 days of today's date, that describes the regulatory status of each waste stream. A record of these determinations must be maintained at each facility, including complete documentation to support a conclusion that controls are not required on a facility or waste stream. Facilities that must install controls to meet the requirements of the standards must complete installation and begin operating the control equipment within 2 years of today's date. The 2-year waiver of the compliance deadline is deemed necessary for installation of controls.

No additional reports are required for facilities that manage waste containing less than 1 megagram/year of benzene. The owner or operator of each facility that manages waste containing 1 megagram/year or more of benzene must annually update and resubmit to EPA or the designated authority the report describing the regulatory status of each waste stream at the facility.

Facilities that manage wastes containing 10 megagrams/year or more of benzene must include in their operating record the design specifications of all control equipment installed to meet these standards. Facilities that are required to monitor control device or treatment device performance must also document the parameters monitored and maintain a record of monitoring results, including a record of when the monitored parameters exceed acceptable levels. Facilities required to measure for detectable emissions or make visual inspections must maintain a record of all occurrences when detectable emissions or problems are detected and what corrective action is taken. Facilities at or above the 10 megagrams/year benzene in waste level must also submit a quarterly report to EPA or the designated authority certifying that all

required inspections have been carried out and documenting when control device or treatment device performance, as indicated by monitoring results, were outside of prescribed limits during the quarter.

Summary of Environmental, Health, and Energy Impacts

The final standards will reduce baseline benzene emissions of 6,000 megagrams/year to 450 megagrams/year, a 93 percent reduction. Emissions of other VOC present in the wastes will also be reduced; however, this reduction could not be quantified because of limited data on the other constituents and their concentrations. The estimated baseline incidence for leukemia from wastes containing benzene would be reduced from approximately 0.6 to 0.05 case/year. The maximum risk would be reduced from approximately 2×10^{-3} at the baseline to approximately 5×10^{-5} by the final standards.

Summary of Cost and Economic Impacts

The total nationwide capital cost of the final standards is estimated at $250 million (1986 dollars), primarily based on the use of steam stripping, TFE, waste incineration, and controls for tanks. The total annual cost is estimated at $87 million/year (1986 dollars). Approximately 140 (35 percent) of the 398 facilities in the benzene data base are estimated to be subject to the control requirements of this regulation and are expected to incur the majority of these costs.

D. Industrial Solvent Use

Based on new site-specific emission information, the proposed standards for rubber tire manufacturing facilities and for pharmaceutical manufacturing process vents are being withdrawn. For both categories, the information received since proposal showed emissions and risks were substantially lower than previously estimated and very few people were estimated to be exposed to risks greater than 1×10^{-6}. In light of this new information, EPA reassessed the proposed decision and determined that the existing emission levels provided an ample margin of safety. In addition, due to existing SIP and NSPS, EPA decided not to set standards to mandate the existing level of controls.

E. Chemical Manufacturing Process Vents

The EPA is reaffirming its decision not to regulate these sources.

III. Background

A. Regulatory/Legal Framework

In 1977, the Administrator announced his decision to list benzene as a hazardous air pollutant under section 112 of the CAA (42 FR 29332, June 8, 1977). Benzene was determined to be a hazardous air pollutant because of its carcinogenic properties. A hazardous air pollutant is defined in section 112(a)(1) of the CAA as

> * * * an air pollutant to which no ambient air quality standard is applicable and which * * * may reasonably be anticipated to result in an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness.

Section 112(b)(1)(B) of the CAA requires EPA to establish emission standards for a hazardous air pollutant "at the level which in [the Administrator's] judgment provides an ample margin of safety to protect the public health from such hazardous air pollutant."

The listing of benzene as a hazardous air pollutant led to the publication of proposed standards for benzene emissions from maleic anhydride process vents, EB/S process vents, benzene storage vessels, and benzene equipment leaks in 1980 and 1981. After receipt of comments from industry and members of the public, EPA published a final rule setting an emission standard for benzene equipment leaks on June 6, 1984 (49 FR 23498). On that date, EPA also withdrew its proposed standards for maleic anhydride process vents, EB/S process vents, and benzene storage vessels (49 FR 23558). The withdrawal was based on the conclusion that both the benzene health risks to the public from these three source categories, and the potential reductions in health risks achievable with available control techniques were too small to warrant Federal regulatory action under section 112 of the CAA. Also on that date, EPA published a proposed standard for benzene emissions from coke by-product recovery plants (49 FR 23522).

On July 28, 1987, the U.S. Court of Appeals for the District of Columbia Circuit remanded to EPA an emissions standard for vinyl chloride which had also been promulgated under section 112 of the CAA (the *Vinyl Chloride* decision). In this decision, the court concluded that EPA had improperly considered cost and technological feasibility without first making a determination of acceptable risk based exclusively on health considerations. In light of this decision, EPA requested, and the court granted, a voluntary remand of the June 6, 1984, benzene equipment leaks NESHAP and the three withdrawals. The EPA also decided to reconsider the 1984 proposal for coke by-product recovery plants. In reviewing these previous decisions for compliance with the *Vinyl Chloride* decision, EPA reevaluated the assumptions and methodology it has used in making section 112 regulatory determinations. The EPA decided that substantial input from the public and all interested organizations should be solicited in formulating a strategy on how to execute the requirements of section 112 of the CAA in future rulemakings. Consequently, the EPA published in the **Federal Register** on July 28, 1988 (53 FR 28496) four proposed policy approaches for making section 112 regulatory decisions and published alternative proposed standards for benzene emissions from maleic anhydride plants, EB/S plants, benzene storage vessels, benzene equipment leaks, and coke by-product recovery plants. The resulting EPA policy for developing NESHAP was promulgated following consideration of public comments on those four proposed policy approaches.

On February 7, 1989, the U.S. Court of Appeals for the District of Columbia Circuit responded to a Natural Resources Defense Council (NRDC) petition which had sought to compel the EPA Administrator, within the 180-day time frame embodied in section 112 of the CAA, to propose emission standards for a variety of benzene source categories, none of which had been included in the Court of Appeals remand.

The District Court subsequently ordered EPA to publish in the **Federal Register** on or before August 5, 1989, either a notice of proposal not to regulate, or a notice of proposed regulations establishing NESHAP limiting emissions of benzene from the following sources: Chemical manufacturing process units, including ethylene plants, chlorobenzene plants, nitrobenzene plants, linear alkylbenzene plants, cyclohexane plants; waste disposal from chemical manufacturing; industrial solvent usage; and bulk terminals, bulk plants, and gasoline service stations (including the filling of gasoline service station tanks by gasoline tank trunks, but not including the refueling of motor vehicles at gasoline service stations). The court amended its order on May 8, 1989, to require EPA to issue its proposal by August 31, 1989, and final decisions by February 27, 1990. The proposal notice was signed on August 31, 1989, and published in the **Federal Register** on September 14, 1989 (54 FR 38083). The

notice also included the Administrator's determination not to regulate the chemical manufacturing process vent source category. The notice proposed regulations for benzene transfer operations, industrial solvent use, benzene waste operations, and three gasoline marketing system sources categories.

Simultaneous with the notice of proposed rulemaking of September 14, 1989, was publication of the final rulemaking notice for benzene emissions from maleic anhydride plants, EB/S plants, benzene storage vessels, equipment leaks, and coke by-product recovery plants (54 FR 38044). That final rulemaking contains a detailed description of the legal framework for regulation under the *Vinyl Chloride* decision and the policy approach developed by EPA for establishing NESHAP within that framework.

Today's regulations are based on the policy approach described in the September 14, 1989, final notice (54 FR 38044). Following is a brief description of that policy. In protecting the public health with an ample margin of safety under section 112, EPA strives to provide maximum feasible protection against risks to health from hazardous air pollutants by (1) protecting the greatest number of persons possible to an individual lifetime risk level no higher than approximately 1 in 1 million and (2) limiting to no higher than approximately 1 in 10 thousand the estimated risk that a person living near a plant would have if he or she were exposed to the maximum pollutant concentrations for 70 years. Implementation of these goals is by means of a two-step, standard-setting approach, with an analytical first step to determine an "acceptable risk" that considers all health information, including risk estimation uncertainty, and includes a presumptive limit on maximum individual lifetime risk (MIR) of approximately 1 in 10 thousand. A second step follows in which the actual standard is set at a level that provides "an ample margin of safety" in consideration of all health information, including the number of persons at risk levels higher than approximately 1 in 1 million, as well as other relevant factors including costs and economic impacts, technological feasibility, and other factors relevant to each particular decision. Applying this approach to the benzene source categories in today's notice results in controls that protect over 99 percent of the persons within 50 kilometers (km) of these sources at risk levels no higher than approximately 1 in 1 million.

A principle that accompanies these numerical goals is that while EPA can establish them as fixed numbers, the state of the art of risk assessment does not enable numerical risk estimates to be made with comparable confidence. Therefore, judgment must be used in deciding how numerical risk estimates are considered with respect to these goals. Uncertainties arising from such factors as the lack of knowledge about the biology of cancer causation and gaps in data must be weighed along with other public health considerations. Many of the factors are not the same for different pollutants, or for different source categories.

B. Public Participation

The preamble to the proposed standards discussed the availability of the background documents pertaining to the health effects of benzene and previous regulatory development efforts for each source category. Public comments were solicited at the time of proposal, and copies of the **Federal Register** notice and brief summaries of the requirements of the proposed standards were distributed to interested parties.

The opportunity for a public hearing was provided to give interested persons a forum for the oral presentation of data, views, and arguments concerning the proposed standards. However, a public hearing was not requested. During the public comment period which was from September 14 to November 13, 1989, EPA received over 180 comments among the 5 dockets. All comments were carefully considered, and when determined to be appropriate by EPA, have served as the basis for changes made to the proposed standards.

IV. Significant Comments, Responses, and Changes

A. Legal Comments and Responses

Comment: A number of commenters stated that the length of time allowed for submission of comments was inadequate, and that it should be extended.

Response: This rule was proposed on September 14, 1989, as a result of a February 16, 1989, order issued by the U.S. District Court for the District of Columbia Circuit in *Natural Resources Defense Council, Inc.*, v. *EPA*, Case No. 83-2951, requiring EPA to regulate or issue decisions not to regulate a number of source categories of benzene on a fixed schedule. An additional order, amending the February 1989 order so as to increase the time allowed for promulgation of the regulations, required EPA to issue final rules by February 27, 1990. In order to meet that court ordered deadline and also respond fully to public comments, it was necessary for EPA to receive all comments on the proposal by November 13, 1989. An extension of the comment period, as requested by the commenters, would have jeopardized the EPA's ability to respond adequately to the comments and to meet the court's deadline and therefore was impossible to grant. However, EPA agrees with the commenters that a longer period for submission and evaluation of comments would have been preferable.

Comment: One commenter stated that cancer risks greater than 1-in-1,000,000 cannot be considered "safe" under the *Vinyl Chloride* decision *(Natural Resources Defense Council, Inc.* v. *EPA*, 824 F.2d at 1146 (D.C. Cir. 1987)). The commenter argued that EPA has stated, regarding pesticides, that a 1-in-1,000,000 cancer risk is not *de minimis* and cited *Alabama Power* v. *Costle*, 636 F.2d at 323 (D.C. Cir. 1978) and *Public Citizen* v. *Young*, 831 F.2d at 1108 (D.C. Cir. 1987).

Response: The EPA does not interpret "safe" for purposes of Section 112, as limited to *de minimis* risk as described in *Alabama Power* and *Public Citizen*. The *Vinyl Chloride* decision, which governs the EPA's NESHAP decision-making process, while going into great detail in discussing the concepts of both "acceptable risk" and "ample margin of safety," never mentioned the concept of *de minimis* risk. What the court did say was that Congress exhibited no intent to require EPA to prohibit emissions of all nonthreshold pollutants, and citing the Supreme Court decision in *Industrial Union Dept., AFL-CIO* v. *American Petroleum Institute*, 448 U.S. 607 (1980) stated that "safe does not mean risk-free," 824 F.2d at 1153.

The *Vinyl Chloride* court decision declined to restrict the Administrator to any particular method of determining what constitutes an acceptable risk, but explained simply that he must decide what risk is acceptable in the world in which we live. Thus, the determination is discretionary. In this rulemaking the Administrator has found risk levels of approximately 10^{-4} to be presumed "safe" within the meaning of *Vinyl Chloride*.

The EPA disagrees with the commenter's contention that the *Public Citizen* case demonstrates that "acceptable risk" is limited to *de minimis* risk. *Public Citizen* involved an FDA statute prohibiting use of any food coloring additive "found * * * to induce cancer in man or animal," 831 F.2d at 1109. The FDA in that case argued that a *de minimis* exception, allowing use of

the challenged additives when the cancer risks involved were trivial, could properly be read into the statute. The court, however, while acknowledging that the cancer risks were indeed trivial, held that the statute imposed an absolute ban once a finding of carcinogenicity had been made, and therefore no *de minimis* exception could be employed.

The situation in *Public Citizen* involving a "no-risk" statute is markedly different from the facts of the *Vinyl Chloride* case, where the court declined to equate "safe" with "risk-free," 824 F.2d at 1153. Indeed, the *Vinyl Chloride* court specifically used examples of activities having acceptable levels of risk "in the world in which we live," but which exceed the *de minimis* concept described in *Alabama Power*. Thus, unless the *Vinyl Chloride* decision is read to broaden the *de minimis* concept from triviality to a level which is acceptable in the world in which we live, the dicta in *Public Citizen* is an apparent misconstruction of the en banc *Vinyl Chloride* opinion. Furthermore, *Public Citizen* did not deal with a statute requiring a determination of a "safe" level, and therefore cannot reasonably be compared to section 112 of the CAA, and the court's analysis of risk in the *Vinyl Chloride* opinion.

Finally, the *Vinyl Chloride* court's citation of *Alabama Power* does not constitute adoption of the *de minimis* concept. As stated above, the *Vinyl Chloride* decision makes no mention of the *de minimis* concept, and cites *Alabama Power* following a discussion of risks found acceptable by the Supreme Court in *Industrial Union* which clearly exceeded *de minimis*. Therefore, at most *Alabama Power* was apparently cited as an example of a risk level, which would, of course, be considered acceptable. Obviously, the enumeration of other, higher, risks precludes the interpretation that the court was equating the *de minimis* concept with "safe" or "acceptable" in *Vinyl Chloride*.

Comment: A number of commenters argued that the proposed regulations for benzene waste operations were written too broadly, exceeded the court mandate, and therefore included more source categories than necessary or appropriate. The majority of these commenters argued that oil and gas exploration and production facilities should not be included in the benzene waste rule. Two commenters stated that in order to comply with the D.C. District Court s order the waste rule need cover only waste disposal from chemical manufacturing and refineries. One commenter stated that the waste rule should be narrowed to exclude marketing.

Response: The EPA agrees that, as proposed, the benzene waste regulations could have been interpreted as applying to more source categories than intended. As a result, EPA issued a clarification notice in the **Federal Register** on December 15, 1989 (54 FR 51423) stating that the proposal had been intended to apply only to benzene waste from chemical plants, petroleum refineries, coke by-product recovery plants, and commercial hazardous waste treatment, storage, and disposal facilities. The final rule is consistent with this clarification and responsive to the comments requesting a narrowing of the coverage of the waste regulations.

Comment: One commenter stated that if the Administrator finds that emissions of a pollutant from a given source category are already below levels that provide the public an ample margin of safety because of existing regulation, no new standards need be adopted in order to comply with section 112. The commenter further argued that EPA has broad discretion to decide which source categories for a listed pollutant warrant regulation.

Response: The EPA agrees with the commenter that if existing regulations do indeed, in the judgment of the Administrator, provide an ample margin of safety to protect the public health, then section 112 does not require new standards to be adopted under section 112. The EPA also agrees that within the limitations of section 112, requiring that the public be protected with an ample margin of safety, EPA has discretion to determine which source categories of emissions of a listed pollutant warrant regulation.

Comment: Some commenters took the position that because Congress is considering amendments to the CAA which include revisions to section 112, EPA should not issue further NESHAP regulations until Congress has enacted new legislation. One commenter suggested deferring the benzene waste operations regulation so that requirements for hazardous waste facilities could be considered concurrently with the requirements being developed under RCRA (section 3004(n)).

Response: At the time this response was drafted Congress was still working at committee level on bills designed to amend the CAA including section 112. Because of the court ordered deadline for promulgation of this rule, EPA was unable to withhold action for purposes of the RCRA requirements or until Congress had completed revisions to the CAA. The EPA had no way of knowing when, whether, or in what final form the pending bills would become law.

Comment: Three commenters argued that the benzene transfer operation rule governing vapor control for marine loading should not be promulgated until after the Coast Guard has promulgated final safety regulations which would be applicable to this area. The Coast Guard regulations were proposed in October 1989. The commenters suggested that EPA and Coast Guard coordinate their rulemakings, and perhaps enter into a Memorandum of Understanding providing that a vapor tightness test be included in the Coast Guard annual certificate of inspection process.

Response: The Coast Guard proposed the safety regulations in question on October 6, 1989. The EPA has been in contact with the Coast Guard to discuss the compatibility of the proposed safety regulations with the EPA rule. It is anticipated that the Coast Guard will promulgate a final rule sometime in 1990, which will be some time before the compliance deadline for the EPA rule. Therefore, sources affected by the EPA rule will be aware of the Coast Guard requirements before they need be in compliance with the EPA rule. If there are inconsistencies, the two agencies will work to resolve them as they occur. However, as EPA is promulgating this rule in response to a court ordered deadline, EPA is unable to postpone promulgation of these regulations.

Comment: A number of comments were filed relating to the issue of the appropriate compliance times for various parts of the rule. Two commenters took the position that instead of the 1- and 2-year compliance deadlines included in the proposal for bulk plants under subpart EE, EPA should allow 3 to 5 years for this source category. Several commenters argued that with respect to bulk terminals under subpart DD, the compliance deadlines should be extended 3 to 6 years because of the difficulty anticipated in obtaining equipment. In contrast, one commenter stated that the proposed December 31, 1992, compliance deadline for bulk terminals with existing vapor processing systems was unlawful because EPA has no authority to extend a compliance date beyond the 90-day deadline specified in section 112, except by issuing source-specific extensions of no more than 2 years. One commenter argued that instead of requiring compliance by existing storage vessels at larger service stations within 1 year, 2 years should be allowed.

Response: In general, section 112 regulations become effective upon promulgation (42 U.S.C. 7412(b)(1)(C)). However, with respect to existing sources, section 112 regulations become effective 90 days after promulgation. Section 112 allows a waiver of this 90-day compliance deadline for sources which require additional time in order to install controls necessary to meet the new standard. This waiver allows up to 2 years for compliance. The regulations promulgated today contain a number of provisions requiring the addition of new controls, and in many cases will require these new controls to be added to large numbers of sources. As a result the Administrator has determined that for some parts of this rule an industry-wide waiver of between 1 and 2 years is necessary to enable the sources to obtain and install the necessary equipment. However, the waiver period is specifically limited by the statute to 2 years and thus EPA is unable to extend the compliance deadlines beyond 2 years from promulgation of the rule (42 U.S.C. section 7412(c)(1)(B)(ii)).

Comment: One commenter argued that EPA has no authority to regulate waste under the CAA.

Response: Section 112 of the CAA provides EPA with authority to regulate hazardous air pollutants, which are defined as air pollutants "which in the judgment of the Administrator cause, or contribute to air pollution which may reasonably be anticipated to result in an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness" (42 U.S.C. section 7412(a)). Once the Administrator has included such a pollutant on the section 112 list of hazardous air pollutants he is required to promulgate air emission standards for that pollutant within 1 year (42 U.S.C. section 7412(b)(1)(B)).

In this case benzene has been listed as a hazardous air pollutant and EPA was required to promulgate regulations governing benzene emissions from a number of source categories including waste by February 1990. Thus, EPA is not only complying with the clear mandate of the CAA to regulate air emissions of hazardous air pollutants, but also is responding to a court order specifically including waste.

Comment: One commenter stated that the EPA's proposal to withhold delegation of authority to the States to make determinations of equivalency of alternative means of emissions limitation contravenes the CAA [section 112(d)(1)].

Response: The policy of EPA is to encourage delegation of implementation and enforcement of NESHAP to States to the maximum extent practicable. The EPA permits delegation to a State of all the Administrator's authorities under 40 CFR part 61, except any which require rulemaking in the **Federal Register** to implement or where Federal overview is the only way to ensure national consistency in the application of standards (see 40 CFR 61.12(d)). Section 301(a) of the CAA prohibits the Administrator from delegating his rulemaking authority. Implementation decisions generally are made by the State, while EPA makes only those decisions that have the potential to alter the intent of the standard or result in divergent application in different regions of the country. Historically, most of the NESHAP authorities have been delegated. Authorities that are not delegated to States under section 112 generally include the following areas: equivalency determinations, alternative test methods, and decisions where Federal oversight is needed to ensure national consistency. Approval of alternatives to any design, equipment, work practice, or operational standard is accomplished through rulemaking and is adopted as a change to the individual subpart. Approved test methods or changes to methods are also proposed and subsequently promulgated in the **Federal Register**. These authorities shall be retained by the Administrator and not delegated to a State.

Comment: One commenter alleged that both the EPA's marine vapor recovery proposal and the Coast Guard safety proposal raise issues with respect to international trade.

Response: The commenter points to no specific international code or convention provisions, or to any international trade agreement which is violated by these regulations. Section 112 of the CAA provides EPA with authority to regulate air emissions of hazardous air pollutants within the United States. Marine facilities within the United States are subject to section 112 to the extent that hazardous air pollutants are present. The EPA has no knowledge of a conflict between this authority and any international agreements. Comments regarding the Coast Guard regulations must be submitted to the Coast Guard.

B. Policy- and Administrative-Related Comments and Responses.

Comment: Several commenters argued that the decisions in these proposed rules and in the September 14, 1989, final rules (53 FR 38044) presented a grossly inconsistent pattern of cost-benefit analyses. To illustrate this point, many of the commenters specifically compared the cost-effectiveness and risk levels of the decisions for the gasoline marketing source categories with the other benzene decisions. These commenters stated that the costs for bulk gasoline terminal controls ($2.4 billion/cancer case avoided) and for service stations ($500 million/cancer case avoided) were not reasonable and questioned whether there was a need to regulate these sources under section 112 where the risks are low. The commenters further stated that the costs of these controls greatly exceeded the costs for controls for standards rejected by EPA (EB/S process vents—$100 million/cancer case avoided, coke by-product recovery plants—$500 million/cancer case avoided, and benzene storage vessels—$100 million/cancer case avoided) and that EPA was not consistent in its decisions to regulate. One commenter argued that inconsistent decisions must inevitably be viewed as arbitrary.

Response: The EPA does not agree with the commenters that the benzene decisions are arbitrary and inconsistent. Rather, EPA views the decisions as reflecting consideration of all relevant health risk, technological and other measures including unquantifiable qualitative information. As explained in the September 14, 1989, **Federal Register** notice (53 FR 38044), in protecting public health with an ample margin of safety under section 112, EPA strives to provide maximum feasible protection against risks to health from hazardous air pollutants by (1) protecting the greatest number of persons possible to an individual lifetime risk level no higher than approximately 1×10^{-6} and (2) limiting to no higher than approximately 1×10^{-4} the estimated risk that a person living near a plant would have if he or she were exposed to the maximum pollutant concentrations for 70 years. Implementation of these goals is by means of a two-step standard-setting approach, with an analytical first step to determine an "acceptable risk" that considers all health information, including risk estimation uncertainty, and includes a presumptive limit on MIR of approximately 1×10^{-4}. A second step follows in which the actual standard is set at a level that provides "an ample margin of safety" in consideration of all health information, including the number of persons at risk levels higher than approximately 1×10^{-6}, as well as other relevant factors including costs and economic impacts, technological feasibility, and other factors relevant to each particular decision, such as uncertainties of specific assessments.

A principle that accompanies that policy and its numerical goals is that judgments must be used in deciding how the risk estimates and the estimates of the other factors like cost are considered with respect to these goals. The EPA believes that the uncertainties within assessments for different source categories can appropriately result in

different decisions on acceptable risk and the appropriate level of control to provide an ample margin of safety. The EPA sees this as appropriate use of its expert judgment. In addition, EPA rejects the position that only quantified information can be considered in the decisions and that all ample margin decisions must conform to some "bright-line" cost-effectiveness ratio. To do this would be to ignore the state of the art of all these analyses and to assume all estimates are of comparable quality and confidence. Such decisions would also be unsound and inconsistent.

Regarding the commenters comparisons of benzene decisions, EPA would like to note that the control cost and incidence reduction obtained only present part of the basis for the decision. To correctly compare decisions among source categories, the commenters need to also consider: (1) The relative change in the number of people estimated to be at risk levels greater than 1×10^{-6}, and the number of people at maximum risk; (2) the change in the maximum risk, (3) the biases and uncertainties in the cost analysis and in the risk assessment, (4) whether the projected reductions are technically feasible, and (5) the associated benefits resulting from incidental control of other pollutants. When such comparisons are made, it is not possible to establish a simple or specific decision process. Rather, EPA believes it is most appropriate to determine the relative weight of the many factors that can be considered in selecting an ample margin of safety for each specific source category. This occurs mainly because technological and economic factors (along with the health related factors) vary from source category to source category. With regard to the gasoline marketing source categories, EPA is withdrawing the proposed standards for those source categories as discussed previously and in section IV–D–5 of this preamble.

Comment: A number of commenters argued that EPA has inappropriately cited additional potential public health benefits from the cocontrol of VOCs and other "air toxics" to justify controls on benzene emissions. The commenters argued that as EPA has neither made the risk findings required by section 112 for listing the unidentified VOCs and air toxics nor listed them as hazardous air pollutants under section 112, EPA cannot regulate them under that section. In addition, some commenters pointed out that EPA has indicated that controls such as those proposed in this rule have already been imposed in nonattainment areas and thus little if any further ozone reductions will be achieved in those areas. The EPA has not demonstrated that further reductions in VOCs in attainment areas will even have any significant health benefits. The commenters argued that further VOC reductions, if required, should be achieved through the SIP process. In addition, several commenters argued that VOCs cannot be regulated under section 112 as they are not pollutants to which no ambient air quality standard is applicable.

In contrast, one commenter argued that because of long-range transport, regional haze, and greenhouse effects, EPA cannot consider VOC cocontrol to be of lesser value in attainment areas than in nonattainment areas.

Response: For all benzene source categories, decisions on whether to require additional control to provide an ample margin of safety were based on an evaluation of all relevant health, technological, and economic information. In every case, decisions to require further control were based on judgments that the reductions in benzene exposures and risks would result in additional health protection and judgments that on balance the costs of regulation to society were reasonable. In decisions on the gasoline marketing source categories (and on other source categories), EPA mentioned cocontrol of VOC in the proposal only as an additional benefit resulting from control and not as the reason for imposing control requirements.

Because of commenters' concerns that judgments in the ample margin decisions were unduly affected by consideration of cocontrol benefits, EPA reexamined the decisions for the gasoline marketing system. The control alternatives considered at proposal were used in this reexamination. In this, EPA considered the quantitative risk estimates, the expected emission and risk reductions from application of controls, the control costs, technical feasibility, economic impacts, and the uncertainties of these estimates. In particular, it was recognized that the cancer incidences and population associated with various risk levels could not be estimated and that there would be a great deal of uncertainty in judgments on health benefits.

For each of the gasoline marketing source categories, EPA concluded that the reductions in incidence and MIR are small. It is expected the vast majority of the current exposures and incidence reductions would be associated with the large population exposed to risk levels below 10^{-6}. The costs of achieving these reductions have, in general, increased since proposal and are relatively high. Although there are additional benefits expected from these controls, these costs are disproportionately large in comparison to the small additional risk reduction achieved. The EPA is, therefore, withdrawing the proposed standards for the gasoline marketing system. The basis for this withdrawal is discussed in detail in response to technical comments on Gasoline Marketing System (see section IV–D–5 of this notice).

Comment: Several commenters restated their comments on previous benzene rulemakings that the EPA's assumption of continuous exposure led to grossly inflated assessments of the MIR. In the commenters' opinion the MIR estimates have no basis in scientific fact and represent a poor foundation for public policy. To support this position, two commenters cited criticism by the SAB of the dispersion and exposure modeling methods used in the risk calculations. These commenters restated their previous recommendations that alternative assumptions of 15 to 35 years and 4 to 22 hours of exposure per day be used. The commenters advocated that EPA provide a mechanism through which regulated industrial sectors or facilities could establish that the MIR worst case conditions do not apply.

One of these commenters submitted supplemental comments after the close of the comment period, contending that EPA addressed a number of exposure issues differently in the promulgated radionuclide NESHAP (December 15, 1989; 54 FR 51654) than in the proposed benzene NESHAP (September 14, 1989; 54 FR 38083). The commenter recommended that EPA reevaluate the benzene exposure estimates using site-specific analyses and less than lifetime exposure assumptions for the MIR, as was done in the radionuclide NESHAP analyses.

Response: The EPA recognizes that there is a wide range of views on the risk assessment methodologies and assumptions that are used in this analysis. In particular, EPA is aware that many commenters, including the SAB, disagreed with the EPA's decision to use 70-year exposures in calculating maximum individual risk. However, EPA makes this assumption as a matter of policy and believes that this is the correct method for doing risk assessments for NESHAP.

The EPA believes that the estimates of risk for the benzene source categories are based on the most current scientific knowledge and on sound scientific judgment. In some instances, inferences

were required due to uncertainties in areas where there is no scientific consensus. The EPA incorporated these judgmental positions (science policies) into the benzene risk assessment based on an evaluation of the currently available information and on the regulatory mission of EPA to protect public health. Although there are uncertainties associated with the methods and assumptions used in the benzene risk assessment, EPA considers the analysis to represent a reasonable and appropriate approach to the estimation of potential health risks. The risk assessment conducted by EPA is consistent with the principles and procedures described in the 1986 Guidelines for Carcinogen Risk Assessment (September 24, 1986; 51 FR 33992) and Guidelines for Exposure Assessment (September 24, 1986; 51 FR 34042). These guidelines were developed by scientists in EPA, and were extensively reviewed by the public and by expert scientists in industry, academia, environmental groups, and other governmental agencies.

Regarding the commenters' specific concern about the exposure duration, EPA recognizes that most people will not actually live their entire life in the same location. Nevertheless, EPA makes this assumption as a matter of policy and does not believe that it diminishes the validity of its risk assessments. The EPA has made this assumption for several reasons. First, EPA is attempting to estimate the MIR, and it is completely possible that an individual could live in the same place for his or her entire life. Use of different assumptions could lead, in some cases, to underestimating the actual maximum risk. Second, the difference that would occur from assuming a shorter exposure period is not very significant. Such changes would only reduce the MIR by a factor of 2 or 3.

Moreover, EPA has used the 70-year exposure duration assumption consistently in Section 112 decisions on radionuclide sources and on benzene sources. The commenter is apparently under a misperception regarding the role of less than lifetime exposure assumptions in the radionuclide decisions (54 FR 51654). In this rulemaking, EPA considered exposure duration as one variable in a preliminary uncertainty analysis of risk for a limited number of facilities. This analysis showed that, when the variability of all factors is considered, risks calculated using 70-years exposure duration represents essentially median values.

While it is true that some of the radionuclide risk assessments were based on site-specific analyses, not all of these assessments were done in this manner. For source categories with a large number of sources (e.g., 135 uranium fuel cycle facilities), site-specific analyses were impractical and model plant analyses were used. In these cases, the risk estimates were developed for hypothetical individuals and populations representative of the sites. The benzene source categories are analogous to the radionuclide source categories with a large number of sources. The risk assessments for benzene sources were done using a similar approach. Thus, EPA does not agree that exposure issues were treated in fundamentally different ways.

Furthermore, since no site-specific emission data, source configuration information or meteorological data were available, it would be inappropriate to adjust the MIR to the maximum where residences are actually located, as advocated by the commenter. To require that one or more residences exist at the point of modeled maximum concentration places undue emphasis on the capability of the model to predict that a specific concentration will occur at a specific location. The EPA regards the models as accurate to the extent that the predicted maximum concentration can be expected to occur in the vicinity of the plant.

The EPA also considers the risk-based waiver program requested by several commenters to be inconsistent with the NESHAP policy. The acceptability of risks is judged under section 112 considering all health and risk information and is not determined solely on the basis of one particular risk parameter. In the second step decisions, EPA considers whether to reduce risks further considering all the health information, technological feasibility, costs and economic impacts, uncertainties of all the assessments, and other relevant factors. Consequently, the standards do not correspond to a single risk level, and it is not possible to define equivalent protection.

Comment: Several commenters disagreed with the EPA's determination that Regulatory Impact Analyses, as required by Executive Order 12291, and Regulatory Flexibility Analyses, as required under the Regulatory Flexibility Act, were not needed for the proposed regulations. Several commenters do not believe that EPA has satisfied the requirements of Executive Order 12291 because the costs associated with the proposed rule far exceed the $100 million threshold criteria contained in the Order. According to these commenters, EPA must consider the proposed rule, particularly the gasoline marketing and waste operations proposals, a major regulation which requires an evaluation of all control costs. Several commenters also requested EPA to prepare an RFA for the proposed regulation as required by the Regulatory Flexibility Act. The commenters did not agree with the EPA's conclusion that the proposed rule would not have a significant economic impact on a substantial number of small businesses. One commenter asserted that EPA had overlooked the "potential, and additive, impacts of the many provisions of the rule." Of particular concern to several commenters were the monitoring requirements for the benzene waste provisions when combined with the gasoline marketing requirements, which together would force closure of some small production wells and service stations. Therefore, the commenters believe EPA is obligated to perform an RFA to consider the costs associated with all of the other technical and administrative provisions of the proposed rule.

Response: The EPA's assessment that RIA's and RFA's were not necessary for any of the proposed rules was based on the EPA's information and assessments at the time of proposal. The EPA interprets the commenters' difference of opinion as primarily arising from the commenters' interpretation of the impacts of the proposed benzene waste regulation. As explained in detail in response to comments on the benzene waste operations rule, EPA did not intend to regulate under that rule sources like service stations and production wells and EPA has narrowed the scope of the rule. In addition, the monitoring, recordkeeping, and reporting requirements for sources that are regulated have been substantially reduced. Based on these changes, and the fact that regulated industries contain few small entities, EPA considers an RFA unnecessary for the benzene waste operations rule.

The proposed regulations for the gasoline marketing source categories are being withdrawn; however, EPA disagrees with the commenters that the proposed regulations for the gasoline marketing system should be considered one rule and that EPA failed to consider the interactive effects of the three rules. The EPA considers that these rules were properly evaluated as separate rulemaking actions and thus, no RIA was necessary. However, to fully consider whether an RFA was necessary, EPA considered the

interactive effects of the three proposed rules. The EPA evaluated the combined effect of the bulk terminal or bulk plant controls in considering the cost impact of the service station standard. It was on this basis that EPA determined the percentage cost increase was less than 0.2 percent.

C. Risk Assessment Comments and Responses

Comments received by EPA on issues of risk assessment for this rulemaking were, in many cases, similar to comments which were addressed in the final rulemaking for benzene emissions from maleic anhydride plants, EB/S plants, benzene storage vessels, benzene equipment leaks, and coke by-product recovery plants [September 14, 1989 (54 FR 38044)] and in the BID for the final rulemaking. Therefore, some responses to those similar comments are restated for this rulemaking. Some additional detail may be found in the BID (EPA Publication No. EPA-450/3-89-31) for the September 14, 1989, final rulemaking.

The commenters expressed views primarily in two areas: (1) The development of the quantitative risk estimate (i.e., unit risk estimate) for benzene, and (2) the exposure assessment. The major comments and the EPA's responses are summarized below.

1. Unit Risk Estimate

Comment: A number of comments were received concerning the selection of the most appropriate epidemiological data for use in deriving the URE for benzene. These commenters maintained that the data from Rinsky (1987) are the most appropriate for quantitative risk calculations.

Response: The EPA does not dispute the contention that in many respects the Rinsky study offers better data for quantitative risk estimation. This does not alter the fact, however, that although there is a great abundance of exposure data after 1950, there is still a dearth of exposure data from the period before 1950. The uncertainties that underlie assumptions made about what those levels were prior to 1950 have produced a variety of quantitative risk estimates that vary over a wide range. The authors of the study have repeatedly stressed this point to the many interested groups that have used these data. It is questionable to assume, as did one trade association, that benzene levels were extremely high in 1940 (based upon suggested occupational standards that had no regulatory force) and that only gradual reductions in exposure took place in the absence of any major effort to control airborne emissions. Furthermore, uncertainties about the blood count data, which were outlined in a previous EPA memorandum (Docket No. OAQPS 79-3, Part 1, Item XII-B-1), preclude the use of such data as compelling evidence that airborne levels fell during the period prior to 1950. Nothing in this latest submission by the trade association has caused EPA to reconsider its conclusions about the uncertainties of the exposure data during that period.

Comment: One trade association maintained that consideration of dermal and pre-employment exposure would reduce the potency estimate.

Response: As noted in correspondence from Rinsky (Docket OAQPS 79-3, Part I, XII-B-1), the issue of dermal exposure was addressed in the NIOSH study. Dermal exposure is considered very important in determining total benzene exposure when exposure to air concentrations is around the recommended NIOSH occupational standard of 0.1 parts per million. However, Rinsky considered absorption by dermal exposure to be insignificant at the assessed pliofilm facility in comparison to the high air concentrations estimated for the NIOSH analysis. Exposures to benzene outside the department studied were addressed by conducting a case control study where both cases and controls had an equal opportunity for exposure to benzene outside the rubber hydrochloride department.

The EPA agrees that pre-employment exposure could reduce risk estimates if data were available to verify this. If these exposure data are available, EPA would like to have them for review.

Comment: One trade association defended the use of latency in their risk assessment model by indicating that both EPA and the trade association developed approaches to estimate latency from radiation data. The trade association expressed interest in collaborating with EPA to obtain better data on latency.

Response: The EPA's criticism of the trade association's use of latency concerns the specific way it is defined and used in the model. Latency is defined by the trade association as the period of time from when a *malignant cell* is born to the time when death from leukemia occurs, in contrast to the term used in epidemiologic studies where latency is usually defined as a time period from the beginning of exposure to the onset of cancer. The EPA understands that it is operationally necessary for the trade association to define latency period in this way in order to make their mathematical model biologically meaningful; namely, to avoid the assumption that occurrence of a single leukemia cell is equivalent to leukemia death. As pointed out previously by EPA (Docket No. OAQPS 79-3, Part I, Item XII-B-1), however, this introduces a biological inconsistency and mathematical inappropriateness into the procedure.

Comment: One trade association and another commenter maintained that blood count data do not correlate well with the Rinsky exposure estimate but correlate well with the estimate by Crump and Allen (1984), suggesting that the exposure estimate by Crump and Allen is more reasonable and should be used for quantitative risk calculation. The commenters compared the Crump and Allen and the NIOSH exposure estimates, and recommended that the Crump and Allen estimates be used because they correlated well with blood cell count data from the 1940's (Kipen, et al., 1988, 1989).

Response: The evidence provided by these commenters to justify the use of the Crump and Allen exposure estimate is disputed by Rinsky (Docket No. OAQPS 79-3, Part I, Item XII-B-1). Given the uncertainty associated with the Crump and Allen exposure estimate, EPA feels that both the Rinsky and Crump and Allen exposure estimates should be considered in risk assessment. There are two exposure estimates for the Rinsky cohort: Rinsky's and Crump and Allen's. Since there are no industrial hygiene data taken prior to 1946, benzene exposure for a given job prior to 1946 must be assumed. Rinsky assumed that for a given job the exposure levels were the same before 1946 as they were in 1946 when some exposure data existed, since there were no major technological changes or improvements in production or control of benzene emissions within the plants. Crump and Allen adjusted the exposure level before 1946 upward from the existing exposure data by multiplying the ratio of prevailing occupational standards at the two different time periods. The argument that the Crump and Allen exposure estimate is superior to the Rinsky exposure estimate is based on an observation that the Crump and Allen estimates have a high correlation with rising peripheral blood counts (higher white blood cell counts are associated with lower exposure estimates), while no correlation is found for the Rinsky estimate. However, Rinsky (1989) has noted that averaged white blood counts rose in both exposed and unexposed employees over time, which may have been due to changes in diagnostic methods, techniques or interpretations. Furthermore, a potential

for bias exists because of a company policy that led to the removal of employees with low white blood cell counts from exposure (Kipen et al., 1988). This would tend to bias mean estimates of white blood cell counts upward with time. It is difficult to make a judgment whether Rinsky's or Crump and Allen's exposure estimate is more appropriate using the blood count data as the sole determinant because of a poor statistical representation of the population that was monitored for blood evaluation. Given the difficulty in evaluating the comparable merit of both the Rinsky and the Crump and Allen exposure estimates, EPA feels that both estimates should be considered in the risk assessment.

Comment: Two commenters expressed concern that in the September 14, 1989, final benzene rule (54 FR 38064) and BID, EPA used the term "artifactual" to describe a correlation developed from studies by Kipen, et al. (1987) that associates rising peripheral blood counts with decreasing benzene exposure levels. The commenters stated that EPA had not done any analysis to support this conclusion and was, in fact, relying on comments submitted by Rinsky, the author of studies which had only recently been completed in preparation for submission for publication by NIOSH.

Response: The EPA agrees that the term "artifactual" should have been attributed to Rinsky, and regrets the inadvertent misstatement. The new analysis prepared by NIOSH which forms the basis for Rinsky's assessment was based on data to which EPA has not had access. Interpretation of the data is currently under discussion by Hornung, Ward, Morris, and Rinsky at NIOSH and Kipen, Cody and Goldstein with the University of Medicine and Dentistry of New Jersey. This, however, does not alter EPA's position on the exposure issue which is clarified in the preceding response.

Comment: Several commenters stated that AML is the only type of leukemia caused by benzene. It was argued that only data on AML and aplastic anemia can be used for risk assessment because these are the only relevant disease endpoints observed in the Rinsky study.

Response: The EPA disagrees with the inference that AML is the only type of leukemia caused by benzene simply because it is more frequently seen in epidemiologic studies. There is substantial evidence from case reports and epidemiologic studies that benzene causes all major cell types of leukemia as well as lymphomas and other diseases (Docket No. OAQPS 79-3, Part I, Item XII-B-1). This is consistent with the observation that other leukemogens (e.g., radiation, oncogenic viruses, alkylating agents and anti-neoplastic drugs) cause cancers in different cell types. There is insufficient evidence to discount the association of benzene with leukemia types other than AML. In addition to leukemia, several studies (described in July 28, 1988, 53 FR 28496) have noted increases in other cancers, most notably lymphosarcoma and multiple myeloma.

The EPA disputes the notion that only AML and aplastic anemia can be used in risk calculation from the Rinsky study. For some unknown reason, the statistically significant excess of multiple myeloma found by the authors was overlooked in the analysis by one trade association. The EPA position on this issue has been extensively discussed in an EPA memorandum (Docket No. OAQPS 79-3, Part I, Item XII-B-1).

Comment: Several commenters maintained that the epidemiological and biological data for benzene are more consistent with a quadratic low-dose extrapolation model rather than with the linear model used by EPA. One trade association suggested that linear and quadratic terms should be used in the dose-response model, and that EPA should not discourage advances in risk assessment that could lead to a more accurate assessment of benzene's potency.

Response: The EPA does not agree with the comment that the demonstration of a nonlinear dose-response relationship in the observed data is a sufficient basis to argue that the shape of the dose-response curve is nonlinear at untested low-dose levels. The EPA's view is that linear low-dose extrapolation is preferred, unless low-dose data and/or mechanism of action or metabolism data show otherwise. The EPA also believes that it is premature to assume a threshold effect for benzene due to the lack of understanding about the mechanism of carcinogenic action. The EPA has elected to use the linear nonthreshold assumption for the benzene dose-response assessment because as a matter of science policy, EPA prefers to use assumptions which will provide risk estimates which are not likely to be exceeded given the lack of understanding about the mechanism of carcinogenic action. This choice of models results in an upper bound (i.e., because of the linear assumption) estimate of leukemia risk to the exposed population.

The EPA encourages the development of new approaches that have a potential to improve quantitative risk assessment. Before these approaches can be adopted, however, there must be consensus about the nature and validity of the improvement. While the trade association's effort to incorporate more biological information into risk assessment is commendable, its proposed benzene risk estimates cannot be considered an improvement over the existing EPA risk estimates because it contains several noteworthy deficiencies, including the use of an inappropriately formulated mathematical model.

2. Exposure Assessment

Comments on the EPA's assessment of human exposure to benzene emissions address three principal areas: (1) The analytical assumptions underlying the assessment; (2) the choice of atmospheric dispersion models; and (3) the matching of predicted concentrations with exposed populations.

Comment: A number of commenters took issue with the EPA's assumption that people living in the vicinity of benzene sources were exposed continuously, for a 70-year lifetime, to predicted long-term ambient benzene levels. Commenters maintained that few individuals would be expected to live in the same location for their entire lives, and that the EPA's assumption did not provide for the fact that people spent a much greater proportion of their time indoors rather than outdoors. Comments suggested alternative assumptions ranging from 15 to 35 years based on plant life and duration of residency estimates, and 4 to 22 hours of exposure per day based on the time individuals spend outdoors.

Response: The EPA recognizes that the assumption of 70 years of continuous exposure constitutes a simplification of actual conditions and represents, in part, a policy judgment by EPA, but feels that this assumption is preferable to the alternatives suggested. Although emissions of benzene from industrial sources would reasonably be expected to change over time, such changes cannot be predicted with any certainty. In lieu of closing, plants may elect to replace or even expand their operations and subsequently increase their emissions. The 70-year exposure duration represents a steady-state emissions assumption that is consistent with the way in which the measure of carcinogenic strength (URE) is expressed (i.e., as the probability of contracting cancer based upon a lifetime (70 years) exposure to a unit concentration).

The EPA agrees that the U.S. population is highly mobile and spends

a proportionally greater amount of time indoors than outdoors. However, adjusting the exposure assumptions to constrain the possibility of exposure to benzene emissions implies that exposure during the periods inside or away from the residence are zero. In addition, a less-than-lifetime assumption would also have a proportional impact on the estimated MIR, suggesting that no individual could be exposed for 70 years. On balance, EPA believes that the present assumption of continuous exposure is consistent with the stated purpose of making plausible, if conservative, estimates of the potential health risks. It is the EPA's opinion that this assumption, while representing in part a policy judgment by EPA, continues to be preferable to the alternative suggested, in view of the shortcomings of such alternatives.

Comment: Some commenters maintained that EPA's choice of dispersion models and selection of modeling parameters and input data caused the benzene risks to be overestimated. Specifically, commenters recommended the use of an area source model such as the ISC–LT model over the HEM for estimating MIR from benzene emission sources.

Other commenters criticized the assumption of flat terrain characteristic of the HEM model and maintained that this would result in an underestimation of the health risks.

Response: The EPA agrees that the use of more sophisticated dispersion models, where justified, would result in more accurate concentration estimates. The EPA does not agree, however, that the substitution of a model such as the ISC–LT would result in substantial changes in the estimated risks or that the changes would be only in a downward direction. In addition, the use of more sophisticated predictive models is often precluded by the input data requirements, particularly where a large number of emitting sources, or emission points within the sources, are being assessed. The EPA does not generally utilize more sophisticated dispersion models unless the input data are of sufficient quality to ensure that the model's outputs are of better quality than those available from the screening model in the HEM. For the benzene sources covered in this rulemaking, EPA believes that the use of the HEM screening model was an appropriate choice.

The effect of terrain on the estimation of exposure may vary from site to site. For any one site, the flat terrain assumption may tend to over- or underestimate exposure. In general, the effect of complex terrain is less for emissions released relatively close to the ground than for elevated process vent emissions that have the potential to impact on hillsides or be affected by building downwash. The EPA agrees that for sources located in complex terrain where the surrounding topography is at a higher elevation, exposure may be underestimated; however, the effect may vary by plant and may be relatively small given the low release heights of most of the modeled benzene sources covered in these rulemakings.

Comment: Several comments on the benzene exposure analysis, particularly the matching of exposure with population, pertained to the level of analysis and the need for more and better data. Several commenters expressed concern that the EPA's frequent assumption of plant fencelines being a uniform 200 meters from the plant center tended to overestimate maximum risk. Suggestions included the use of more source specific information including actual locations of residences and plant boundaries, and more recent census data.

Response: The EPA has used the 200 meter fenceline assumption routinely to facilitate comparison of the MIR among sources and source categories. Changes in this assumption have very little impact upon estimates of population risk (annual incidence) but can significantly affect the MIR since this measure of risk is normally predicted close to the plant. Individual plant boundary information, however, is not readily available and is often difficult to obtain. Sensitivity analyses indicate that while the 200 meter assumption may result in an overestimate of the exposure (and thus MIR) in some cases, there are also cases where the exposure may be underpredicted.

The choice of less sophisticated analyses and the need for simplifying assumptions most often results from the lack of source-specific data. The collection of such data, which would facilitate more detailed assessments, is usually prohibitively expensive. The EPA believes that, in such circumstances, assumptions such as the 200 meter fenceline are a reasonable and appropriate surrogate.

The use of maximum off-site concentration is an alternative but also requires determination of actual or estimated plant boundaries and does not address the issue of habitability. To require that one or more residences exist at the point of modeled maximum concentration, however, places undue emphasis on the capability of the model to predict that a specific concentration will occur at a specific location. The EPA regards the models as accurate to the extent that the predicted maximum concentration can be expected to occur in the vicinity of the plant. The EPA concludes that while a rough check of the habitability of the area may be advisable, insistence on the verification of residences at the specific concentration point is not technically defensible.

Comment: One trade association suggested that the matching of exposure with population in the benzene assessment would be improved by incorporating daily human activity patterns similar to the modeling approach taken in the development of EPA's NAAQS.

Response: The EPA has consistently taken the position that the models used to estimate exposure and risk should be commensurate with the quality and amount of data available. The NAAQS Exposure Model (NEM) has been used by EPA exclusively for criteria air pollutants. Extensive national monitoring networks are established for these criteria air pollutants that facilitate the identification and evaluation of microenvironments representative of daily activities. Comparable data are not available for benzene and the gathering of such data for the much larger universe of toxic pollutants would be infeasible.

In addition, the health effects associated with exposure to the criteria pollutants are different from those attributable to benzene. In the criteria pollutant program there is a greater emphasis on the potential for effects from shorter term exposure and a greater need to evaluate the potential for such exposures. Cancer, in contrast, is generally viewed as a chronic disease in which cumulative dose is the principal factor in risk estimation.

While EPA agrees that the incorporation of human activity data would represent an analytical improvement, this increase in sophistication and expense is not commensurate with the presently available data, the nature of the effects evaluated, and the underlying uncertainties in estimating cancer risks from exposure to benzene.

Comment: One commenter stated that it is inappropriate to use HEM results to derive absolute values of risk, citing the HEM User's Manual which states that HEM results should be used only for comparisons with similar substances and scenarios for decision making.

Response: Because of the assumptions and uncertainties in the dose/response assessment and exposure assessment (see July 28, 1988 **Federal Register** notice

(53 FR 28496) for a complete description of these uncertainties), the EPA's estimates of risks cannot be construed as absolute measures of the true risk burden to the benzene-exposed population. Rather, the quantitative risk assessment is best viewed as a relative estimate of the likelihood of cancer associated with benzene emissions from one industrial source category or compared to another benzene source category, or for comparison of estimates of emissions and risk associated with alternative emission reduction strategies within one source category.

The EPA used discrete estimates of risk or estimated risk ranges to characterize the risk that would remain after implementation of each control strategy. These residual risk impacts were, for comparison purposes, presented as discrete numbers or ranges. In judging the acceptability of risks and whether to require additional control, however, EPA recognized the uncertainties associated with the risk estimates and considered this information in making the benzene determinations. The choice and use of presumptive risk benchmarks, in the same way, included consideration of the associated scientific and technical uncertainties. Although the development of such benchmarks suggests that the magnitude of the estimated risk does play a role in the decision process, this role is tempered by the associated uncertainties and is consistent with the general conclusion that the estimates are best used for comparative purposes.

D. Technical Comments, Responses, and Changes Since Proposal

1. Benzene Emissions from Chemical Manufacturing Process Vents

Comment: Several commenters supported the proposed negative determination for this source category. One commenter, however, argued that this decision was inconsistent with the decisions on the gasoline marketing source categories because the projected risk reductions and control costs are not meaningfully different between the two groups of source categories. The commenter thought EPA had failed to justify the inconsistency and to explain why it has not required all sources to use 98 percent efficient controls.

Response: The EPA considers the decision for process vents to be consistent with the other decisions for benzene sources, including the gasoline marketing source categories. As presented in the **Federal Register** notice which announced the decisions on the policy approach (54 FR 38044), decisions on acceptable risk are based on a broad set of risk measures and information; decisions on ample margin of safety consider this health information and additional factors such as technical feasibility, the emission reduction achieved, the additional health protection provided, the cost, the potential economic impact, and other relevant factors. Consequently, judgments are based on consideration of qualitative and quantitative information and are not determined by any single factor.

In considering whether to require additional control to provide an ample margin of safety, EPA examined: the potential reductions in the number of people at risk levels greater than 1×10^{-6}; the reduction in the MIR and incidence; the control cost; coreductions of other pollutants; possible biases and uncertainties in all the estimates; and the feasibility of achieving further reductions. As discussed in the proposal notice (54 FR 38089–38090), EPA decided that the additional control levels provide essentially the same level of health protection. As no commenters submitted information or reasons that indicated the estimates presented at proposal were incorrect, EPA still considers the alternative control levels to provide essentially the same level of health protection. The costs of these additional controls, thus, are still high considering the small reductions in risk and incidence achieved. For the above reasons, EPA is reaffirming its decision not to regulate these sources.

2. Benzene Transfer Operations

The major comments and responses are summarized in this preamble. Additional details for some responses are contained in the docket for these standards, which is referred to in the **ADDRESSES** section of this preamble. Also, some minor comments are responded to in memoranda to the docket. In response to the public comments and as a result of the EPA's reevaluation, several changes have been made to the standards since proposal.

Section 61.300 has been modified to clarify that only loading racks which load liquids containing 70 or more weight-percent benzene are subject to the collection and control requirements of the standard.

The proposed date of February 1, 1991, for compliance of marine vessels with the standard has been changed, in § 61.300, to February 28, 1991, to be consistent with the expected date of promulgation of Coast Guard standards.

The allowable back pressure requirement for marine vessel vapor collection systems in § 61.302(j) has been changed from 0.5 to 0.8 times the relief set pressure to be consistent with the value expected to be promulgated in the final Coast Guard safety standards.

Sections 61.302(h), 61.302(i), 61.304(d), and the definitions of "vapor-tight tank truck" and "vapor-tight railcar" in § 61.301 have been modified to require that tank trucks and railcars loaded with benzene are not operated at higher pressures than those at which they were tested and shown to be vapor tight, that pressure measurement instruments capable of measuring up to that test pressure be used for testing with Method 27, and that vacuum-pressure vents in vapor collection service do not open at less than the maximum operating pressure.

The specifications for flares in § 61.302(c) have been modified to cite the NSPS General Provisions on flares (40 CFR 60.18). The proposed limitation of maximum velocity to 18.3 cubic meters/second has been deleted.

Language in the proposed regulation which required flow indicators on each vent stream going to the control device has been revised as follows: If there are no diversion lines from the control device, no flow indicators will be required, but a piping diagram must be provided. If there are diversion lines, all valves on the diversion lines must be car-sealed closed and all valves on lines directly to the control device car-sealed open. The owner or operator may then choose either to monitor the seals monthly for breakage or install and monitor a flow indicator capable of recording the presence of flow in the diversion lines.

The proposed requirement for monthly leak inspections of the vapor collection system and control device has been changed to require inspections consistent with the equipment leaks regulation in 40 CFR part 61, subpart V.

The units of P_{ia} in § 61.304(f), a section describing the requirements for one of the test methods for marine vessel vapor tightness, have been corrected.

The proposed carbon adsorber requirements in § 61.303(d), 61.305(a)(4) and 61.305(b)(5) have been clarified and simplified. Those sections now require: Reporting of "R," the recovery efficiency of the carbon adsorber determined during the performance test, and all supporting test data and calculations; monitoring of the concentration of organic compounds (rather than benzene concentration) in the carbon adsorber outlet gas stream; and reporting of all 3-hour periods of operation during which the average organic compound reading was 20 percent greater than the average reading

during the most recent performance test which demonstrated compliance.

General

Comment: One commenter opposed the exclusion of coke by-product recovery plants from the benzene transfer operations regulation. The commenter believed that the proposed controls for the benzene producers and terminals are also technologically feasible for coke by-product recovery plants and are mandated by the *Vinyl Chloride* decision. Another commenter believed that EPA should reevaluate its estimate of benzene emissions from transfer operations and the corresponding risks, and reconsider whether regulation of this source category was indeed necessary. The commenter also believed that the control cost of $30 million/year for the proposed regulation was much greater than those for other regulations of this type.

Response: The issue of the estimation of emissions and risks from the transfer operations source category is dealt with in the response to a subsequent, more detailed comment on this topic. Because the baseline MIR from this source category is approximately 6×10^{-3}, and is above the presumptive level of about 1×10^{-4}, it is unacceptable. Therefore, it was necessary to propose a regulation requiring controls such that risk would be reduced to an acceptable level. The EPA considered several alternatives to achieve this acceptable level, and judged that the health risk associated with incineration (i.e., 98 percent control) of benzene transfer emissions at producers and terminals to be acceptable. The benzene throughputs of the coke by-product plants are relatively small compared to those of producers and terminals. The baseline MIR from emissions at coke by-product recovery plants was 4×10^{-5}. If coke by-product recovery plants were regulated at the same level of control as the benzene producers and terminals, the MIR for this source category would be reduced from 4×10^{-5} to 7×10^{-6}, and the annual incidence from 0.02 to 0.009. Most (about 90 percent) of the incidence reduction would be associated with exposures to risk levels below 1×10^{-6}. The number of people estimated to be exposed to risk levels greater than 1×10^{-6} at baseline for coke by-product recovery plants is approximately 40,000. The control of benzene transfer emissions at coke by-product recovery plants was not necessary in order to achieve an acceptable risk.

In the ample margin of safety decision, EPA considered the costs of more stringent control alternatives including control of benzene emissions at coke by-product recovery plants. As discussed in the proposed rulemaking notice (54 FR 38091), the cost of regulating coke by-product recovery plants was disproportionately great compared to the small additional emission and risk reduction it would achieve. The EPA decided that 98 percent control of benzene transfer emissions from terminals and producers would protect the public with an ample margin of safety.

Comment: Five commenters believed that EPA's estimates of benzene emissions from transfer operations were overstated. The commenters pointed out several factors in EPA's analysis of emissions that they believed contributed to the overstatement: (1) The assumption that all of the benzene produced was shipped by either railcar or marine vessel ignored the fact that a large portion of the benzene produced is transferred by pipeline, which results in essentially no emissions; (2) EPA's method of scaling 1983 plant capacities up to 1988 levels was based on a factor of 3.07 representing the ratio between 1988 and 1983 industry capacities, which the commenters believed was 3 times too high; (3) EPA's estimate that 50 percent of the benzene produced was loaded to marine vessels, instead of 80 percent, caused emissions to be overestimated because the saturation factor for marine vessels is only half that for railcars; (4) the assignment of average capacities to production facilities whose actual capacities were unknown exaggerated true industry capacities; (5) the assumption that only one source was controlled was not accurate. One of the commenters stated that these factors caused emissions to be overestimated by a factor of four.

Response: Available data on transport methods for benzene, amount of benzene loaded to each type of transport vessel, emissions from each type of loading, and controls currently in use were limited. Emission estimates for this source category were based on information developed by EPA in 1983 and then updated to 1988 industry capacities with the limited information available. The EPA's goal was to estimate the magnitude of emissions and risk for this source category and to provide a reasonable worst case analysis to adequately characterize the MIR. The EPA believes that although there are uncertainties associated with the emission and risk estimates, these estimates are sufficient to support regulatory development. In the proposal notice, EPA acknowledged uncertainties in the data, but stated its belief that reasonable assumptions were made in light of the available data. These uncertainties were considered in the judgment of whether the risks are acceptable and whether to require, in providing an ample margin of safety, a level of control more stringent than the level associated with acceptable risks.

The EPA agrees with the commenters that some aspects of the proposal estimates were erroneous. The EPA considered making appropriate adjustments to the emission estimates and concluded that such an effort would not be a productive use of the limited time available under the court schedule and the limited resources. One consideration in this judgment was the existence of other uncertainties that would counterbalance the overestimates pointed out by the commenters. Thus, a comprehensive reevaluation would not result in a change in the regulatory decisions. Specific considerations in this assessment are described below.

Regarding the first point made by the commenters, none of the benzene producers contacted by EPA for current information mentioned pipeline transfer. The personnel who contacted benzene producers asked about total benzene transferred off site annually, and what percentage of that total was transferred by tank truck, railcar, and marine vessel. No specific information was given that would have alerted EPA to the significance of pipeline transfers. The commenters who mentioned this point did not supply any detailed industry-wide data that would allow EPA to change its estimates of the amount of benzene going through the various modes of transfer. In addition, EPA feels that its analysis provides a realistic worst case scenario given that there is no requirement that the present proportions of benzene transferred by the different modes would stay at those levels.

The scaling factor of 3.07 mentioned in the second point made by the commenters was based on the ratio of 1988 total U.S. benzene capacity to 1983 total U.S. capacity. The EPA obtained its estimates of the 1983 and 1988 industry capacities on values listed in the "Directory of Chemical Producers—United States" published by the SRI. In response to the commenter's point, EPA rechecked these values, and, after contacting the SRI, learned that the 1983 capacity had erroneously been listed as $2{,}406\times10^{3}$ metric tons instead of $2{,}406\times10^{6}$ gallons (see Docket No. A-89-04, Item IV-E-1). The conversion of $2{,}406\times10^{6}$ metric tons led to an underestimate of the 1983 capacity. Based on the corrected information, the

ratio of 1988 to 1983 capacity is approximately 1.

Regarding the commenters' third point, EPA was aware during development of this standard that the saturation factor, and hence the emission factors, for tank trucks and railcars is double that for marine vessels, and that the assumption that 50 percent of benzene production is loaded into railcars would tend toward overestimation if the assumption was incorrect. The EPA examined several scenarios regarding what proportions of benzene production were loaded to different types of vessels. The scenario of 50 percent of benzene loaded to railcars was intended to provide a realistic worst case which could be used to estimate maximum possible risks from this source category. There is nothing to assure that the percentage of benzene transfers to marine vessels would stay at the 80 percent level claimed by one commenter, or that this is even representative of general transfer operations throughout the industry.

In response to the commenters' fourth point, EPA believes that the average capacity used was realistic. In developing an assumed average capacity to assign to those facilities whose 1983 capacity was unknown, EPA first calculated the average of the capacities of the 43 plants for which there were 1983 data. However, that average capacity of 42,000,000 gallons of benzene per year was deemed unrepresentatively high because those facilities for which EPA had data were considered to be the largest facilities. Instead, EPA used an average capacity of 24,000,000 gallons per year, obtained by dividing the sum of the capacities for the 43 plants that had 1983 data by the total of 74 facilities. Although the 24,000,000 gallons per year may be an over- or under-estimate for any individual facility, EPA believes that on the whole, it is realistic.

Regarding the commenter's last point, only one facility contacted for current information reported using controls. The EPA could not contact all facilities, and had no basis for assuming controls were in place at those facilities not contacted.

In considering the points made by the commenters about the emission estimates, EPA still believes that there are many uncertainties in the data which could cause emissions, and hence risks, to be either over- or under-estimated on the whole. Although the commenters pointed out only factors which they believed contributed to overstatement of emissions, EPA believes that one factor possibly contributing to understatement is the consolidation of operations since 1983 and increased throughput at remaining facilities. Thus, emissions and risks for facilities transferring benzene could be higher than estimated. EPA believes that, considering all biases which tend to over- and under-estimate emissions, the actual level of benzene emissions from this source category is close to what has been estimated.

In conclusion, it is EPA's judgment that the estimates of emissions from benzene transfer operations given in the proposal notice are still its best estimates, that they represent a reasonable worst case, and therefore adequately characterize risks from this source category.

Applicability and Exemptions

Comment: Two commenters favored increasing the cutoff in the regulation (§ 61.300(c)), which exempts transfer facilities that load less than 1.3 million liters of benzene/year. One commenter requested that the exemption be increased to include facilities that load less than 5 million liters of benzene/year, stating that 1.3 million liters of benzene/year is less than a full load on one of this company's smallest tank barges. Another commenter believed that the EPA's selection of 1.3 million liters/year was arbitrary, and suggested that a cutoff equivalent to 2.4 million liters/year might be more cost effective.

Response: The applicability cutoff of 1.3 million liters of benzene loaded annually was based on the smallest annual throughput of benzene loaded at production facilities and terminals in the data base developed by EPA for assessing emissions and risks from this source category. It was EPA's intention to exclude only those facilities which load small quantities such as, at most, several tank trucks or railcars per year. Emissions, and thus risks, are proportional to the amount of benzene loaded and not significantly dependent on the size of the barge loaded. Thus, to exclude small barges from complying with the regulation when they may actually handle a significant amount of the benzene could result in a failure to control a potentially significant source of risk.

Comment: Three commenters suggested that a minimum benzene concentration should be included in the definition of benzene so that facilities loading liquid materials containing trace or small amounts of benzene would not be subject to recordkeeping and reporting requirements. One commenter pointed out that under the current definition of benzene, facilities that load materials such as crude oil, fuel oil, toluene and xylene would be subject to the recordkeeping requirements although the facilities do not contribute significantly to benzene emissions. The commenters suggested modifying the regulations so that liquid materials containing less than 10 weight-percent benzene would not be subject to the recordkeeping and reporting requirements, and that materials containing more than 10, but less than 70 weight-percent benzene would be subject to the reporting and recordkeeping requirements, but not the control standards.

Another commenter stated that the regulation's [§ 61.300(b)] exemption of affected facilities which load material containing less than 70 weight-percent benzene was arbitrary and inconsistent with other proposals in the same notice. The commenter pointed out that EPA had decided to regulate benzene-containing wastes with traces (10 ppm or 0.001 percent) of benzene, and gasoline (at most, 6 percent benzene). The commenter urged the extension of the transfer rules to mixtures with comparably low percentages of benzene.

Response: It was EPA's intention that transfer operations for streams containing less than 70 weight-percent benzene be subject to reporting and recordkeeping requirements only, while loading of streams containing 70 weight-percent or more benzene be subject to control as well as reporting and recordkeeping requirements. This approach was taken because available information suggests that transfers of materials containing less than 70 weight-percent benzene would not be a major source of benzene emissions due to the small quantities transferred. In the development of the proposed regulation, EPA found that nearly all transfers of benzene involved materials containing approximately 100 percent benzene except transfers at the coke by-product recovery plants, which usually involve mixtures of approximately 73 percent benzene. None of the commenters provided information that demonstrates or even suggests that there are significant benzene emissions from transfers of materials containing less than 70 weight-percent benzene.

Comment: Two commenters stated that the language of Section 61.300(a) and the definition of benzene in the proposed regulation could be interpreted in such a way as to subject all loading racks at a facility to the standard if only one rack is used in loading a material which contains 70 weight-percent or more benzene or more. The commenters recommended that § 61.300(a) be reworded to clearly exclude all loading racks not intended to be covered.

One of the commenters suggested that EPA reword § 61.302 to clarify that vapor-tight requirements apply only to loading racks when they are loading a liquid containing 70 weight-percent or more benzene.

Response: The EPA agrees that the proposed regulation could be misinterpreted to require control at all racks loading benzene-containing liquids, regardless of the weight-percent of benzene in the liquid. Section 61.300 of the final regulation has been modified to clarify that only loading racks which load liquids containing 70 weight-percent or more benzene are subject to the collection and control requirements of the standard. In addition, the previously included definition of benzene has been deleted.

Comment: Several commenters believed that not enough time is allowed by the proposed regulation for transfer facilities to come into compliance, explaining that substantial engineering work may be required to design acceptable vapor recovery systems, time delays in ordering and receiving custom design equipment may occur, safety problems exist with vapor-tight systems on marine vessels, and pre-construction permits, if required, take time. One commenter stated that a minimum of 2 years would be required to attain compliance, and pointed out that the General Provisions of the NESHAP regulations provide for a waiver of up to 2 years for existing sources subject to a standard when approved by EPA. Several commenters recommended that installation of vapor control systems should be required only after the Coast Guard safety standards have been promulgated. Compliance dates of 5 years, 3 years, 2 years and 1 year after promulgation of the Coast Guard standards were suggested by the commenters.

Response: The EPA wishes to clarify its intention that tank truck and railcar loading racks be in compliance with the regulation 90 days after promulgation, as specified by the NESHAP General Provisions of § 61.12, and that marine vessel loading racks be in compliance with the standards by February 28, 1991.

Section 112(c)(1)(B)(i) of the CAA requires that compliance for existing sources be achieved within 90 days of promulgation. The Act allows EPA to grant waivers of compliance for up to 2 years if such a period is necessary for installation of controls. The compliance dates provided in the standard reflect the EPA's judgment that an industry-wide waiver of 1 year is necessary to comply with the standards for marine vessel loading racks. However, because vapor collection and control systems are already available for tank trucks and railcars, it is believed that a waiver is not necessary for these sources.

During development of the proposed benzene transfer operations regulation, EPA was well aware of the safety standards being developed by the Coast Guard. The February 28, 1991, date specified in § 61.300(d) of the final regulations is intended to allow an adequate compliance period in which to take the proposed Coast Guard standards into consideration. At the time this notice was prepared, the date was changed to be consistent with the current Coast Guard projected schedule for promulgation. The EPA believes that this compliance period allows adequate time for affected facilities to review these regulations, and considering the standards proposed by the Coast Guard, design, purchase, and install appropriate vapor control systems. In the case of an individual affected facility which may have difficulties in the design of such a system, or in obtaining the necessary equipment or services necessary to meet the compliance schedule provided in the standard, EPA can consider the application for a waiver of up to 2 years, as provided for in section 112(c)(1)(B)(ii) of the CAA, as the appropriate course of action.

Comment: One commenter requested that promulgation of the regulation be postponed until the API safety study on vapor recovery systems is completed and concerns about the potential explosion hazards associated with transfer vapor recovery systems are resolved.

Several other commenters urged that the proposed regulations for marine vessel loading racks be consistent with, and safe as determined by, the Coast Guard standards. One commenter recommended waiting until the proposed Coast Guard standards are finalized before finalizing the benzene transfer NESHAP to ensure that these concerns are addressed. Another commenter favored the addition of safe vapor recovery systems at barge loading facilities, but requested a regulation that would receive mutual support from EPA, the Coast Guard, and OSHA.

Response: The EPA understands the commenters' concerns about safety. The EPA is aware of the API study, and anticipates that the study will demonstrate the feasibility of systems which meet Coast Guard requirements and which can be applied to the larger diameter pipes that must be used in marine loading. The EPA is allowing marine vessel loading racks until February 28, 1991, to come into compliance; this date is 1 year after the currently projected promulgation date for the Coast Guard standards. The EPA believes that this allows sufficient time for the API test to be completed and for any problems to be discovered. The EPA also believes that equipment to address the vapor recovery safety concerns should be available from manufacturers by that date. In any case, section 112(c)(1)(B)(ii) of the CAA allows any facility subject to a regulation to request a waiver of up to 2 years to come into compliance.

Standards

Comment: One commenter believed that a standard in terms of percent reduction for benzene emissions from benzene transfer operations would be an unfair and inappropriate way to judge compliance with the standard. The commenter stated that equipment vendors have extreme difficulty guaranteeing an efficiency percentage for control. The commenter also stated that given an amount of benzene loaded and a control device efficiency, the amount of benzene emitted by the control device would vary greatly with temperature conditions because of the effect on benzene vapor concentration. The commenter gave examples of situations where, depending on ambient conditions, a control device with a higher efficiency could be emitting a greater mass of benzene than one with a lower efficiency, even given the same amount of benzene loaded.

To be more fair, the commenter recommended revising the standard so that the benzene emission limit would be related to the volume of benzene transferred, and suggested a standard of 5 milligrams benzene emitted per liter of benzene loaded. The commenter gave some example calculations to show that, on the average, a 98 weight percent control efficiency would still be achieved. The commenter cited the use of this format of standard in the existing bulk gasoline terminals NSPS and the proposed bulk gasoline terminals NESHAP, and stated that this format of standard had proven itself to be fair and easily measured.

Response: The operations covered under the bulk gasoline terminals NSPS and the proposed bulk gasoline terminals benzene NESHAP both involve the loading of gasoline, a substance with fairly uniform concentration levels of benzene, at fairly constant loading rates and throughputs. These factors made it relatively easy to develop standards in the concentration format advocated by the commenter. In contrast, the proposed benzene transfer NESHAP covers operations involving far more variant conditions. The vessels

covered do not all have the same loading rate, and the benzene concentration emitted can vary with the concentration of benzene in the material loaded and with the materials carried previously by the vessel. These considerations make it difficult to identify a particular mass of benzene emitted per unit of benzene loaded which could be used as a standard that would achieve the goal of protecting public health. In addition, EPA currently does not have any data upon which to base such a standard. Therefore, EPA believes that the percent emission reduction format of the standard is the best approach for regulating this source category.

Comment: Three commenters believed that the regulation's restriction [§ 61.302(j)] of the amount of back pressure allowed during loading to 0.5 times the relief set pressure would unnecessarily restrict marine vessels from operating within the safe working pressures for which they were designed. The commenters maintained that this relief set pressure limit would necessitate the use of a blower to move vapors through the emission control device, and that the blower would create a safety hazard due to its potential as an ignition source. They suggested EPA revise § 61.302(j) to require that the maximum normal operating pressure of a marine vessel's vapor collection equipment not exceed 0.85 or 0.9 times the relief set pressure of the pressure-vacuum systems.

Response: The allowable back pressure of 0.5 times the relief set pressure was taken from the proposed Coast Guard safety standards, in order to be consistent with those standards. As a result of communication with the Coast Guard, the Coast Guard recommended changing the allowable back pressure requirement to 0.8 times the relief set pressure, as in their final standards. Therefore, to be consistent with the Coast Guard's recommendation, the pressure requirement of § 61.302(j) has been changed to 0.8 times the relief set pressure of the pressure-vacuum vents.

Comment: Three commenters stated that operating a marine vessel below atmospheric pressure conflicts with current Coast Guard standards on safety. Two of the commenters explained that blowers used to create pressures below atmospheric pressure would be an ignition source. The commenters stated that one means of protection against ignition specified by the Coast Guard is to enrich vapors above the upper explosion limit prior to the ignition source, and then to keep the vapors above atmospheric pressure after enrichment. The commenters concluded that this posed a conflict, since the suction side of the blower in this case would be below atmospheric pressure. The third commenter stated that operating under a vacuum makes leaks more difficult to find, and, if air is leaking into the system, could cause vapor control inefficiencies. Another commenter stated that loading should be allowed at slight vacuum or slight pressure.

Response: The EPA is not requiring that vessels operate below atmospheric pressure, but recognizes that there would be no leakage from a vessel that operates below atmospheric pressure. The regulation provides three alternatives for demonstrating vapor tightness in marine vessels: use of the test method in § 61.304(f) which involves pressurization of the vessel with dry air or an inert gas; testing of a marine vessel during the last 20 percent of loading using method 21, 40 CFR part 60, appendix A; or loading of the vessel with the benzene product tank at below atmospheric pressure.

The Coast Guard does set limits on the operating pressures relative to the negative and positive pressure settings on the pressure relief vents. However, the proposed Coast Guard standards do not preclude a vessel from operating below atmospheric pressure.

Comment: Three commenters believed that the gauge pressure limits normally applied to petroleum or nonpressure tank trucks had erroneously been applied to chemical tank trucks and railcars. The commenters stated that chemical tank trucks and railcars are able to withstand much higher pressures, and that limiting the gauge pressure to 4,500 pascals during loading would require extensive retrofitting of railcar loading racks, and would result in delays in loading. One commenter suggested that the regulation incorporate a 75 pounds per square inch gauge (618 kilopascals) maximum pressure rating on railcars. Another commenter suggested that the regulation be reworded to require that vapor collection and benzene loading equipment of tank trucks and railcars be designed and operated to prevent gauge pressure in the truck or car from exceeding 0.9 times the relief set pressure of the safety relief device during loading. This commenter stated that EPA would also have to modify the measurement device requirements in § 61.304(d)(1), the "vapor-tight tank truck" or "vapor-tight railcar" definition in § 61.301, and the testing procedure (Method 27) in § 61.302(d). The commenter stated that Method 27 deals with vapor tightness of gasoline delivery tank trucks and is not appropriate for chemical tank trucks. The commenter provided descriptions of different types of tank trucks, including pressure information, to support this.

Response: The EPA agrees that the upper pressure limit of 4,500 pascals would be too restrictive for vessels designed to carry loads at higher pressures. The intent of § 61.302(h) and (i) is: (1) To ensure that tank trucks and railcars which are tested and shown to be vapor tight at a given pressure are not operated during loading to exceed that pressure, and (2) to ensure that pressure-vacuum vents in the vapor collection systems do not open at less than the maximum operating pressure, thereby causing vapors to be vented to the atmosphere rather than to the collection system and control device. Therefore, EPA has made the following changes to the regulation to clarify this: (1) The definition of "vapor-tight tank truck" or "vapor-tight railcar" in § 61.301 has been modified such that the tank undergoing the vapor-tightness test will be pressured to a minimum of 4,500 pascals. Also, a pressure measurement device which is capable of measuring pressures above the initial pressure at which the test is done will be required to be used with Method 27; (2) § 61.302(h) has been modified to require that truck and railcar tanks be operated so that the pressure in the tank will not exceed the pressure at which the tank was tested and shown to be vapor tight; (3) § 61.302(i) has been modified to require that no pressure-vacuum vent in a vapor collection system for tank trucks or railcars shall begin to open at a pressure less than the maximum pressure at which the tank truck or railcar is operated; and (4) § 61.304(c)(1) has been modified to require a pressure measurement device capable of measuring above the initial pressure at which the railcar or tank truck was pressured to and shown to be vapor tight during the most recent vapor-tightness test.

Thus, when a vapor-tightness test is performed on a railcar or tank truck, it should be decided what the maximum pressure during benzene loading operations will be, and then the tank should be pressured to that level at the start of the test. Method 27 is to be used for the vapor tightness test, with Method 27's P_i being the pressure at the start of the test and the pressure loss ΔP being 750 pascals, as specified in § 61.301 under the definition of "vapor-tight railcar" or "vapor-tight tank truck". The EPA believes that these changes will

allow the flexibility to use tanks at any pressure suitable for loading and transporting benzene while not compromising vapor tightness or the collection and routing of vapors to control devices.

Documentation and Responsibility for Ensuring Vapor Tightness

Comment: Several commenters disputed the provision of the transfer regulation to make loading facilities responsible for documenting marine vessel vapor tightness, and believed that the vessel owner or operator should be accountable for the condition of his vessel. One commenter stated that loading facility owners or operators are not trained or qualified to perform tests on marine vessels. One commenter questioned how EPA intended to enforce this provision when neither the provision, nor transfer facilities which are not vessel owners, would have jurisdiction or power to require vessels to comply. The commenter also protested the cost of conducting the vapor-tightness test at the dock, stating that these costs had not been adequately addressed in the economic analysis and that EPA was asking terminals to do the government's enforcement work without being paid. The commenter recommended allowing terminals to rely on any authorized documentation that a vessel submits since, if such documentation were invalid or fraudulent, it would be the vessel owners or operator and not the terminal that would be in violation of the law.

Response: Section 61.302(e) does not require affected facilities to be responsible for documenting marine vessel vapor tightness. The responsibility of the affected facility is to load only those vessels which provide appropriate vapor-tightness documentation. The loading facility may refuse to load a vessel which has no vapor-tightness documentation, or may elect to load a nondocumented vessel, if a vapor-tightness test is performed during loading or if it can be shown that repairs needed to achieve vapor tightness are technically infeasible without dry-docking the vessel. The provisions requiring the facility to retain copies of vapor-tightness documentation, and/or test results, are intended to prevent a vessel which has failed its most recent test from loading again without first completing repairs.

Testing costs are typically very small (<1 percent) relative to capital costs associated with the control equipment. A rough estimation was developed for a Method 21 test for vapor tightness. The estimate when compared to the $168,000 retrofit cost for the barge is less than 1 percent of the total capital cost. Therefore, EPA does not believe that the cost of conducting the vapor-tightness test, if necessary, will have a significant adverse economic impact on facility owners or operators.

Affected facilities may rely on any documentation submitted by a vessel, as long as the documentation contains the items listed in § 61.305(h).

Comment: One commenter asked whether a marine vessel should be unloaded if it fails the vapor-tightness test in the last 20 percent of loading at the dock. The commenter also asked who would be required to complete the documentation for a test at the dock which showed no leaks, and by when this documentation must be completed. Specifically, the commenter asked if the vessel operator could complete it later and send it to the terminal.

Response: The standard does not require that a vessel which fails the vapor-tightness test be unloaded when the testing is completed, only that the failure be documented. This is reasonable because the test is performed during the final stages of loading, and unloading would in itself result in increased air emissions. Such a vessel may not be subsequently loaded until the owner or operator provides documentation that the leaks identified in the test have been repaired or that repair is technically infeasible without dry-docking the vessel.

The EPA believes that it is appropriate for the documentation of either a failed or a successful vapor-tightness test to be completed by whomever conducts the test. This documentation is to be completed at the end of the test prior to the vessel's departure, because the standard requires that the affected facility retain a copy of the test documentation on file (see § 61.305(h)). Documentation of repairs necessitated by a failed test should also be completed when the repairs are completed. This documentation should be provided when the vessel is next loaded subsequent to repairs. The EPA is requiring that the vessel be retested for vapor tightness during the first loading after the documented repairs have been completed to ensure that the vessel is vapor tight.

A sentence has been added to § 61.302(e)(2)(ii)(B) of the final regulation, clarifying that unsuccessful tests are to be documented and copies of the documentation provided to the owner or operator of the affected facility. This requirement was already specified in § 61.305(h) under the recordkeeping and reporting requirements for affected facilities. The wording of § 61.302(e)(2)(ii)(A) has also been modified to clarify that the documentation should be completed prior to departure of the vessel.

Comment: One commenter pointed out that the owner or operator of an affected facility would have no way of knowing whether a vessel had failed more than one vapor tightness test in the preceding 12 months. The commenter asked who would require the vessel operator to present such documentation.

Response: It is the responsibility of the owner or operator of an affected facility to obtain the documentation of vapor-tightness for each vessel it loads, or conduct a vapor-tightness test during loading and document the results.

Section 61.305(h) requires an affected facility to maintain a documentation file which reflects the current status for each vessel it services. Therefore, a vessel docking can have only one of three possible statuses; (a) no documentation [or documentation older than 12 months] of current vapor tightness, (b) documentation of a failed vapor tightness test, or (c) documentation of a successful vapor-tightness test performed within the last 12 months. In the case of (a), the affected facility may load the vessel if either documentation of a successful vapor-tightness test conducted within the last 12 months is provided, or a test is conducted and documented during loading. The documentation would be added to the affected facility's file for that particular vessel. In the case of (b), the affected facility may load the vessel if documentation of a successful vapor-tightness test subsequent to repair is provided, if repair documentation is provided and a vapor-tightness test is conducted during the loading procedure or repair is technically infeasible without dry-docking the vessel. The affected facility would retain a copy of the test documentation in its file for that vessel. A successful test after repair would document vapor tightness for the next 12 months. In the case of (c), the affected facility may load or unload the vessel with no further testing for 12 months from the test date.

Comment: One commenter suggested amending § 61.302(e)(2) of the proposed regulation to accept the Coast Guard's VOC tightness certification in order to eliminate the additional paperwork burden caused by the vapor-tightness documentation requirement. Another commenter suggested that EPA enter into a memorandum of agreement with the Coast Guard to require that the vapor-tightness test be included in the

annual certificate of inspection issued by the Coast Guard. A third commenter proposed that the Coast Guard be designated the regulatory authority to certify vapor tightness of marine vessels.

Response: The EPA has considered the comments regarding the involvement of the Coast Guard in documenting marine vessel vapor tightness. The EPA considered it inappropriate for the Coast Guard to be responsible for testing which is required under regulations pursuant to the CAA. In this rulemaking, EPA is requiring affected facilities to load only vessels having documentation of vapor tightness. The final standard provides both a method by which to establish vapor tightness, and a means to acquire and update documentation. If a vapor tightness test meeting the requirements of method 21 of 40 CFR part 60, appendix A, or of § 61.304(f), has been conducted and recorded in a document which contains the information required by section 305(h), a copy of such documentation will be considered adequate.

Comment: One commenter requested clarification as to whether the repair documentation referred to in the regulation was another document in addition to the vapor-tightness documentation.

Response: The repair documentation required in § 61.302(e)(2)(iii) is a separate document from the vapor-tightness documentation required after a vapor-tightness test has been conducted in compliance with § 61.302(e)(2)(ii). An unsuccessful vapor-tightness test is documented to alert all parties that repairs will be necessary. If a marine vessel has failed a previous vapor-tightness test, the owner or operator of the vessel must provide the affected facility with documentation that the leaks have been repaired, or that repair is technically infeasible without dry-docking the vessel, before the affected facility may load the vessel.

The repair documentation does not substitute for vapor-tightness documentation. The repair documentation can only assure that repairs have been effected, and only a vapor-tightness test can document that vapor tightness has been achieved. For this reason, § 61.302(e)(2)(iii) requires that a vapor-tightness test be performed during the first loading after repairs have been made and documented. This subsequent test, completed successfully, assures that vapor tightness has in fact been restored by the repairs.

Emission Control Technology

Comment: One commenter stated that tank truck vapor collection systems are not as advanced as tank truck loading systems. The commenter asserted that establishing a constant 98 weight-percent collection efficiency would be very difficult because many operations usually involve top-loading, and the tank truck collection systems are not closed systems, but instead utilize a collection device placed at the manway opening.

Response: The EPA believes the commenter has inappropriately interpreted the 98 weight-percent reduction as applying to the collection system. The standard specifies that a 98 weight-percent reduction in benzene be achieved by the control system. This reduction efficiency is measured across the control device, i.e., the 98 percent reduction occurs after collection at the control device itself. The EPA has established design specifications for the collection systems, which are evaluated separately from the performance specifications for the control device.

Comment: Two commenters expressed concern about the requirement to not exceed the maximum flare velocity of 18.3 meters/second, and believed that the limitation on the maximum flare velocity is not supported by information or data used to develop the standard. One commenter believed that this requirement will preclude the use of some existing flares when complying with the standard, and recommended that the flare velocity requirement be deleted. The other commenter recommended incorporating by reference the flare provisions in the NSPS General Provisions (40 CFR 60.18).

Response: The EPA agrees with the commenters' points and has modified § 61.302(c) of the final regulation to specifically cite the NSPS General Provisions on flares.

Comment: Two commenters advocated that EPA require controls for emissions from benzene loading operations to be at least 95 percent efficient, instead of 98 percent as proposed. One commenter stated that it may be desirable in some cases to recover the benzene through the use of a carbon adsorber, condenser, or pressure swing adsorber, which typically have 95 percent control efficiencies for benzene. The commenter pointed out that §§ 61.305 (a)(4), (b)(5), and (b)(6) of the proposed regulation explicitly contemplate the use of carbon adsorption systems to comply with control requirements. Another commenter recommended giving incentives to install vapor control devices that are capable of recovering and recycling the vent stream back to the process by allowing them to operate at 90 percent efficiency. The commenter believed that such recovery type control devices are more in line with current pollution prevention efforts than the typically used end-of-the-pipe destruction type control devices, and would, in the case of benzene transfer operations, still provide an ample margin of safety. The commenter provided information on installation, operation and cost of a recovery type control device used at one of his facilities.

Response: The EPA understands and agrees with efforts to recover and recycle benzene instead of using end-of-the-pipe destruction type control devices. However, the intent of the proposed regulation is to ensure that an ample margin of safety is provided to individuals exposed to benzene emissions from transfer operations. The EPA examined the option of using 95 percent efficient carbon adsorbers for all sources and found that this did not control emissions with an ample margin of safety. An acceptable level of risk and an ample margin of safety is provided by 98 percent control. The EPA did explicitly contemplate the use of carbon adsorbers in §§ 61.305 (a)(4), (b)(5) and (b)(6) because it was recognized that some carbon adsorbers can achieve a 98 percent efficiency. In addition, EPA wanted to allow the flexibility to use either thermal incineration or carbon adsorption for control.

Note: Section 61.305(b)(6) of the proposed regulation has been deleted in the final regulation, as discussed in the response to another comment.

Comment: One commenter stated that § 61.302(1) was confusing and unnecessary, and recommended it be deleted. The section provides that a facility owner or operator wishing to use an alternative means of emission control may apply to the Administrator for a determination that the alternative means of emission limitation can achieve the required reduction. The commenter pointed out that the standard is a performance standard, and does not specify any particular control device that must be used to meet the standard.

Response: The EPA agrees with the commenter that the requirement in the proposed § 61.302(1) is unnecessary. Therefore, the proposed § 61.302(1) has been deleted in the final standard.

Note: A new § 61.302(1) has been added, but it contains an unrelated requirement.

Test Methods and Monitoring

Comment: Two commenters believed that leak testing with soap should be

considered as an alternative test method to method 21 for the demonstration of vapor tightness of marine vessels. One commenter stated that the soap screening method has been accepted and used by the Coast Guard for testing weld integrity during repairs to tankers and barges for many years. Another commenter believed that method 21 was time-consuming and did not offer any advantages over other leak detection methods. This commenter further stated that the soap test often identified leaks emitting less than the method 21 10,000 parts per million threshold.

Response: Soap screening could conceptually be used as an alternative tightness test to that of method 21. However, the temperature of the component, physical configuration and relative movement of parts often interfere with bubble formation. A standard written procedure would need to be developed which would ensure uniform practice of this method, which would address these problems, and which would include quantification of soap screening results in a manner similar to that of method 21 (i.e., how large would a bubble have to be before it was interpreted as indicating a leak on the level of 10,000 parts per million by volume measured using method 21). Any facility may apply to use soap screening as an alternate method under § 61.13, which allows for alternative testing methods.

Comment: One commenter believed the requirement of flow indicators on stream flow vents to control devices was unnecessary. The commenter suggested that flow indicators only be required on any line that would be a diversion away from the control device.

Response: The EPA considers it very important that vent streams are continuously vented to the control device. The primary intent of the flow monitoring requirement was to provide a means for indicating when vent streams were bypassing the control device. The EPA has reevaluated the use of flow indicators in light of the commenter's point and other information received since proposal. The final standard now requires an engineering report that describes the piping arrangement for venting the affected emission streams to the control device. If any valves are present in the line between the source and the control device, the rule requires them to be car-sealed open (see § 61.301 of the final regulation for a definition of "car-sealed"). In addition, all valves that allow emissions to bypass the control device are required to be car-sealed closed. The monitoring requirements have been revised now that this engineering report is required. An owner or operator may elect to follow one of two methods for monitoring the vent system. One method would require monthly inspection of the valves to inspect the car seals, the reporting and recordkeeping of any time the car seals are broken, and reporting and recordkeeping of any time the valve position has changed. The other method would require installation of a flow indicator, which gives an indication of flow/no flow, at the closest downstream point of each valve that is required to be car-sealed closed. The owner or operator is required to record all periods of flow (which indicates a portion of the emission stream is bypassing the control device) and report such periods of flow quarterly.

Comment: One commenter stated that the performance testing for all controls other than flares is confusing, and that the long testing period would be difficult to manage. The commenter gave the example that even his company's largest barges would be loaded within 2.5 hours at maximum loading rates. The commenter suggested revising the observation period requirement to no less than 2 hours, saying that this should be adequate to obtain representative sampling of the system.

Response: Performance testing of air emission controls has been required to ensure that the control system is operating according to specification, therefore achieving the emission reduction for which it was installed. The testing period was intended to span several loading events, because the collection and control systems being tested will be started up and shut down frequently in their normal operation.

Comment: Several commenters objected to the regulation's (§ 61.302(k)) requirement of monthly inspection of the vapor collection systems and the control device during loading. One commenter stated that quarterly leak inspection was sufficient. Another commenter pointed out that this requirement was more stringent than the Subpart V provisions (40 CFR part 61). Since the personnel at an affected facility that are responsible for monitoring under subpart V would be responsible for monitoring under subpart BB, EPA must ensure consistency in the monitoring requirements between the two regulations.

Response: The EPA has reexamined the proposed monthly monitoring requirement of § 61.302(k) and the annual monitoring requirement of subpart V, and finds that annual monitoring would provide the necessary assurance that the vapor collection systems and control devices are being properly operated and maintained. Accordingly, this section of the regulation has been modified to require that inspection of the vapor collection system and control device conform to the standards of 40 CFR part 61, subpart V, § 61.242–11 (e) and (f).

Comment: One commenter stated that the requirement in the proposed § 61.304(e)(3) to record the pressure every 5 minutes during the performance test was excessive and unwarranted, and recommended that it be changed to every 5 minutes during the first 30 minutes of operation, and thereafter, every 30 minutes until completion of the test.

Response: The EPA disagrees with the commenter regarding the necessity to record the pressure every 5 minutes during the performance test. The more conservative approach would be to require a continuous recording monitor in order to ensure that the highest instantaneous pressure is in fact recorded. Barring a continuous recorder, recording at 5 minute intervals will at least indicate if pressure fluctuations are approaching 0.8 times the relief set pressure of the pressure-vacuum vents.

Comment: One commenter was unsure if the equation which was part of the vapor-tightness test described in § 61.304(f) had the proper units and whether the test method itself was valid. The commenter stated that the measurement unit "inches of water absolute" should be "pounds per square inch absolute (psia)." The commenter stated that it appeared that EPA was trying to model this method after the CTAC suggestions to the Coast Guard during a recent proposed rulemaking. Ultimately, the Coast Guard did not use this equation in their rulemaking. The commenter was unsure if the method had ever been tested, and requested that the industry be allowed additional time to collect data prior to finalizing this requirement in order to ensure that it is achievable.

Response: The EPA did model the vapor-tightness test method of § 61.304(f) after the CTAC suggestions. The Coast Guard did not use these equations in their proposed standards because those standards are safety-oriented and the small amount of leakage that would be detected by the vapor tightness test would not be a safety issue. However, these leaks are of concern from an air emission standpoint. The test method contained in § 61.304(f) is very similar to Method 27 for testing vapor tightness of gasoline delivery tanks, which has been tested, and used previously in the bulk gasoline

terminals regulation (40 CFR part 60, subpart XX). The units of P_{ia} in § 61.304(f)(4) have been corrected to pounds per square inch absolute.

Comment: Two commenters objected to the carbon adsorber requirements for continuous monitoring of benzene concentration. One commenter believed that these requirements were more expensive than those for flares and incinerators, and that this would bias owners and operators against installing carbon adsorbers. Another commenter believed that the carbon adsorber monitoring requirements would be extremely difficult to carry out because of the low levels of benzene and the sensitivity and maintenance requirements of the necessary equipment.

One of the commenters also stated that it would be impossible for carbon adsorber units with single vents to demonstrate 95 percent benzene removal when the unit is running with no vapor inlet flow, even though benzene emissions during those times would be very low. The commenter also believed that there was no justification for requiring a 3-day rolling average emissions report for carbon adsorbers with separate vents when only a 3-consecutive cycle average was required for those systems with a common vent.

Response: The EPA's intent in the proposed standard was to have affected facilities using carbon adsorbers monitor an indicator of benzene concentration; the intent was not to require monitoring of the actual benzene concentration. However, EPA has reconsidered the format of the proposed carbon adsorber requirements and has made the following changes in the final standard in order to clarify and simplify the requirements: (1) Section 61.303(d) has been changed to require the use of a device that continuously records the concentration of organic compounds rather than benzene in the outlet gas stream; (2) section 61.305(a)(4) has been modified to require only reporting of the control efficiency as determined in the performance test, and of supporting data and calculations; and (3) section 61.305(b)(5) has been changed to require only that a facility report all 3-hour periods of operation during which the average concentration of organics rather than benzene in the exhaust gas is more than 20 percent greater than the average exhaust gas concentration during the most recent performance test which showed compliance. The EPA believes that these changes address the commenters' concerns about measurement of actual benzene concentration, inequity in monitoring requirements between carbon adsorbers and other devices, different averaging times for individual versus common vents, and demonstration of 95 percent removal when there is no vapor inlet flow.

Comment: One commenter believed that if hydrocarbons lighter than benzene are present from previous loading of other products, they may be displaced by the benzene loading. The commenter suggested that the compliance provisions allow for detection and subtraction of nonbenzene hydrocarbons when using method 25A or 25B.

Response: It is true that NDIR and FID instruments would not differentiate between benzene and other hydrocarbons. The EPA assumed that the other hydrocarbons displaced would not be significant and that method 25A or 25B instruments, if calibrated with benzene, would provide adequate proof of compliance. The EPA understands that NDIR and FID instruments will have a response to most hydrocarbons other than benzene and that the effect of using the nonspecific method will depend on the magnitude of the compound-specific variable control efficiency. The EPA believes that the relative benefit of using a less complicated method justifies this uncertainty. If the source owner or operator believes this is unfair, then he or she may request an alternative testing procedure under § 61.13.

Comment: One commenter questioned EPA's authority to require marine terminal operators to test ships and barges which they do not own and for the terminals to do EPA testing.

Response: The EPA does not have the obligation to do the testing. It is the source's responsibility to comply with the requirements of this subpart which includes ensuring that vessels loaded at the facility are in compliance with the leak-tight requirements of the NESHAP. In some cases, this may be accomplished by the source owner or operator requiring a test to be conducted.

3. Industrial Solvent Use

Rubber Tire Manufacturing Regulation

Comment: Two commenters stated that EPA's estimate of benzene emissions from solvent use in rubber tire manufacturing was overstated. The commenters pointed out that old VOC emission factors and solvent composition information for tire production had been used to develop the estimate of benzene emissions, and that these factors did not reflect recent trends in the industry and the effect of the 1987 OSHA rule (September 11, 1987; 52 FR 34460) which encouraged the use of solvents containing less than 0.1 percent benzene. To support this point, one commenter submitted actual data on solvent use and percentage of benzene in the solvents for the 39 tire manufacturers in the United States. These data showed that total benzene emissions from U.S. tire manufacturers are no more than 9,700 kilograms/year, or only 8 percent of EPA's estimate, at proposal, of 121,560 kilograms/year. With this revised benzene usage information and using the same assumptions on source characteristics in the exposure modeling, the commenters calculated that the MIR was at most 5×10^{-6}, and cancer incidence was 0.001 case/year. The commenters believed that because the risk from benzene emissions from rubber tire manufacturing solvent use is so low, and is well below the EPA's presumptive acceptable risk level, the regulation for rubber tire manufacturing should not be promulgated.

Response: The EPA was well aware at proposal that the emission and risk estimates were based on old information that may not accurately characterize current practices. It was for this reason EPA specifically requested information on current benzene emissions and on the cost of appying additional control to the manufacturing facilities. The EPA examined the information provided by one of the commenters and found that it supported the contentions that less solvent is used per tire today than was used in the late 1970's, and that the solvents used contain less benzene. The overall solvent usage rate indicated by the commenter's data was approximately half of what had been previously observed for the tire manufacturing industry. On an individual facility basis, the larger differences between actual solvent use and the EPA's estimate of solvent use occurred at facilities located in ozone nonattainment areas (i.e., sources subject to the CTG requirements for tire manufacturing), and at facilities subject to the NSPS for tire manufacturing. Although the commenters did not provide information on tire production for the period, a review of trade reports indicates that the tire industry has been operating at close to full capacity. In addition, the average percentage of benzene in solvents used in the rubber tire industry reported by the commenter was 0.05 percent; this is lower than the estimate used by EPA at proposal by a factor of 6. None of the 39 facilities had benzene usage more than 1,500 kilograms/year; benzene usage ranged

from less than 100 kilograms/year to about 1,400 kilograms/year, with only 6 facilities reporting more than 500 kilograms/year.

Based on the reported benzene usage, EPA concluded the proposed standard would not reduce benzene emissions or risks. Currently no facility uses more than 1,500 kilograms/year of benzene and thus none would be required to apply control systems or to further limit benzene content of solvents. The proposed standard also would not significantly reduce future increases in emissions because any new sources (including growth at existing facilities) would have to comply with the requirements of the NSPS for the rubber tire manufacturing industry (40 CFR 60, Subpart BBB). The primary effect of the proposed standard would be to require existing facilities to submit reports to EPA documenting their solvent usage. This recordkeeping and reporting requirement would affect all 39 facilities in the industry and would cost roughly $250,000 annually for the industry as a whole.

Because of the new information and the absence of any benefit from the proposed standard, EPA reanalyzed the risks from these sources, the feasibility of further control, and reexamined the proposed decisions. Using the benzene emission estimates provided by the commenter for all 39 tire manufacturing facilities, EPA reran the HEM to predict risks for this source category. The resulting risk estimates were an MIR of approximately 4×10^{-6}, an incidence of 0.0006 case/year, and fewer than 1,000 people at risk levels greater than 1×10^{-6}. The decrease in the predicted risks from those estimated by EPA at the time of proposal is primarily due to the change in the benzene emission estimates. Since none of the facilities were colocated, the MIR is not expected to be higher than predicted due to colocation.

The commenters did not provide any information on the extent of the use of water-based sprays and cements versus those which are solvent based, or on the use of emission capture and control devices. Consequently, it is not possible to determine from the commenters' information the feasibility of further emission reductions. However, since only a few facilities are known to have installed hoods and control devices, EPA assumes the 50 percent VOC reduction is due to use of water-based and low-VOC cements and sprays. Thus, additional emission reductions would be primarily achieved through use of emission capture systems and control devices.

The EPA reassessed the cost of further emission reductions from these sources to ensure the costs were representative of widespread use of capture systems routed to control devices. (The estimates considered in the proposal analysis were representative of controlling a few operations by capture and control device combinations and use of low-VOC cements and sprays.) The control costs were reassessed using flow rates representative of operations in a 30,000 tire/day model plant and assuming plant-wide use of capture systems. The annual cost for incinerator control of the captured emissions was estimated to be approximately $7.7 million/year for the model plant.

Decision on Acceptable Risk: The baseline MIR of 4×10^{-6} is below the presumptive benchmark of approximately 1×10^{-4} and the estimated cancer incidence of 0.0006 case/year does not change the presumption that these risks are acceptable. The vast majority (more than 99.9 percent) of the population is exposed to risk levels below 1×10^{-6}. Fewer than 1,000 people are estimated to be exposed to risk levels of approximately 1×10^{-6} with a total incidence of 0.00002 case/year for this group. Benzene concentrations reported to produce noncancer health effects are at least four orders of magnitude greater than the exposure modeled for the source category. After considering all these factors, EPA judged that the baseline emission level represents an acceptable risk.

Decision on Ample Margin of Safety: To judge whether more stringent control should be considered, a new alternative was evaluated. This alternative (Alternative 2) requires facilities using 500 kilograms/year, or more, of benzene to reduce emissions by 75 percent. Based on current solvent usage, Alternative 2 would require application of controls to 6 facilities and would reduce emissions by approximately 2.4 megagrams/year of benzene and 3,200 megagrams/year of VOC. It is estimated this emission control would cost approximately $46 million/year (1984 dollars).

Alternative 2 would reduce the MIR to approximately 1×10^{-6}. The number of people exposed to risk levels greater than 1×10^{-6} would be reduced from fewer than 1,000 to fewer than 200. For the population exposed to risks greater than 1×10^{-6} the incidence would be reduced from approximately 0.00002 case/year to essentially zero. The overall incidence reduction would be approximately 0.0003 case/year. Essentially all of the risk reduction occurs for the population exposed to risk levels below 1×10^{-6}. In addition, benzene concentrations reported to produce noncancer health effects are at least four orders of magnitude greater than the exposures modeled for this source.

As noted previously, the cost of this emission reduction is $46 million/year (1984 dollars). The EPA considers the cost of this emission reduction to be far in excess of the small additional risk and incidence reductions which would be achieved.

After considering the preceding factors, EPA concluded that the existing level of emissions provides an ample margin of safety and it is unnecessary for EPA to establish a NESHAP for this source category. The EPA is, therefore, withdrawing the proposed standard for rubber tire manufacturing facilities.

Pharmaceutical Manufacturing Regulation

Comment: Two commenters questioned whether the actual emission reduction and health benefits of a standard for pharmaceutical manufacturing facilities would justify the cost of the standard. In addition, one of the commenters considered the control approach of the proposed standard to be inappropriate for these sources owing to the intermittent and varied operations in batch pharmaceutical manufacturing. In the commenter's opinion, a better standard would give credit for process redesign that minimizes emissions.

Response: The EPA's estimates at proposal of baseline emissions and risks from pharmaceutical facilities were based on the emission estimates reported in 1987 under the SARA title III reporting requirements by the one facility in this category, and on stack release parameters assumed by EPA. To address the commenters' question of the actual emission and risk reduction benefits of the proposed standard, EPA obtained additional information from the one pharmaceutical manufacturing facility known to be using benzene as a solvent. Facility-specific information was obtained on the basis for the SARA title III emission estimates, the source's estimate of actual emissions, the release height and velocity of the emissions source, and the actual location coordinates of the facility. Information was also obtained on the specific characteristics of the process from which benzene is being emitted.

The new information contained several important differences from that used by EPA at the time of proposal to

model risks from this source category. First, the emission rate, of approximately 5 megagrams/year of benzene, reported by the facility under SARA title III and subsequently used in the proposal analysis was based on the facility's current permit level, which is an hourly emission rate not to be exceeded. Based on recent measurements of air in-leakage into the process unit, actual emissions were estimated by the facility to be no greater than one-third of the permit limit, or 1.6 megagram/year benzene. Also, the stack height and release velocity are significantly greater than the representative parameters assumed by EPA in the proposal analysis to model exposures. These stack height and release velocity conditions are required for releases of toxic pollutants by the State where this pharmaceutical manufacturer is located.

Benzene exposures associated with this facility's operations were reevaluated using the information supplied by the commenter. The revised estimate of baseline cancer risk predicted by HEM is approximately 0.001 case/year and an MIR of 1×10^{-6}. Because the new information resulted in a significant change in the risk estimates, EPA reexamined the proposed decisions.

Decision on Acceptable Risk: The baseline MIR of 1×10^{-6} is below the presumptive benchmark of approximately 1×10^{-4} and the estimated cancer incidence of 0.001 case/year does not change the presumption that these risks are acceptable. The vast majority (more than 99.99 percent) of the population is exposed to risk levels below 1×10^{-6}. Only 700 people are estimated to be exposed to a risk of approximately 1×10^{-6} with a total incidence of 0.00001 case/year for this group. Benzene concentrations reported to produce noncancer health effects are at least four orders of magnitude greater than the exposure modeled for this source. After considering all these factors EPA judged that the baseline emission level represents an acceptable risk.

Decision on Ample Margin of Safety: In addition to the site-specific emission information, the company also provided EPA with information on the design and estimated cost of a planned process redesign and control program. Because the company is in the best position to understand the specific design requirements of the process unit, and the planned changes result in an emission reduction equivalent to EPA's proposed standard, EPA considered the company's control plan in examination of whether to require control to provide an ample margin of safety.

The new control alternative would reduce benzene emissions by 1.6 megagrams/year, leaving about 60 kilograms/year emissions. The MIR would be reduced from the baseline of 1×10^{-6} to 4×10^{-8}. Thus, no one would be potentially exposed to risks of 1×10^{-6} or higher. For the population exposed to risks of 1×10^{-6}, the incidence would be reduced by about 0.00001 case/year. Overall the incidence reduction would be about 0.001 case/year and the residual incidence would be 0.00004 case/year in a modeled population of 12 million people. The benzene exposures expected after these controls are applied are many orders of magnitude below exposures that have been reported to produce noncancer health effects.

To achieve this emission reduction, the company estimated it would cost $425,000 for the process redesign, operational changes and installation of carbon canisters. The EPA estimated this capital cost would result in annual costs of roughly $110,000/year assuming a 10-year equipment life, 10 percent interest, and 10 percent operation and maintenance costs. The controls are not expected to result in cocontrol of other pollutants such as VOC or other toxic compounds.

While the costs of the controls are small, they are disproportionate to the small additional emission and risk reduction which might be achieved through further control. Therefore, EPA decided that the existing level of controls provides an ample margin of safety and it is unnecessary for EPA to establish a NESHAP for this source category. The EPA is thus withdrawing the proposed standard for pharmaceutical manufacturing process vents.

4. Benzene Waste Operations

The major comments and responses for the standards for benzene waste operations are summarized in this preamble section. Additional details for some responses are contained in the docket for these standards, which is referred to in the **ADDRESSES** section of this preamble. Also, some minor comments are responded to in memoranda to the docket. Public comments on the proposed standards for benzene waste operations identified several major issues. In responding to these comments, EPA reevaluated the rationale for several provisions to the proposal and revised those provisions where it was determined to be appropriate. These revisions are described in the response to comments presented below.

Regulatory Scope

Comment: A number of respondents commented that the proposed regulation would cover numerous facilities that were not intended to be regulated and for which there were no data to indicate that they pose a health risk problem. A major concern was the expansiveness of the definition of waste and commenters suggested several specific examples of waste streams that would be included in the definition of waste but which should not be covered by the regulation. There was also concern that the definition of waste in the proposed regulation included recycled streams and wastes handled in enclosed systems and returned to the process which could cause waste streams with a low emission potential to be regulated. Some commenters suggested that many facilities with a low potential for emitting benzene could be determined to handle more than 10 megagrams per year of benzene in their wastes solely on the basis of recycled or recovered products. Commenters were uncertain whether gaseous emissions from process vents or equipment leaks were included in the calculation of annual quantity of benzene in waste.

The commenters were also concerned about the industries covered. The commenters suggested that a large number of relatively small facilities associated with petroleum exploration, production, transportation, and marketing activities would be regulated even though they pose a very low health risk, the court order did not require control of these industries, and they were not included in the analysis of impacts.

Commenters also expressed concern that many waste streams that have a very low emission potential would have to be monitored and possibly controlled merely because the benzene concentration could potentially be occasionally above 10 parts per million by weight (ppmw). Examples that were cited included low volume waste streams and stormwater runoff.

One of the primary concerns of commenters was that, even though many of the facilities and waste streams covered by the proposed regulation would qualify for an exemption from the control requirements of the regulation, the waste sampling required to qualify for an exemption would impose an undue burden on the regulated community.

Response: In the proposal, EPA was seeking to regulate all facilities that

could pose a potential health risk problem from managing wastes containing benzene. To identify plants and waste streams that might pose a problem, residual risk estimates were made for several emission control scenarios using the best available data from several sources to estimate benzene emissions, human exposure, and MIR. The data used for the analysis included information on petroleum refineries, chemical plants, coke by-product recovery plants, and hazardous waste TSDF. The estimates showed that health risks due to emissions from those facilities would exceed acceptable levels and that applying controls to waste streams with a benzene concentration of 10 ppmw or more at all facilities that handle 10 megagrams per year or more of benzene in their waste would reduce the health risks from all facilities to acceptable levels. The EPA's intent in the proposal was to regulate those plants which pose a significant health risk. However, because of the possibility that there may be plants not identified in the data base that generate or manage benzene containing wastes that could pose an unacceptable risk, EPA chose to make the proposed standards broadly applicable to all wastes that contain benzene. The EPA sought to focus the control requirements on only those facilities and individual waste streams with significant emission potential by including provisions in the proposed regulation that would allow facilities to obtain exemptions from control and monitoring requirements if it were demonstrated that specified levels of benzene in waste were not exceeded.

Based on comments received and a reevaluation of the potential impacts of a broadly applicable approach, EPA is now aware that the proposed standard could affect a very large number of facilities and waste streams which have low emissions, which EPA did not intend to regulate with this rulemaking (e.g., service stations), or for which the levels of risk are not known because no data are contained in the data base. Although there are provisions in the proposal that allow owners and operators to seek exemptions from the control requirements, obtaining an exemption could involve a substantial effort on the part of an affected facility. Therefore, EPA has reconsidered the proposed approach and decided to narrow the scope of the standards as discussed below. Even though the scope of the regulation has been narrowed, the final rule still regulates those sources which EPA intended to regulate in the proposal and still achieves the reduction in benzene emissions from those sources necessary to protect public health. The primary effect of the reduced scope is the elimination of monitoring, recordkeeping, and reporting requirements for many sources that would have been affected by the proposal but that are not affected by the final rule.

The scope of the final rule has been narrowed through several revisions to the proposed rule. These revisions consist of specific exclusions of certain waste streams from coverage by the rule, revisions to the procedure for determining if a facility is subject to the rule, and revisions to the procedure for determining if an individual waste stream is subject to the control requirements of the rule. These revisions are discussed below.

a. Waste Definition

Numerous comments were submitted regarding the definition of waste. Some of the commenters were uncertain about the meaning of wastes from "community activities", there were suggestions that the RCRA definition of waste be used, and there was concern about the inclusion of recycled waste streams in the definition. The EPA considered all of the comments and concluded that the most appropriate way to address the comments was to provide specific exclusions in the final rule for those streams that clearly have little or no emission potential rather than to change the proposed definition of waste. Specific exclusions were included for recycled streams that are internal to the production process, segregated stormwater runoff, and gaseous emissions from process vents.

The definition of waste in the proposed rule is the same as that used in 40 CFR part 60, subpart Kb. The EPA chose to use this definition in the benzene waste rule to be consistent with a rule already promulgated under the CAA, and because the definition is broad enough to cover all wastes that could potentially contain benzene.

Although EPA has chosen not to change the definition of waste in response to comments, EPA has made revisions to the proposal pertaining to the applicability of the rule and has included specific exclusions for certain types of wastes as discussed below.

Based on the definition of waste, all wastes that are recycled would have been subject to the proposed regulation if they contain benzene. However, several commenters contend that many waste streams are recycled internally to the production process and have little or no air emissions and were never previously considered wastes. These commenters further contend that including these waste streams in the determination of the annual quantity of benzene in waste could cause facilities to be subject to the regulation that would otherwise be exempt, thus unnecessarily increasing the monitoring and recordkeeping burden imposed. Recycled and recovered streams were not excluded from the definition of waste to ensure that benzene emissions are controlled. For example, when an off-specification product is stored in a tank prior to being returned to the process, unless the storage tank is equipped with controls, benzene will be emitted to the atmosphere. However, upon reevaluation, EPA concurs that in-process recycle streams such as the reflux from a distillation column and reboilers are not exposed to the atmosphere, and consequently, there is no need to regulate these streams in this rulemaking. Therefore, EPA included a specific exemption for in-process, recycled wastes in the final rule. Other recycled or recovered wastes that exit the production process or pass through oil-water separators or similar treatment devices, such as slop oil, are not exempted from control in the final regulation because they could be managed in open sources and have the potential for air emissions.

Stormwater runoff that is kept segregated from process wastes is also specifically excluded from today's rule. Benzene in stormwater would result on an intermittent basis when spills or leaks are entrained by rainwater that falls at the facility. Existing regulations related to spills under both the CWA and RCRA should minimize the amount of benzene available for entrainment by stormwater runoff. Because of this and considering that stormwater runoff waste streams occur intermittently, EPA believes that on an annual average basis, benzene emissions from stormwater will not contribute significantly to overall risk due to benzene emissions at a facility. Therefore, segregated stormwater runoff is specifically excluded from today's benzene rule.

Waste in the form of gases or vapors that is emitted from process fluids is also specifically excluded from today's final rule. Some commenters were uncertain whether or not these gaseous emissions would have to be included in the calculation of annual quantity of benzene in waste managed at a facility. In the proposed regulation, EPA did not intend that the calculation of annual quantity of benzene in waste would include gaseous emissions because these emissions were considered in separate regulatory decisions that

addressed process emissions (rather than emissions from waste operations) from various source categories. In order to clarify this position, today's final rule includes a specific exclusion for these wastes. On the basis of these specific exclusions and the other changes discussed elsewhere in this preamble, EPA concluded that the commenters' concerns are adequately addressed without changing the definition of waste.

b. Facility Applicability

Two revisions were made to the proposed standards that affect the procedure for determining if a facility is covered by the standards. They are: (1) A clarification of the industries regulated and (2) a change in the procedure for calculating the annual quantity of benzene in the waste managed at a facility. The clarification of industries regulated, in effect, reduces the number of facilities subject to the regulation by explicitly citing the industry sectors that will be regulated. The final rule is applicable to facilities in the following industry sectors: petroleum refineries, coke by-product recovery plants, chemical plants, and commercial TSDF that manage wastes generated by the other three industries (i.e., petroleum refineries, coke by-product recovery plants, and chemical plants). Examples of affected industries include SIC codes 2911, 3312, 2800's, 4959, and 9511. The clarification of industries regulated appeared in the **Federal Register** on December 15, 1989, (54 FR 51423). Although, as mentioned previously, the definition of waste has not been changed from proposal, one of the effects of the clarification of the industries regulated is to eliminate consideration of wastes from community activities, which was a source of uncertainty for some commenters.

Several commenters maintained that petroleum refineries should not be covered by the benzene waste rule because refineries were not included in the court order mandating development of the standards and because they did not consider the data base for petroleum refineries adequate to show that a benzene emission problem exists. Although the court order requiring development of today's standard did not specifically include petroleum refineries, for the purpose of regulating benzene emissions from waste operations, EPA found it difficult to distinguish between waste operations at petroleum refineries and those at chemical plants. There is no clear point at which a petrochemical complex changes from a refinery to a chemical plant and the waste streams from both types of operations are often combined for transport or treatment. The EPA therefore concluded that it was not possible to make a sufficiently clear distinction between refinery waste streams and chemical plant waste streams to allow them to be regulated separately. Furthermore, EPA disagrees with those commenters who challenged the adequacy of the data base for demonstrating a benzene air emission problem at petroleum refineries. Available data on petroleum refinery wastes indicate the potential for significant benzene emissions that, if not controlled, will cause an unacceptable health risk. Although there is uncertainty associated with the data, as discussed below in Data Base and Emission Modeling, EPA believes that the data are adequate for estimating benzene emissions and associated risk levels. Therefore, petroleum refineries are included as an affected industry sector in the final rule.

The second change affecting the identification of facilities subject to the standards involves a change in the method of calculating the annual quantity of benzene in waste. This change was made in response to comments related to waste stream emission potential. Under the proposed standards, emission controls for benzene were not required at a facility if the total annual quantity of benzene in the waste managed at the facility was less than 10 megagrams per year. For the purpose of determining if a facility would be subject to the standards, the proposed standards required that the total benzene in waste managed at a facility be calculated as the sum of the quantity of benzene in all waste streams at the facility. Several commenters pointed out that the emission potential of benzene in aqueous wastes (those wastes containing water) is much higher than that for organic waste having equivalent benzene concentrations and, in addition, that aqueous wastes are more likely to be handled in waste management units that are open to the atmosphere, which further increases their emission potential. It was further noted by commenters that if all wastes at a facility consist of streams with a low emission potential, such as organic waste streams, then there is no need for those streams to be controlled.

The EPA agrees that benzene in aqueous waste is the dominant source of benzene air emissions from waste operations. When benzene is dissolved in water, it is highly volatile and thus easily emitted. Therefore, when aqueous wastes are managed in open sources such as open sewer systems, tanks, or surface impoundments, the benzene in the waste is quickly emitted to the atmosphere. In contrast, when benzene is dissolved in organics, it is much less volatile than benzene in aqueous wastes at the same concentration. Additionally, organic wastes are more likely to be transported in closed pipes and managed in closed systems such as covered tanks than are aqueous wastes, which are routinely managed in open wastewater treatment tanks. Finally, aqueous wastes are normally generated in much larger quantities than organic wastes, which further contributes to the dominance of aqueous wastes over organic wastes as a major source of benzene emissions from waste.

On the basis of these considerations, the final rule does not require the benzene contained in organic waste streams to be counted in the calculation of annual quantity of benzene managed at a facility. The benzene in all other wastes is counted in this calculation, including the benzene in all process wastewater, tank drawdown, and landfill leachate. The final rule specifies that "double counting" of benzene in waste streams is not required in calculating the annual quantity of benzene managed. For example, the benzene in waste streams that are generated by the treatment or management of other wastes would be excluded from the calculation if the benzene in these streams has been counted already at the point of generation. This means that benzene wastes generated by a waste management unit, such as API separator sludges, would be excluded from the calculation of the annual quantity of benzene assuming it already would have been included at the point of generation. Including the benzene in these sludges in the calculation of annual quantity of benzene in waste would cause double counting of the benzene in these wastes. These exclusions are only for the purpose of determining if a facility meets the 10 megagrams per year of benzene in waste applicability level. At facilities that meet the applicability level, all wastes, including organics, are subject to the control requirements of the final rule unless they have a specific exclusion or meet other exemption criteria. Even though the calculation of annual quantity of benzene in waste excludes organic waste streams, benzene emissions from organic wastes contribute to the overall risk and the impacts of the rule were estimated based on the assumption that these streams would be controlled. The exclusion of organic wastes in the calculation of benzene in waste, along with other changes discussed in this

preamble, will further focus the benzene waste rule on those wastes identified as having the greatest benzene emmission potential.

To determine the annual quantity of benzene in waste, organic wastes are defined as any waste that contains less than 10 percent water. The EPA chose a value of 10 percent to insure that the estimate of annual quantity of benzene in waste will clearly exclude those organic wastes with a low benzene emission potential. With this value, organic waste streams cited by the commenters, such as off-specification product that is returned to the process, will not be included in the determination of whether a facility exceeds 10 megagrams per year of benzene in waste. Reanalysis of EPA's data base for benzene waste shows that the change in the procedure for calculating benzene in waste would not cause any facilities that warrant control to be excluded from the control requirements of the final rule.

c. Waste Stream Applicability

Under the proposed regulation, facilities that generate or manage 10 megagrams per year or more of benzene in their wastes could seek exemptions for individual waste streams if they demonstrate by waste sampling that the benzene concentration of a waste stream is less than 10 ppmw. Several commenters contended that some types of waste streams (e.g., intermittent or low volume streams) with benzene concentrations of 10 ppmw or more have a low emission potential and should not be controlled by the standards. The EPA has considered these comments and incorporated revisions in the final rule that affect the determination of whether individual waste streams are exempt from the control and monitoring requirements of the regulation. The exemption of in-process recycle streams, stormwater runoff and gaseous emissions from process fluids from all requirements of the regulation was previously discussed under the definition of waste. Other revisions include: (1) Use of annual average benzene concentration, (2) addition of a low-flow cutoff for process wastewater streams, and (3) an exemption for certain process wastewater streams.

(1) Benzene Concentration Determinations

In the proposed regulation, any facility that manages 10 megagrams per year or more of benzene would be required to manage each waste stream at the facility in controlled units and treat the waste to remove or destroy benzene. An exemption to these requirements was allowed if the owner or operator demonstrated through waste sampling that the benzene concentration of the waste stream would be less than 10 ppmw based on analysis of samples taken at a time when the benzene concentration is at its highest level. The analysis included a conservative safety factor, implemented through the use of a statistical t-test, to take into account sampling and analytical variability. This approach to obtaining an exemption was selected to insure that all waste streams with the potential for causing adverse health impacts would be regulated. Several commenters noted that some waste streams could potentially have a benzene concentration in excess of 10 ppmw at certain times even though they almost always would have concentrations that are less than 10 ppmw (e.g., maintenance activities, process upsets, etc.) and have a low potential for benzene emissions. Other commenters were concerned that the use of a statistical t-test to account for sampling and analytical variability could cause wastes that never have a benzene concentration greater than 10 ppmw to be controlled. Still others questioned the ability to sample waste (and the representativeness of samples) at a time when the benzene concentration is at the maximum level.

In developing the specific requirements of the proposed standards, EPA was not aware of the extent to which waste streams with benzene concentrations that are generally much less than 10 ppmw could exceed 10 ppmw. Although it was not EPA's intent to apply controls to waste streams that, on a continuous basis, normally contain well below 10 ppmw of benzene, the proposal, in effect, established a benzene concentration of 10 ppmw as a level never to be exceeded. Based on a review of the comments submitted, EPA is now aware that this approach could require the control of numerous waste streams that normally have benzene concentrations well below 10 ppmw, which is contrary to the intent of the proposal. Consequently, EPA has concluded that it is more appropriate to use an annual average benzene concentration for determining if a stream is exempt from the control requirements of the regulation rather than using waste sampling performed when the benzene concentration is at its highest level. Use of an annual average is consistent with EPA's concern with chronic or long-term benzene emissions which was the basis of the risk analysis. Therefore, the final rule allows the use of an annual average benzene concentration without the use of a t-test to determine if a waste stream qualifies for an exemption from the control requirements. An owner or operator seeking an exemption from control for a waste stream under this provision must include an assessment of how the concentration of benzene in the waste stream varies over the course of a year as part of his demonstration that a stream is less than 10 ppmw on an annual basis. The owner or operator would also be expected to maintain and operate the process or equipment generating the waste stream in a manner that would minimize the concentration of benzene in the waste in order to comply with the general provisions of 40 CFR part 61.

(2) Low-Flow Cutoff

Commenters also suggested that many waste streams at a facility may have low emission potential even though the annual average benzene concentration is 10 ppmw or more if the stream consists of only a small quantity of waste such as might be generated by a small batch process or maintenance operations or by a continuous process with a low flat rate. In these cases, the commenters asserted that if the total quantity of waste is small, then the emission potential is also small and the waste stream should not be subject to the control requirements of the regulation.

The EPA concurs with the commenters that there are certain small quantity waste streams that have a low emission potential and consequently make a negligible contribution to overall risk at a facility. These waste streams would also be difficult and inefficient to control with the types of controls that served as the basis of the proposal, which included piping of waste streams to a treatment unit. Based on these considerations, EPA evaluated alternative low-flow cutoffs and concluded that it would be appropriate to exempt individual process wastewater streams with a continuous flow rate below 0.02 liters of waste per minute or intermittent and batch flows with a total mass of waste below 10 megagrams per year for each process wastewater stream. Process wastewater streams that have a flow rate below the exemption cutoff would have a very low emission potential and even if there were many streams at the cutoff level at a facility, emissions from these streams would not contribute significantly to the maximum risk. In addition, exempting these low-flow process wastewater streams will substantially reduce the monitoring, reporting, and recordkeeping

burden that would have been imposed by the proposed standards.

Only those streams that are process wastewater are eligible for this low-flow exemption. As defined in the final rule, "process wastewater" means water that comes in contact with benzene during manufacturing or processing operations conducted within a process unit. Organic wastes, process fluids, product tank drawdown, cooling tower blowdown, steam trap condensate, and landfill leachate are specifically excluded from the definition of process wastewater and, as such, are not eligible for the low-flow cutoff.

(3) Wastewater Stream Exemption

Several commenters claimed that at some facilities particularly at petroleum refineries where there are many waste streams, only a few waste streams cause the majority of the risk and that controls should only be required on those streams. These commenters further requested that EPA provide an option in the final rule that would allow facilities to selectively identify and treat waste streams until an overall facility-based level of benzene in waste was met. The commenters suggested 10 megagrams per year of benzene in waste as a facility target level because this level was used by EPA in the proposed standards to identify facilities for control.

The EPA considered this comment and determined that it is not necessary to require blanket control of all waste streams if emissions can be reduced to a safe level without doing so. Therefore, EPA has included an additional option in the final rule for exempting process wastewater streams from control if it is demonstrated that the total amount of benzene in all process wastewaters at a facility is reduced to a specified level. This exemption provision, like the exemption for low-flow streams, only applies to process wastewaters at a facility.

As discussed under Selection of Standards, the 10 megagrams per year level of benzene in waste used in the proposed standards to identify facilities for control, and suggested by commenters for use in the option discussed here, was not intended as a facility target level. Consequently, 10 megagrams per year of benzene in waste was rejected as a facility target level. Instead, one megagram per year was selected because it is sufficiently stringent that EPA is confident that the maximum individual risk at any facility choosing to use this option will be at a safe level. In addition, this target level will serve as a cap on emissions, thereby continuing to ensure that a limited number of people will be exposed to maximum risks greater than 1×10^{-6}.

Under this option, an owner or operator would first determine the quantity of benzene present in all process wastewaters at their points of generation. Then the owner or operator would select individual streams for control (i.e. management in units controlled for air emissions until treatment in a unit also controlled for air emissions) until the quantity of benzene remaining in the treatment residue from the treated streams plus the benzene in the streams not treated is less than 1 megagram per year. When a sufficient number of streams have been controlled to reduce the total quantity of benzene in both treated and untreated streams to less than 1 megagram per year, the remaining untreated streams would be exempt from the control requirements of the regulation.

Interrelationship with Other Regulations

Comment: Some commenters stated that air emission standards for benzene waste operations should be developed under RCRA instead of the CAA. In contrast, other commenters supported the use of the CAA as the basis for air emission standards for these sources. Many commenters claimed that the proposed standards for benzene waste operations are not needed because regulations promulgated by EPA under the CAA and other Federal statutes (i.e., RCRA, CERCLA, and FWPCA) and by OSHA already adequately control benzene emissions from waste operations. To the extent the proposed standards are acceptable under the CAA and are not addressing sources already adequately controlled by other regulations for benzene emissions, commenters further stated that the specific requirements for benzene waste operations (e.g., allowable control techniques, monitoring intervals, recordkeeping requirements) needed to be consistent with rules already promulgated by EPA.

Response: As discussed in the response to legal comments, EPA has the authority to regulate hazardous air pollutants from waste under Section 112 of the CAA. The EPA has determined that benzene is a hazardous air pollutant and standards for benzene waste operations were proposed under section 112 of the CAA to control benzene emissions from waste management units in which waste containing benzene is placed prior to treatment and from processes used to treat this waste.

The preamble to the proposed standards for benzene waste operations discussed the interrelationship of the proposal with other EPA rulemakings under the CAA, RCRA, CERCLA, and FWPCA. Regulations promulgated under these Acts that affect the management of waste, for the most part, require treatment of the waste to remove or destroy benzene or other organics in at least some of the waste; they do not ensure control of air emissions from the management of the waste prior to treatment or from the treatment process itself. In response to comments on the proposed standards, certain requirements were changed to make the final standards consistent with other related standards promulgated by EPA and to improve the ease of implementation by the facility owner and operator. This section of the preamble discusses why the other Acts do not adequately address the problem of controlling benzene emissions from benzene waste operations and how the requirements of the standards promulgated today generally relate to other standards. Existing regulations were found to be inadequate for controlling benzene emissions from waste operations for one or more of the following reasons: (1) The existing standards do not apply to the sources of benzene emissions, (2) the existing standards only apply to a subset of the sources (e.g., NSPS only applies to new, modified or reconstructed facilities), or (3) the existing regulation does not require controls from the point of generation, but, rather, requires controls only on certain downstream units.

a. CAA Requirements

As discussed in the preamble to the proposed standards, EPA expected that some requirements proposed for the national emission standard for benzene waste operations would overlap with other regulations developed by EPA under the CAA. Under section 111 of the CAA, EPA has established NSPS controlling VOC emissions from certain VOL storage tanks (40 CFR part 60, subpart Kb) and from petroleum refinery wastewater systems (40 CFR part 60, subpart QQQ). By controlling VOC emissions, these NSPS also control benzene emissions from some types of benzene waste operations but only at new, modified, or reconstructed facilities. These standards do not require controls on all existing facilities. The EPA has also established specific national emission standards under section 112 of the CAA for benzene emissions from equipment leaks (40 CFR part 61, subpart J), coke by-product

recovery plants (40 CFR part 61, subpart L), and benzene storage vessels (40 CFR part 61, subpart Y). The standards previously promulgated under sections 111 and 112 of the CAA control benzene emissions from some but not all benzene waste operations that EPA's analysis indicates require benzene emission controls. The national emission standard promulgated today is needed to ensure that all benzene waste operations requiring benzene emission controls are controlled to a level protective of public health and the environment.

The control requirements specified in today's final standards are compatible with other CAA standards. Where today's standards are applicable to a benzene waste operation that is also regulated by another CAA standard, the requirements for controls, monitoring, recordkeeping, and reporting are as consistent as possible considering that the purpose of today's standards is to specifically control benzene emissions. It is important to note that coverage under another regulation does not eliminate the requirement to demonstrate compliance with the benzene waste rule.

(1) NSPS (Section 111)

The standards of performance for VOL storage vessels (40 CFR part 60, subpart Kb) apply only to those tanks constructed, reconstructed, or modified after July 23, 1984 that contain organic liquid that meets specified vapor pressure criteria. The VOL storage NSPS generally controls large storage tanks (i.e., greater than 151 m^3); waste storage tanks are typically not as large as product storage tanks. Although there is a potential for overlap of the VOL storage vessel rule with the benzene waste operations rule, the control requirements of the two rules are the same. The benzene waste operations rule allows the standards in 40 CFR part 60, subpart Kb as alternative standards for tanks.

The standards of performance for petroleum refinery wastewater systems (40 CFR part 60, subpart QQQ) apply to affected facilities located in petroleum refineries for which construction, modification, or reconstruction commenced after May 4, 1987. The standards for individual drain systems and oil-water separators established in subpart QQQ do not apply to chemical plants, TSDF, or coke by-product recovery plants. Therefore, the only overlap that potentially arises is at new, modified, or reconstructed refinery wastewater systems. The standards for individual drain systems in the final benzene waste operations rule allow the alternative use of water seals for drains and vents on covers applied to junction boxes as specified in 40 CFR part 60, subpart QQQ. However, either water seal controls on waste streams entering each junction box or venting the junction box to a closed vent system and control device would be required for the benzene waste operations rule to ensure that no flow occurs through the sewer system and out the junction boxes during normal operation. This additional requirement is necessary to control benzene emissions. To the extent that the NSPS controls are now allowed, today's rule is consistent with the NSPS. Any overlap in the two drain standards is not expected to present a compliance problem.

(2) NESHAP (Section 112)

The national emission standards for benzene storage vessels (40 CFR part 61, subpart Y) apply to tanks storing benzene (not mixtures) with a capacity of greater than 38 m^3 (10,000 gallons) that are not located at coke by-product plants or on vehicles. The provisions of subpart Y are essentially the same as those in 40 CFR part 60, subpart Kb. There appears to be no potential for overlap with the benzene waste rule because subpart Y applies to product storage vessels as opposed to benzene containing wastes.

The national emission standards for equipment leaks of benzene (40 CFR part 61, subpart J) apply to specific pieces of equipment (i.e., pumps, compressors, pressure relief devices, sampling connections, open-ended valves or lines, valves, flanges, product accumulator vessels, and control devices required by the subpart) that either contains or contacts a fluid with at least 10 percent benzene by weight. The benzene waste operations rule does not address the same type of emission sources as subpart J.

The national emission standards for benzene emissions from coke byproduct recovery plants (40 CFR part 61, subpart L) regulate a number of benzene emission sources from waste operations at coke by-product recovery plants. These include the tar decanters, tar-intercepting sumps, and light-oil sumps at both furnace and foundry coke plants and ammonia liquor storage tanks at furnace coke plants. These sources could also be regulated under the benzene waste operations rule; however, the control requirements under subpart L are considered adequate to meet the requirements of the benzene waste rule. Under the benzene waste operations rule, the point of generation for a waste stream regulated by subpart L is considered the outlet or effluent from the regulated unit. In addition, there are other sources that handle benzene containing wastes at coke by-product recovery plants that are not controlled by subpart L (e.g., wastewater from the light-oil sump that is not currently stripped (in the ammonia stripper) and ammonia-liquor storage tanks at foundry coke plants). These sources would be regulated under the benzene waste operations rule.

b. RCRA Requirements

Benzene is listed as a hazardous constituent in 40 CFR part 261, appendix VIII, and has been identified as a component in several types of RCRA-listed hazardous waste. The proposed organic toxicity characteristic (51 FR 21648, June 13, 1986) would identify additional benzene containing wastes as hazardous. Therefore, certain wastes containing benzene would be hazardous wastes that would be affected by various emission control programs being developed by EPA under authority of RCRA sections 3004(m), (n), and (u). Standards developed under these RCRA sections would control benzene emissions from certain benzene waste operations, but because of exclusions and exemptions allowed under RCRA not all benzene waste operations at TSDF would be controlled. The national emission standards for benzene waste operations promulgated today will in some cases overlap with regulations developed under RCRA but, most importantly, today's final rule will also control benzene emissions from benzene waste operations not controlled under RCRA.

(1) Land Disposal Restrictions

Under RCRA section 3004(m), EPA is developing regulations restricting the land disposal of untreated hazardous wastes. The LDR establish standards that require certain hazardous waste be treated to reduce specific hazardous waste properties (e.g., concentrations of individual toxic constituents such as benzene) before the waste is placed in a land disposal unit. The LDR treatment standards are expressed as either concentration limits or specified technologies that are based upon the performance achievable by the "best demonstrated available technologies" that will minimize the health and environmental threats posed by the waste. When a treatment standard is expressed as a concentration limit (i.e., performance level), the owner or operator may use any nonprohibited technology to treat the waste to meet the standard. However, when a treatment standard is expressed as a specific

technology or technologies (i.e., BDAT), the owner or operator must treat the waste using the specified technologies prior to land disposal.

The EPA is proposing and promulgating LDR in stages. The first set of LDR, for certain dioxins and solvent-containing hazardous wastes was promulgated on November 7, 1986 (51 FR 40572); the second set of restrictions, the "California list," was promulgated on July 8, 1987 (52 FR 25760); the "First Third" was promulgated on August 17, 1988 (53 FR 31138); and the "Second Third" on June 23, 1989 (54 FR 26597). To date, the only benzene-specific LDR treatment standards that have been promulgated are benzene concentration limits for certain petroleum refining wastes (i.e., 0.011 milligrams of benzene per liter of wastewater and 9.5 milligrams per kilogram of nonwastewaters) (53 FR 31138, August 17, 1988). These treatment standards are based on the use of solvent extraction or fluidized bed incineration, but the LDR allow the owner or operator to meet this standard by using any nonprohibited technology.

Because LDR treatment minimizes the benzene concentration in the residual waste, LDR treatment processes are allowed as equivalent control systems (treatment processes) under the benzene waste operations rule. This point is discussed further under the Control Technology section. While treatment to meet benzene-specific LDR standards will minimize benzene emissions from waste management units in which a waste is placed following treatment, air emission controls are not required under RCRA for the LDR treatment process. Thus, benzene emissions from waste management units in which waste containing benzene is placed prior to LDR treatment and from LDR treatment processes used to treat this waste are not controlled by the standards under RCRA Section 3004(m). These sources of benzene emissions would be controlled as part of the requirements of the benzene waste operations rule.

(2) Air Emission Standards

Section 3004(n) of RCRA directs EPA to promulgate regulations for the monitoring and control of air emissions from hazardous waste TSDF as may be necessary to protect human health and the environment. In a separate three-phase rulemaking, EPA is developing nationwide standards for the control of organic emissions from certain waste management units at TSDF. The first two phases of this rulemaking are addressing total organic emissions as a class from TSDF sources (as opposed to emissions of specific organic compounds such as benzene). For the third phase, EPA is planning to assess the protectiveness of the organic emission control requirements specified by standards developed for the first two phases and for other EPA air emission control programs such as today's promulgated national emission standards for benzene waste operations. If this assessment determines that additional standards or guidance are necessary to protect human health and the environment, then one approach EPA may choose would be to develop nationwide TSDF standards for individual constituents.

Although EPA is aware that there will be some overlap in the RCRA 3004(n) air emission standards and the benzene waste operation rule, the controls required by these regulations are, to the extent possible, consistent. In addition, regulations being developed under RCRA section 3004(n) apply to only specific waste management units at TSDF subject to RCRA subtitle C permitting requirements. Not all facilities managing hazardous waste are subject to RCRA permit requirements and not all waste management units at TSDF subject to RCRA permit requirements will be subject to RCRA air emission standards.

The EPA's analysis indicates that a significant portion of the risk to human health and the environment from benzene waste operations is due to exposure to air emissions from wastewater and wastewater sludges containing benzene. Many waste operations used to manage wastewater containing benzene are not subject to RCRA subtitle C permitting requirements. The RCRA regulations under 40 CFR 270.1(c)(2)(iv) specifically exclude owners and operators of elementary neutralization units or wastewater treatment units as defined in 40 CFR 260.10 from obtaining a RCRA permit. This exception from RCRA permitting requirements applies not only to the tank where the waste is treated but also to any ancillary equipment connected to the tank (53 FR 34080; September 2, 1988). Thus, a major source of benzene emissions wastewater collection and treatment units, would be not controlled by the RCRA standards under section 3004(n). Benzene emissions from wastewater collection and treatment units at the affected facilities are regulated by today's final standards.

Other benzene waste operation emission sources are also exempt from RCRA subtitle C permitting requirements and, therefore, may not be controlled by standards under RCRA section 3004(n). The RCRA regulations under 40 CFR 261.4(a)(8) exclude from the definition of hazardous waste those materials that are reclaimed and returned within 12 months to the process which generated the material. Thus, benzene waste operations that accumulate and store materials containing benzene that are ultimately recycled to the process or processes generating the material (e.g., slop oil collected in waste management units at a petroleum refinery) may not be controlled by air emission standards under RCRA section 3004(n). Also under RCRA, tanks and containers used to accumulate hazardous waste for short periods of time (i.e., up to 90 or 270 days depending on the quantity of waste generated) may be exempted from the RCRA subtitle C permitting requirements in accordance with requirements specified in 40 CFR 262.34. Thus, air emission standards under RCRA section 3004(n) may not control benzene emissions from tanks and containers used to accumulate waste containing benzene. Because these tanks and containers manage the waste near the point where the waste is generated and the potential for benzene emissions is greatest, if the accumulation tanks and containers are not controlled, the majority of the benzene contained in the waste may be emitted to the atmosphere before the waste is transferred to a waste management unit subject to control under RCRA section 3004(n). Today's final standards will regulate benzene waste operations from the point where the waste leaves the process unit where it is generated through treatment of the waste to remove or destroy benzene, including any storage or accumulation devices.

(3) Corrective Action

Under authority of RCRA section 3004(u), EPA is developing regulations to address releases of hazardous waste or hazardous constituents from SWMU's that pose a threat to human health and the environment. This corrective action program applies to contamination of soil, water, and air media. Therefore, at TSDF with benzene waste operations, benzene emissions from SWMU's may be addressed by a corrective action program. This corrective action program would be designed to achieve target risk levels for individual process units based on an examination of the particular TSDF. It is not intended to set national emission standards for specific constituents, such as benzene, from all TSDF. Today's promulgated national emission standards for benzene waste operations are applicable to those TSDF

that meet the applicability criteria and would require benzene controls for the benzene waste operations conducted at these facilities.

(4) Waste Combustion

The proposed national emission standards for benzene waste operations would establish specific treatment requirements for certain waste streams containing benzene. Several commenters claimed that these treatment requirements would be inconsistent with the LDR treatment standards and the RCRA regulatory approach proposed by EPA under 40 CFR part 266, subpart D for burning hazardous waste in any boiler or industrial furnace. It is not EPA's intention in developing the NESHAP for benzene waste operations to prevent or discourage an owner or operator from using a certain treatment process that they are currently using or plan to use to comply with RCRA standards provided that treatment process can meet or exceed the treatment requirements that EPA has determined to be necessary for reducing benzene emissions to levels protective of public health and the environment. Therefore, EPA concluded that it was appropriate to include boilers and industrial furnaces allowed under the proposed regulatory amendments to 40 CFR part 266, subpart D as equivalent waste treatment processes in today's final standards. It is important to note that existing regulations in 40 CFR part 266, subpart D do not contain substantive control requirements for these waste combustion processes. These treatment processes are discussed more fully in the Control Technology section.

c. CERCLA Requirements

The CERCLA as amended by SARA, 42 U.S.C 9601 *et seq.*, authorizes EPA to undertake removal and remedial actions to clean up hazardous substance releases. Removal actions typically are short-term or temporary measures taken to minimize exposure or danger to humans and the environment from the release of a hazardous substance. Remedial actions are longer term activities that are consistent with a permanent remedy for a release. On-site remedial actions are required by CERCLA section 121(d)(2) to comply with the requirements of Federal and more stringent State public health and environmental laws that are ARAR's to the specific CERCLA site. "Relevant and appropriate requirements" means those Federal or State requirements that, while not applicable, address problems or situations sufficiently similar to those encountered at the CERCLA site such that their use is well suited to the particular site (53 FR 51478). In addition, the NCP provides that on-site CERCLA removal actions "should comply with the Federal ARAR's to the extent practicable considering the exigencies of the circumstances" (40 CFR 300.65(f)). The EPA has developed interim final guidance on the appropriate use of ARAR's. It is entitled "The CERCLA Compliance with Other Laws Manual: Parts I and II (9234.1-01 and 9234.1-02)". A requirement under a Federal or State environmental law may either be "applicable" or "relevant and appropriate," but not both, to a remedial or removal action conducted at a CERCLA site. "Applicable requirements" as defined in the proposed revisions to the NCP, means those cleanup standards, standards of control, and other substantive environmental protection requirements, criteria, or limitations promulgated under Federal or State law that specifically address a hazardous substance, pollutant, contaminant, remedial action, location, or other circumstance found at a CERCLA site (40 CFR 300.5 (proposed), 53 FR 51475; December 21, 1988).

d. CWA Requirements

Wastewater containing benzene is subject to regulation under the CWA. Because CWA controls apply to the point where the wastewater is discharged to a POTW or directly into surface waters, the CWA requirements do not generally control benzene either upstream at the benzene waste operations or at the treatment process used to meet the discharge requirements.

e. OSHA Requirements

Standards are issued by OSHA to protect the health and safety of personnel working at a facility. The OSHA standards limit exposure of workers to hazardous materials such as benzene in the workplace but do not apply to people living outside the facility boundaries. Controls implemented at a facility to comply with OSHA standards are intended and designed to reduce worker exposure to benzene. Consequently, these controls would not necessarily result in reduced benzene emissions to the atmosphere. For example, requiring workers to wear protective equipment such as respirators or installing engineering controls such as room or hood ventilation systems to maintain benzene concentrations in work areas below specified limits would reduce worker exposure but would not control benzene emissions to the atmosphere. In addition, there is expected to be no overlap between the benzene waste rule and OSHA requirements. Furthermore, sufficient flexibility was included in the rule to allow owners and operators to consider safety in the selection of benzene emission controls for compliance with today's rule.

Data Base and Emission Modeling

Comment: Comments on the plant-specific estimates of benzene emissions generally suggested that emissions were overestimated because the data base was outdated or incomplete and the emission modeling approach was flawed. Many of these respondents concluded that because of shortcomings in the data base and modeling, EPA failed to show that benzene emissions from waste operations were high enough to pose health risk problems or that the proposed emission controls were needed. Others stated that the data used by EPA were not collected for the purpose of developing regulations for air emissions because they were submitted in response to data-gathering efforts by OW and OSW. These commenters suggested that EPA should conduct additional surveys and an extensive sampling and analysis program to develop data specifically for this regulatory effort. A few commenters stated that the benzene concentrations used for specific waste streams at specific facilities were too high. Others noted that there were actually many more benzene-containing wastes at certain types of facilities, especially petroleum refineries, than those recorded in the EPA data base and used to estimate emissions. Commenters also stated that emissions from the wastewater collection system (drains, sewers, junction boxes) were overestimated, benzene destruction by biodegradation was underestimated, and the modeling approach did not account for the significant quantities of benzene removed with the oil phase in oil-water separators. Other commenters focused on the uncertainties in the emission estimates that were described in the proposal preamble and stated that the estimates of impacts were not valid because of these uncertainties. Additional comments stated that the rulemaking docket was incomplete and that the emission estimates could not be verified because of the incomplete documentation of the information that EPA used. A few commenters stated that benzene emissions were overestimated for their plants because they had already installed technology similar to that required by the proposed regulation. One company reported that benzene was stripped from their process

wastewater prior to discharge of the water to open sources (such as sewers, wastewater treatment tanks, surface impoundments), and another stated that their wastewater collection system was already enclosed because of the presence of benzene and other volatile organics in the process wastewater.

Response: The EPA has reassessed both the data base and the emission modeling approach and concluded that both are adequate to support the proposed control of benzene emissions from waste operations at chemical plants, petroleum refineries, coke by-product recovery plants, and commercial TSDF. Data for benzene waste operations at these industries are included in the analysis of impacts and show significant benzene emissions based on the quantities of benzene in the waste and the management of these wastes in open sources. In addition, the final rule is structured to ensure that the facilities and waste streams that must be controlled are determined based on facility-by-facility estimates of benzene emission potential as determined by the quantity of benzene in the wastes.

a. Sources of Benzene Wastes

Wastes that contain benzene are generated from raw materials, intermediates, and products that contain benzene at petroleum refineries, chemical plants that use or produce benzene, and coke by-product recovery plants. At petroleum refineries, benzene is present in the crude oil, in light fractions produced during refining, and in final products such as gasoline, BTX (benzene-toluene-xylene), and pure benzene. Water is introduced into refinery processes that use direct contact steam and cooling water, and into storage tanks from storm water or incomplete separations of water and process fluids. Benzene wastes are generated from the refinery processes when water, waste oil, or sludge is separated from materials that contain benzene. Because of incomplete separations and emulsions, the wastes usually contain aqueous and oily phases. The wastes are removed from the process units and storage tanks through drains that discharge into a sewer system composed of piping or trenches and junction boxes that combine different wastewaters. Oil-water separators and air flotation units are used to remove and recover the oil and sludges, and the water phase is usually processed in a series of open tanks, such as equalization basins, clarifiers, and biological treatment units. Certain chemical plants use benzene as a raw material or produce it as a product or as a coproduct or by-product in processes that involve direct-contact with steam or cooling water. These processes generate wastewater, sludges, and organic liquid wastes that contain benzene. Benzene is also present in coke oven gas, and wastewaters are generated in by-product recovery processes from water that directly contacts the gas (for cooling or tar removal). In addition, steam is used in the light oil recovery operation, and wastewater is decanted from a mixture of benzene, toluene, and xylene. Some chemical and by-product recovery plants remove the benzene from the waste by stripping for recycle or reuse. Other plants discharge these wastewaters through process drains, trenches, sumps, junction boxes, oil-water separators, open wastewater treatment tanks, and surface impoundments. The concentration of benzene in these wastes is highest when the waste is first generated (point of generation) before it is exposed to the atmosphere. The benzene concentration decreases as the waste passes through the collection and treatment system because benzene is emitted and because of mixing with wastewaters that do not contain benzene. Benzene in water is highly volatile and is emitted from open collection systems and open (sometimes aerated) treatment tanks.

b. EPA's Data Base for Waste Operations

In developing the data base for the proposed benzene waste rule, EPA examined data from several sources in an attempt to characterize the wastes generated at petroleum refineries, chemical plants, and coke by-product recovery plants. Most of the data for the affected industries were gathered to support regulatory programs within OSW and OW; however, these data provided details on waste quantity, benzene concentration, and how the waste is managed, which are the critical components in estimating benzene air emissions. Some of the data were collected several years ago, and other data were submitted to EPA within the past 2 to 3 years in response to survey questionnaires. All of the data sources were used in combination to characterize wastes that contain benzene. By using data from several different sources, EPA was able to compile the best available characterization of those facilities that manage wastes with benzene. Very few of the comments on the proposed rule supplied alternative or more complete data than that compiled by EPA. Consequently, the data base constructed on benzene waste operations was the best available within the time constraints of this regulatory development effort and provided a documented record of the estimates of benzene emissions.

Although EPA believes the data base for benzene waste operations is sufficient to support regulatory development, EPA acknowledged the uncertainties associated with the data base in the proposal preamble and continues to acknowledge those uncertainties. Although several sources of data were used, it is unlikely that the data base includes all facilities that manage benzene wastes. Neither is it likely that the data base includes all benzene containing waste streams at those facilities that are represented in the data base. Additionally, in several cases the information for facilities did not include data on their wastewaters or on organic wastes that are eventually recovered and recycled.

Additional uncertainties are introduced by the reported benzene concentration in the waste, which often represented a point in the collection system after much of the benzene could have been emitted and after the waste had been diluted by combination with other wastewater. For example, some refineries reported benzene concentrations measured at the equalization basin, after the waste had been collected and retained in units open to the atmosphere. For those waste streams, the benzene concentration would have been higher at upstream locations, such as the process drain where the waste is first exposed to the atmosphere.

Many of the wastes were a mixture of oil and water when they were generated; however, there were few data on the relative amounts of each phase or the benzene concentration in each phase. Several plants did not identify benzene as a constituent in their waste, and others identified benzene but provided no concentration data. For some facilities, the sequence of waste management units was not described in detail, and for others, emission controls that may have been installed were not recorded.

A few commenters on the proposed rule offered additional site-specific details that were used by EPA to improve the data, but most did not provide information to reduce the uncertainties described above. It is important to note that most of the uncertainties cited above indicate that actual benzene concentrations are higher than was reported and used by EPA in the risk analysis.

Many commenters questioned the characterization of wastes that are

managed at the affected industries. For example, several commenters focused on specific waste streams in the data base for specific facilities and claimed that the benzene content and emissions were overestimated. Others stated that when they reported the benzene concentration to EPA as a range in the survey of hazardous waste generators, the actual concentration was at the lower end of the range and was less than the midrange value used to estimate emissions for the benzene waste proposal. These commenters stated that emissions were overestimated for some of the plants, and EPA failed to show that emissions were high enough to pose health risk problems. Others noted that there were actually more benzene-containing wastes than those recorded in EPA's data base. For example, one commenter identified 13 major benzene containing waste streams at petroleum refineries rather than the 2 or 3 used by EPA in the analysis for the proposed standards. The commenter also suggested that when small quantity streams are considered, there may be thousands of benzene containing waste streams at petroleum refineries.

The EPA performed a revised analysis of impacts in an attempt to improve the data base and to examine the potential effects of the uncertainties. The revised analysis also incorporated revised emission estimates for wastewater treatment systems, including the collection system and oil-water separators. As will be discussed, the results of the analysis indicate that the benzene emissions presented at proposal were underestimated, rather than overestimated as some of the commenters claimed. Two major factors that contributed to this revised estimate were a reexamination of the benzene concentration data and revised estimates of the quantity of waste that contains benzene. These are discussed below.

(1) Benzene Concentration

Most of the benzene concentration data reported by the facilities and contained in EPA's data base for waste operations were not based on analyses conducted at the point where the waste is first exposed to the atmosphere, where the benzene concentration would be at its maximum. The reported data generally represented the benzene concentration at some point downstream of process drains and the waste collection system after significant quantities of benzene had already been emitted. For example, the major emitting streams contained in EPA's data base for waste operations were large quantities of process wastewater. The reported concentrations for these waste streams were generally associated with measurements at the equalization basin, which is designed to mix wastewaters from different processes after they have traveled through the wastewater collection system. The concentrations presented for the equalization basin do not reflect that 20 to 40 percent of the benzene may have already been emitted as the wastewater traveled from the process drains, through sewers or trenches, junction boxes, sumps, and lift stations. This range of the percent of the benzene emitted for the wastewater collection system is based on analyses presented in the CTG document for industrial wastewater volatile organic compound emissions, which provides background information for BACT/LAER determinations.

Another example of benzene concentration data that do not reflect losses in the collection system includes wastes from the petroleum refining industry that were identified as sludges or waste oil removed from oil-water separators. For these wastes, the reported benzene concentration and quantity do not reflect the benzene lost in the wastewater collection system or the separator itself. Because the company-reported data used to estimate emissions were not for the point where the waste was discharged and first exposed to the atmosphere, the quantity of benzene actually generated and discharged with these wastes would have been much higher than the quantity of benzene represented by the data base used at proposal.

The revised analysis of impacts attempted to compensate for benzene emissions in the wastewater collection system that were not represented by the reported benzene concentrations. The revised estimates were based on 20 to 40 percent of the benzene being emitted during wastewater collection and resulted in an increase in the emission estimates. The revised analysis also examined the effect of using the midrange benzene concentration versus the lower or upper end of the range. For example, some facilities reported the benzene concentration as a range (such as 10 to 100 ppmw), and some commenters claimed that the average concentration was actually at the lower end of the range. A closer examination of the estimates for two chemical plants showed that the maximum risk may be significant even if all waste stream benzene concentrations are at the lower end of the concentration range. For petroleum refineries, revised estimates were generated based on a range of benzene concentrations for several waste streams that are likely to contain benzene. The revised estimates indicated that a few of the largest refineries may have maximum risks of 1×10^{-4} or higher even if the benzene concentrations are always at the lower end of the range. If benzene concentrations are actually at the upper end of the range, numerous facilities are estimated to exceed a maximum risk of 1×10^{-4}.

(2) Waste Quantity

The other major factor leading to a potental underestimate for benzene emissions involves the reported waste quantities and the number of waste streams. Several commenters indicated that certain facilities, especially petroleum refineries, have many more waste streams that contain benzene than were actually recorded in EPA's data base for waste operations. These commenters stated that there might be thousands of small quantity waste streams that contain benzene at petroleum refineries. Many respondents to hazardous waste surveys generally reported only those wastes they believed to be classified as hazardous under RCRA, and in many cases the only data available were for relatively low volume wastes such as oily sludges. Additionally, wastes that are eventually recycled and reused generally were not reported. Total wastewater quantity has the most significant potential for affecting estimated benzene emissions and was also missing in EPA's data base for several facilities. These wastes were not accounted for in the analysis of impacts presented at proposal because they were not reported in the original surveys used to compile the data bases.

The analysis of impacts for the proposed rule was revised for the final rule to improve the estimates of waste quantity and number of waste streams. The focus of the revised analysis was to identify the major waste streams that contain benzene because the proposed regulation was revised to exclude small quantity wastes (less than 10 megagrams of waste per year) that have a low emission potential. This revision will exclude from the control requirements of the final rule many of the very small quantity waste streams, such as pump drips, that were cited by the commenters. For petroleum refineries, a total of 13 major waste streams were identified based on comments received from the industry and an evaluation of the refinery processes that generate the wastes. These waste streams are generated from processes and storage tanks that contain

benzene, such as crude storage, light product storage, catalytic cracking, catalytic reforming, and benzene production. Waste generation factors (e.g., gallons of wastewater per barrel of crude oil) were used with site-specific capacity data by process for 187 petroleum refineries to estimate the quantity of each major waste stream generated at each refinery. For coke by-product recovery plants, data from effluent guidelines documents prepared by OW were used to identify 3 major waste streams that contain benzene and their generation factors (gallons per ton of coke). The data from petroleum refineries and coke by-product recovery plants for wastes containing benzene were used to reevaluate the number of facilities, the number of waste streams, and the total waste quantity, all of which increased significantly from the estimates that were used at proposal. At proposal 74 facilities in EPA's data base were estimated to have more than 10 megagrams per year of benzene in their wastes, and were estimated to handle 200 waste streams totaling 8 million megagrams of benzene per year. The revised analysis estimates that 80 to 200 facilities manage aqueous wastes that contain over 10 megagrams of benzene per year, and these facilities are projected to have 1,000 to 3,500 waste streams exceeding a concentration of 10 ppmw benzene with a total waste quantity of 22 to 76 million megagrams per year. The revised estimates of the total quantity of waste that contains benzene resulted in an increase in the emission estimates and also supports the conclusion that the benzene emission estimates presented at proposal were not overestimated.

c. Emission Modeling Approach

Several commenters questioned the validity and accuracy of the emission models used for the wastewater collection system, biodegradation, and oil-water separators. These models were used to estimate the fracton of benzene that is likely to be emitted in different types of sources. The emission models have been reviewed by the public and comments have been incorporated during regulatory development programs for air emissions from hazardous waste facilities and industrial wastewater treatment systems. The uncertainties associated with the emission modeling have been acknowledged and discussed in the proposal preamble. The models used for the wastewater collection system (open sewers and junction boxes) were under development at the time of proposal. These models have been recently revised based on additional design and operation data, improved modeling assumptions, and comments received during public review of the models. Revisions have been incorporated into the estimates of emissions for benzene waste operations to account for changes to the emission models. The effect of these revisions was to lower the estimates of benzene emitted from the wastewater collection system. The previous estimate of 97 percent emitted collectively from the entire wastewater treatment system (from the process drain, sewers, junction boxes, equalization basin, activated sludge unit, etc.) was revised downward to 73 percent. The major components of the revised estimate include 20 to 40 percent emitted in an open collection system prior to the equalization basin and 40 percent emitted in a nonaerated equalization basin.

Some of the commenters on the emission models stated that benzene destruction by biodegradation was not evaluated properly and that EPA's revised model for air emissions from units with biodegradation, "Chemdat 7", should have been used. However, the EPA emission estimates presented at proposal for the biodegradation unit in the wastewater treatment sequence were based on Chemdat 7, which contained the revised kinetics for biodegradation. Commenter also stated that the original estimate of 97 percent emitted for wastewater treatment and the current estimate of 73 percent emitted do not appear to give credit for biodegradation as a competing removal mechanism. However, the emission estimate used by EPA was based on the entire wastewater treatment system, including the collection system, a series of open wastewater treatment tanks prior to the biodegradation unit, and the biodegradation unit. Most of the benzene emissions are projected to occur before the wastewater reaches units designed for biodegradation.

For the biodegradation (activated sludge) unit alone, the Chemdat 7 model predicted that only 6 to 12 percent of the benzene is emitted and 88 to 92 percent is biologically degraded. One commenter who stated that credit was not given for biodegradation cited values of 12 percent emitted and 88 percent biologically degraded in an activated sludge unit, which is not significantly different from EPA's estimate. Another commenter stated that benzene emissions from a series of wastewater treatment tanks is only 25 to 72 percent, which neglects emissions from the wastewater collection system. However, EPA's estimate for the wastewater treatment tanks (neglecting the collection system) falls within the range suggested by the commenter because EPA's estimate includes 40 percent emitted in the equalization basin, 2.5 percent emitted in the clarifier, and 6 to 12 percent emitted in the biodegradation unit. One commenter stated that their emission model for an aerated surface impoundment with biodegradation predicted only 73 percent emitted, and the model they believed EPA used predicted 98.6 percent emitted. The model cited by the commenter was not used for surface impoundments. For surface impoundments, emissions were estimated to range from 50 to 100 percent because some impoundments are biologically active, some are not biologically active, some are aerated, and some are quiescent. A midrange value of approximately 75 percent emitted was used in the EPA emission estimates for surface impoundments in general.

The models used for biodegradation and for open tanks in the wastewater treatment system have undergone extensive review as part of the development of air standards for hazardous waste TSDF, and revisions were made based on public comments prior to their use in estimating benzene emissions for the proposed rule. Several of these comments focused on the biodegradation component of the model and recommended the use of Monod kinetics to estimate the extent of biodegradation. The model was revised to incorporate Monod kinetics for biodegradation, and this version of the model (Chemdat 7) was used to estimate emissions for the biodegradation unit in the previously cited CTG document for VOC emissions from industrial wastewater treatment systems. This CTG document served as the primary source for EPA's estimates of benzene emissions from wastewater treatment systems.

Several commenters stated that the emission modeling for oil-water separators did not reflect that most of the benzene will be removed with the oil layer and a smaller amount will leave with the wastewater from the separator. One commenter stated that 10 to 30 percent of the benzene would be removed with the wastewater, and another estimated that 10 to 20 percent would be removed with the wastewater. The EPA agrees that benzene will preferentially partition into the oil layer (the benzene concentration in the oil will be much higher than that in the water layer). The emission modeling approach was revised for petroleum refineries to reflect that about 20 percent of the benzene (midrange of 10 to 30

percent) will be removed with the wastewater and about 80 percent of the benzene will be removed from the separator with the oil layer. The revised analysis also considered that some oil-water separators are covered, as mentioned by a few commenters, and some are open vessels. In addition, an attempt was made to estimate emissions from the wastewater collection system prior to the oil-water separator. The revised analysis estimates that 30 to 50 percent of the benzene that enters the wastewater collection system is recovered with the waste oil from the oil-water separator. Most of the balance of the benzene is emitted from the wastewater collection system prior to the oil-water separator and from open oil-water separators.

Oil-water separators and air flotation units also generate sludges. These sludges may first be dewatered, and an EPA field evaluation of a sludge dewatering unit at a petroleum refinery showed that up to 40 percent of the benzene ay be emitted during dewatering. The balance of the benzene leaves with the dewatered solids (6 to 28 percent) and the water or filtrate (32 to 94 percent). The benzene leaving with the solids or filtrate is also likely to be emitted in subsequent processes, such as wastewater treatment or land treatment. For these sludges, the revised impacts analysis estimated that over 90 percent of the benzene would be emitted in the sludge treatment and disposal processes.

d. Baseline Controls

Several commenters stated that emissions were overestimated for certain facilities because they had already installed emission control equipment. For example, one commenter stated that at two plants their current practice is to routinely strip benzene from their wastewater prior to discharging the wastewater to open wastewater treatment units. Another stated that the sewers were enclosed at their particular plant because of the presence of benzene and other volatile organics in the wastewater. Commenters also indicated that some coke by-product recovery plants currently strip benzene from their wastewater.

The EPA finds it encouraging that some plants have already adopted control technology similar to that required by the proposed benzene waste standard; however, only a few facilities fell into this category. These existing controls are expected to comply with the requirements of the benzene waste rule; therefore, the standard is not expected to impose additional control requirements on these sources. The changes already implemented by these plants demonstrate the feasibility of removing the benzene prior to managing the wastes in sources with a high emission potential, such as open tanks, aerated units, or surface impoundments.

The revised analysis of impacts included controls that are in place at facilities identified by the commenters, such as those that currently strip the wastewater. In addition, the revised estimate for petroleum refineries considers that some oil-water separators are covered. For coke by-product plants, the revised analysis assumes that a significant portion of the wastewater is stripped prior to placement in open wastewater treatment tanks and assumes that the facilities are in compliance with subpart L of 40 CFR part 61. The result of these revisions was much lower emission estimates for those plants that currently control benzene emissions from their wastes. However, many plants do not remove the benzene from their wastes prior to transporting the wastes in open wastewater collection systems or treatment in open wastewater tanks. Although a few plants may have already installed controls that are in compliance with the standard, many other plants have not installed controls. The revised impacts analysis estimated significant benzene emissions at many plants from handling wastes with benzene, and significant reductions in emissions will be obtained by the controls required for benzene waste operations.

e. Summary of Revised Impacts Analysis

As discussed in the preceding paragraphs, EPA considered all the comments submitted concerning the data base and emission modeling and performed a revised analysis of the impacts of benzene emissions from waste operations in the affected industries. In the revised analysis, EPA addressed the uncertainties that were cited by commenters and that were cited in the proposal preamble. Where site specific information on particular facilities was submitted by commenters, it was incorporated into the analysis. The EPA believes that the revised analysis represents the best available approach to estimating emissions and risk within the time constraints imposed by the court order, utilizes the most recent data available, and supports the final rulemaking.

The results of the revised analysis show that annual baseline emissions of benzene from waste operations are about 6,000 megagrams/year, as compared to the proposal estimate of 5,300 megagrams/year at baseline. The estimate of MIR at baseline produced by the revised analysis is approximately 2×10^{-3} compared to the proposal estimate of approximately 8×10^{-3}. The revised estimate of incidence at baseline is approximately 0.6 case/year compared to the estimate of approximately 0.3 case/year at proposal. These results indicate that even when the uncertainties in the proposal analysis are addressed, additional controls for benzene emissions are needed to reduce emissions and risk to an acceptable level. The EPA, therefore, concluded that the emission controls required by the benzene waste rule are warranted.

The results of the revised analysis further show that after application of the controls required by the final standards, benzene emissions from the affected waste operations are reduced to 450 megagrams per year, a reduction of 93 percent from baseline. The MIR after control is approximately 5×10^{-5} and the annual cancer incidence after control is approximately 0.05 case/year. At baseline, about 5,000,000 people are estimated to be exposed at risk levels above 1×10^{-6}; 300,00 of these people are estimated to be exposed at risk levels above 1×10^{-5}; 10,000 are estimated to be exposed at risk levels above 1×10^{-4}; and 200 above 1×10^{-3}. After control, no one is estimated to be exposed at risk levels above 1×10^{-4} and the number exposed to levels above 1×10^{-6} is estimated to be reduced to 200,000 and the number exposed to levels above 1×10^{-5} is estimated to be reduced to about 9,000 people.

f. Documentation

One commenter stated that the rulemakng docket was incomplete and that the emission estimates could not be verified. The commenter stated that all of the background information was not provided and public comments that had been made on draft documents were not included in the docket. In fact, the docket for this rulemaking contained all the data used to estimate emissions except for confidential business information. The chapters and appendices from the CTG document for emissions from industrial wastewater treatment that were used to estimate impacts for the proposed rule were included in the docket. Those sections of the background information document for volatile organic emissions from TSDF that were used for estimates of impacts were also included. Public comments on these documents were available in the two meetings of the National Air Pollution Control Techniques Advisory Committee held in

May 1988 and June 1989. The only details not publicly available in the docket were surveys that were classified as confidential business information. However, the commenters have access to this information for their facilities because they participated in the survey and provided the data. In addition, the confidental information for their specific facility can be obtained directly from OW or OSW, which are the EPA offices that conducted the surveys and are responsible for protecting the confidential information they may contain. The documentation includes each element of the nonconfidential information in the data base, such as the company name, location, and data for each waste stream (RCRA waste code, waste quantity, midrange benzene concentration, physical form of the waste, and the waste management processes). In addition, the documentation describes in detail how the emission factors for the waste management processes were derived, how average or typical benzene concentrations were developed to fill data gaps, and how emissions were estimated. The revised analysis of impacts performed by EPA after proposal is also included in the docket.

Selection of Standards

Comment: Comments were received both for and against the cutoff levels and format of the proposed standard. One commenter stated that the level of the standard is appropriate for the industries and waste streams regulated while other commenters suggested that the basis of the 10 ppmw cutoff should be clarified and contended that if 10 ppmw offers an ample margin of safety, alternative treatment technologies should not be required to achieve a treatment level less than 10 ppmw. Several of the commenters stated that the 10 ppmw criteria was arbitrary and that the control requirements are not supported by the record. Some commenters suggested that the basis for the 10 megagram per year benzene-in-waste facility cutoff should be explained, while others maintained that the cutoff level is too low and will catch numerous small refineries with low emissions. Some of the commenters suggested that the format of the proposal should be changed to an emission standard to provide facilities as much freedom as possible to choose the least-cost path to attain adequate control. One commenter suggested that the standard should be a facility-based performance standard in which controls are applied to individual waste streams with benzene concentrations of 10 ppmw or more until a sufficient number of streams are controlled to reduce the amount of benzene in wastes sent to wastewater treatment to 10 megagrams per year. This commenter also requested that the standards not mandate the use of steam stripping for the treatment of petroleum refinery wastes. Some commenters contended that those provisions of the proposed standard related to dilution were unnecessarily complicated and difficult to use. Commenters also expressed concern regarding use of the point of generation as the point at which waste stream benzene concentrations would be determined. Some commenters were not sure what was meant by the point of generation, others thought that making measurements at the point of generation would be extremely difficult for some sources, and some suggested that the rule be modified to allow waste stream testing downstream of the point of generation.

Response: In preparing a response to comments related to the selection of the standard, EPA identified five basic areas of commenter concern: (1) The reasons for selecting 10 megagrams per year and 10 ppmw for facility and waste stream exemption levels, respectively, (2) the levels of performance specified for alternative treatment technologies, (3) the selection of a format other than an emission limit or performance standard, (4) the complexity of using the dilution equation, (5) the selection of the point of generation as the location for determining waste stream benzene concentration, and (6) the deadline for compliance with the rule. Each of these concerns is addressed below.

a. Facility and Waste Stream Exemption Levels

In selecting the requirements of the proposed standards, EPA performed risk analyses using available waste stream data from several sources. The results of the risk analyses indicated that health risks would be reduced to acceptable levels if controls are applied on all waste streams with a benzene concentration of 10 ppmw or more at all facilities that manage 10 megagrams per year or more of benzene in their waste. Those commenters who suggested a facility-specific performance standard with a 10 megagram per year target for the amount of benzene in waste managed in uncontrolled units apparently misinterpreted the way EPA used the 10 megagrams per year threshold. The intent of the regulation was to control major benzene containing waste streams at facilities that might pose a health risk problem. The 10 megagrams per year was not established as a target level of emissions for all facilities; rather, it was identified as a cutoff for identifying plants with the potential for exceeding acceptable levels of health risk. That is, plants managing benzene-in-waste above this level were identified as needing controls. The EPA considered selecting lower levels of 6 megagrams per year and 1 megagram per year as the cutoff. Lowering the cutoff level successively increases the number of facilities that must apply controls. Based on the revised data base and considering only wastes that are at least 10 percent water, the number of facilities affected at a cutoff level of 10 megagrams per year is estimated to be about 140. Lowering the cutoff to 6 megagrams per year or 1 megagram per year is estimated to increase the number of facilities affected to about 160 and 240, respectively. The EPA's primary concern was to control emissions at plants with the potential for creating unacceptable health risks, and the additional plants that would be required to install controls at the lower cutoff levels have a low benzene emission potential. The risk analysis showed that a level of 10 megagrams per year in wastes containing at least 10 percent water brings all facilities with a potential for exceeding acceptable risk levels under the standards. Consequently, that level was selected for the proposed standards and is retained in today's final rule. Once controls are applied, benzene emissions at most affected plants would be reduced significantly below 10 megagrams per year.

The EPA's intent in the development of the proposed benzene waste rule was to require controls on all benzene-containing waste streams at facilities that manage more than 10 megagrams per year of benzene in waste. However, an evaluation of benzene waste data in the data base indicated that controlling all streams that contain any benzene could include many waste streams with trace amounts of benzene that have a very low emission potential. The primary concern of EPA was to control those emission sources that contribute to benzene emissions, which were identified as waste streams that have a benzene concentration well above detectable levels. Consequently, to avoid controlling waste streams with a low emission potential, EPA evaluated allowing exemptions for waste streams with benzene concentrations below a certain cutoff level. Evaluations of several concentration cutoffs indicated that acceptable risk levels were not exceeded if a concentration cutoff of 10 ppmw is used. This level was therefore selected for the proposed standards for

the purpose of identifying waste streams that are subject to the benzene waste rule.

In response to comments, EPA looked at the effects on health impacts of varying both the 10 megagrams per year facility cutoff and the 10 ppmw waste stream cutoff. As discussed under Data Base and Emission Modeling, EPA added additional data and re-estimated impacts. The reanalysis incorporated changes made in the final rule, such as applying the 10 megagrams per year cutoff only to wastes that are more than 10 percent water rather than to all benzene containing wastes and using annual average benzene concentrations rather than a maximum value. The results of this reanalysis confirm that controls are needed on waste streams with benzene concentrations of 10 ppmw or more at plants managing greater than 10 megagrams per year of benzene in waste (see Data Base and Emission Modeling for discussion of revised impacts). In light of these evaluations, EPA still believes that the proposed cutoff levels are needed to assure that acceptable health impacts are not exceeded. Consequently, these values are retained in today's final rule.

b. Level of Control Required for Alternative Treatment Technologies

In the proposed standards, it was not EPA's intent to mandate the use of a particular treatment technology and provisions were included that would allow alternative technologies other than those named in the proposed rule. However, certain controls were assumed in the analysis to support the proposal. To ensure that emissions and risk were also reduced to acceptable levels if alternative technologies were used, a performance level for alternative treatment was selected based on the performance level that would be achieved by the controls assumed in the analysis. The estimates of emissions after control assumed the use of steam stripping of wastewaters at an efficiency of 99 percent, TFE for sludges at an efficiency of 98 percent, and incineration for organic liquids and solids at an efficiency of 99.99 percent. The estimates also assumed the use of submerged fill for container loading, which is estimated to reduce loading emissions by 65 percent, and the use of 95 percent efficient vapor controls on vents from waste management units.

As with the 10 megagrams per year facility cutoff, the 10 ppmw level for waste streams was identified as a level above which controls were needed. Although 10 ppmw was allowed as a treatment standard for steam strippers and TFE, it was anticipated that the devices would operate at the benzene removal efficiencies that they typically achieve (98 to 99 percent or more). Although it is assumed that a small portion of the total waste treated to meet the standards will be treated by TFE at an efficiency of 98 percent, it is anticipated (and assumed in the analysis) that most waste will be steam stripped at an efficiency of 99 percent. To ensure that comparable emission reductions would be achieved if other treatment technologies are used, EPA selected an efficiency of 99 percent as the levels of control that must be met by alternative treatment technologies in the proposed rule. The treatment devices assumed in the analyses are well proven in treating the types of waste streams of concern in this rule and the levels of control assumed in the analyses were based on the demonstrated performance of these devices in similar application. In setting the level of control required in the proposed standards, EPA elected to specify the use of the treatment devices that served as the basis for the risk analyses. Although these devices were specifically identified, compliance flexibility was added to the proposed rule by allowing the use of alternatives if they can be demonstrated to achieve a 99 percent mass emission reduction. Allowing treatment alternatives would permit owners and operators to use any control device that can be demonstrated to achieve control efficiencies that are equivalent to that of the specified devices. This could benefit owners and operators with unused capacity in existing treatment devices.

The EPA believes that the treatment requirements specified in the proposed standards were reasonable and that the rule provides sufficient flexibility for owners and operators in choosing a method of compliance. By specifying particular treatment devices, the proposal allowed compliance to be demonstrated without a formal performance test thus minimizing the burden on facility owners and operators and on EPA enforcement. The premise is that a properly designed and operated treatment device will obtain the benzene emission control levels that are needed to protect public health. As stated previously, even though the concentration cutoff level was set at 10 ppmw, a properly designed and operated TFE or steam stripper should achieve benzene removal rates of at least 98 and 99 percent, respectively, and, therefore, EPA used those values in the analyses of risk. However, EPA agrees with the commenter that it is inconsistent to allow steam strippers and TFE to demonstrate compliance by reducing waste stream benzene concentrations to less than 10 ppmw while requiring other treatment devices to demonstrate a mass emission reduction of 99 percent. Consequently, the final rule was revised to allow all treatment processes to demonstrate compliance by either a 99 percent destruction or removal efficiency or by a reduction in waste stream benzene concentrations to levels below 10 ppmw. Even though the revision includes the 10 ppmw concentration limit to demonstrate compliance, EPA still anticipates that properly operated treatment devices will achieve removal efficiencies consistent with the assumptions in the risk analysis.

c. Format of the Standard

Section 112 of the CAA requires EPA to establish standards in the form of emission limits for hazardous air pollutants unless it is not feasible to do so. Section 112 then defines what is meant by not feasible as including situations where a hazardous pollutant cannot be emitted through a conveyance, where use of a conveyance violates Federal, State, or local law, or where measurement methods are not practicable. Where emission standards are determined to be not feasible, a design, equipment, work practice, or operational standard is allowed. In developing the proposed regulation for benzene waste operations, EPA first considered an emission standard; however, because of practical problems associated with that format, EPA selected a combination of equipment, performance, and operational standards applicable to facilities and waste streams above specified cutoff levels. Because of the close correlation between emissions from open waste management units and the amount of benzene in waste managed in these units, EPA chose to express the cutoffs in terms of benzene quantity managed (for facilities) and benzene concentration (for individual waste streams).

For waste treatment operations, owners or operators may demonstrate that a treatment technology will achieve specified performance levels. For other waste management units, such as tanks and impoundments, emissions must be contained by the use of covers or enclosures up to the point where treatment occurs and vents must be controlled by vapor control equipment. The standards that require covers and enclosures are in the form of equipment specifications. The standard for vapor recovery devices is a performance standard that requires a specified

percent reduction in benzene in the gas stream. For container loading, where equipment, performance, or operational standards are not feasible, a work practice standard requiring submerged fill is appropriate.

An emission limit was not selected as the format of the standard primarily because of the difficulty associated with the measurement of emissions from many of the sources regulated by the rule (e.g., drains and surface impoundments). For example there are no reasonably accurate or precise test methods for routinely measuring emissions from area sources such as open sewers, open treatment tanks, or surface impoundments for the purpose of implementing standards. Additionally, emissions from these sources may vary because of changes in meteorological conditions (e.g., windspeed, temperature, etc.), changes in processes, as from the intermittent (batch) generation of wastes, and small changes in operating conditions of the source such as throughput and residence time. Although several commenters suggested a change in the format of the proposed standard to an emission limit, none of them offered any suggestions on how these practical difficulties could be overcome and EPA still believes that the reasons for choosing a combination of formats are valid. Consequently, a combination of formats has been retained in the final rule.

d. Dilution

To avoid situations where an owner or operator would dilute or mix waste streams to reduce the benzene concentration below the 10 ppmw cutoff level, the proposed standards included an equation for calculating a concentration limit that must be met when multiple waste streams are combined before treatment. Several commenters stated that the equation is unwieldy and unusable in many situations because of the large number of waste streams that must be considered and the many different ways in which waste streams are combined for transfer or treatment. The EPA agrees that using the dilution equation could be difficult in many situations and has deleted it from the final rule. The final rule allows the combination of individual waste streams to facilitate treatment in a centralized treatment process unit but prohibits the use of dilution or mixing of waste streams for the sole purpose of reducing the benzene concentration.

While the final rule allows the combination of waste streams for the purpose of centralized treatment, EPA recognizes that this allowance could result in emissions and risks higher than intended in certain cases when many large volume waste streams that contain levels of benzene above and below 10 ppmw are mixed. This situation could occur if an owner or operator chooses to reduce the benzene content of process wastewater streams through treatment that occurs in a facility's wastewater treatment system rather than segregate streams with greater than 10 ppmw benzene for separate treatment. The wastewater treatment system at some facilities, such as at petroleum refineries, manages large quantities of wastewater made up of a mixture of waste streams having benzene concentrations above and below 10 ppmw. The mixed stream may go through several management steps leading to a biological treatment unit. Due to the large volume of wastes handled, benzene emissions could be substantial even though the benzene concentration in the mixed waste is below 10 ppmw. The dilution equation in the proposed rule would have required an appropriate level of control in these situations by establishing a treatment limit below 10 ppmw for the mixed stream. With the dilution equation deleted in the final rule, some other provision is needed to ensure the streams are treated to an appropriate level. Therefore, a provision has been added to the final rule that applies specifically to those situations where an owner or operator chooses to use an existing wastewater treatment system to meet the treatment requirements of the rule. In these situations, the final rule requires the facility to apply controls to all wastewater treatment units up to the point where the benzene concentration is below 10 ppmw and one of the following occurs: (1) The total annual quantity of benzene in the process wastewater for the facility is reduced below 1 megagram; or (2) the waste has reached the biological treatment unit. Biological treatment units would need to be controlled only if the benzene concentration of the waste entering the unit is 10 ppmw or greater. These units routinely remove up to 80 percent of the organics in dilute waste streams and thus would not be required to meet the 1 megagram per year limit if the concentration entering the unit is less than 10 ppmw.

e. Point of Generation

In the determination of benzene concentration of a waste stream for the purpose of calculating annual quantities of benzene in waste or to identify waste streams that are exempt from the control requirements of the standards, EPA has specified that the determination be made at the point of generation of the waste stream. The point of generation was described as the point at which the waste leaves the device or process that generates it or the point at which it enters the first downstream waste management unit if there has been no exposure to the atmosphere. The point of generation was selected as the most appropriate location for making a determination of the benzene content. The goal of the benzene waste regulation is to protect public health from benzene emissions from waste management activities and, consequently, it is important to control all sources of benzene emissions along the flow path of a waste stream. By specifying controls for all waste management units and waste transfer activities from the point of generation, the potential for the release of benzene to the atmosphere is minimized. If benzene concentration determinations are made at a point further downstream, as requested by some commenters, significant amounts of benzene may already have been released to the atmosphere. This would be especially true if the waste stream has passed through any open waste transfer activities such as sewers or open waste management units such as surface impoundments or open tanks. Therefore, the point of generation has been retained in the final rule as the point at which waste stream benzene concentrations are determined.

As discussed under Interrelationships with Other Regulations there is one exception to the general definition of the point of generation. Benzene emissions from coke by-product recovery plants are currently regulated by subpart L of 40 CFR, part 61, which requires emission controls on some sources of benzene emissions at these facilities. For the purpose of implementing today's final rule, the point of generation at these facilities would be considered to be the point at which waste exits from the unit regulated by subpart L.

f. Compliance Deadline

Several commenters stated that it was unreasonable to require compliance with the standards within 90 days of the effective date (March 7, 1990). One commenter suggested that at least 180 days would be needed to design and install the controls required by the proposed standards. Another commenter suggested that up to three years be allowed.

Although the compliance deadline of the standards is 90 days after promulgation, under section 112 of the Clean Air Act the Administrator may

grant a waiver of compliance for up to two years after the effective date, if he finds that this period is necessary for the installation of controls. The procedure for applying for this waiver of compliance is described in the general provisions of 40 CFR part 61. However, under the general provisions, each owner or operator must separately request a waiver of compliance. Considering the comments received and the controls required by the final standards, EPA believes that most facilities that must install controls will not be able to comply with the standards within 90 days of the effective date. Furthermore, due to the complexity of the controls required and the fact that many of the controls must be retrofit to existing units, EPA believes that up to two years may be required to design and install the controls. Given that most facilities will need up to two years to design and install the controls required by the standards, EPA has specifically allowed up to two years for compliance in the final standards, rather than require each owner or operator to separately request a waiver of compliance under the general provisions.

Control Technology

Comment: Several comments were received regarding the selection, technical feasibility, and cost of the control technologies required by the proposed rule for benzene waste operations. Commenters stated that there is insufficient flexibility in the treatment technologies available for use in the removal of benzene. The commenters recommended that the benzene waste rule establish performance levels instead of requiring specific treatment technologies. As an example, rather than specify three treatment technologies, the rule should allow any technology that achieves a mass emission reduction of 99 percent for benzene or attains the 10 ppmw benzene concentration criterion. In addition, commenters claim that the equivalency demonstration or petition process established in the proposed rule for alternative technologies (§ § 61.353 and 61.355) is duplicative, unnecessary, burdensome, and discourages the use of other treatment technologies capable of achieving the desired emission control. Commenters stated that use of control technologies required by other environmental regulations, as discussed in Interrelationships with Other Regulations, should be considered as acceptable alternatives to the technologies prescribed in the proposed rule. Also, waste disposed of in management units or processes, such as deep well injection, that have low benzene emission potential should be exempt from the requirements of the rule, accepted in the rule as equivalent alternative technologies, or, at a minimum, exempt from the "equivalence" procedures of § 61.342(b)(2) and § 61.353. With regard to technical feasibility, the proposed rule requires the use of TFE for benzene removal from sludges and steam stripping for benzene removal from watewaters. However, commenters contend that because of erosion problems, TFE may not be suitable for processing waste material with gritty solids, i.e., benzene sludges, and that alternative technologies to TFE (i.e., indirectly heated dryers or evaporators) may not be technically capable of removal efficiencies of 99 percent because of physical limitations. The technical feasibility of steam stripping of benzene containing wastewater was also questioned. Commenters stated that steam stripping has not been demonstrated as effective for removing benzene on very dilute streams with just over 10 ppmw of benzene. Commenters also claimed that wastewater at refineries contains significant quantities of dissolved solids, emulsified oil, and suspended solids and that these contaminants will foul a steam stripper and make it unusable. It was also pointed out by commenters that the container standard requires submerged fill loading and that this method of loading is incompatible with sludges and bulk solids. Commenters also had several concerns regarding the technical feasibility, cost, and operation of closed drain systems. Commenters stated that these systems pose a fire and explosion hazard. In addition, if the waste is "hard piped" from process units, spills would not have anywhere to drain, equipment such as pumps could not be drained to the sewer system prior to maintenance or repair, and there would be no practical way to determine that the water or hydrocarbon interface has been reached when draining water bottoms from a tank. Regarding the level of control required for drain systems, commenters stated that the proposed standards apply to facilities similar to those regulated under 40 CFR 60.692–2 (the NSPS for petroleum refinery wastewater), but require different standards (or control levels). The requirement that "individual drain systems shall not be open to the atmosphere and shall be covered or enclosed" should be clarified to explicitly state that "p-traps" and comparable vapor seals constitute a "cover" or "enclosure". Several commenters believe that standards consistent with the petroleum refinery wastewater NSPS regulations are adequate to control benzene emissions from drains and should be considered as an alternative technology.

Response: As previously discussed EPA's approach to controlling benzene emissions was based on identifying waste streams with significant emissions potential at the point of generation and piping these waste streams to a treatment device effective in removing or destroying the benzene in the waste. The EPA has reviewed the comments relating to control technologies and has revised the rule to allow greater flexibility in use of treatment technologies and emission control systems that achieve the desired emission reduction. The revisions to the rule are also intended to reduce the burden imposed on facility owners or operators that elect to use alternative or equivalent control systems. In short, the final rule makes it easier to use other technologies that EPA believes will reduce benzene emissions to the needed levels. Responses to specific comments on control technology issues are presented below.

a. Feasibility of Selected Technologies

In the proposed regulation, EPA was seeking to insure that emissions are reduced to a level that is protective of public health. The EPA specified three technologies (i.e., steam stripping, TFE, and incineration) as acceptable because they have been demonstrated to be effective in treating benzene containing wastes (i.e., they can effectively remove or destroy the benzene to the levels required by the standards). As an alternative, EPA allowed owners or operators to use other control technologies if they could demonstrate a mass emission reduction of at least 99 percent, a level that the risk analyses indicated is protective of public health.

The EPA agrees with the comment that TFE may not be suitable for processing some benzene waste sludges containing gritty solids. The EPA does not agree that there are no alternative technologies capable of reducing benzene concentrations to less than 10 ppmw or achieving removal efficiencies of 99 percent. Commenters only discussed indirect dryers or evaporators as an alternative to TFE and the physical limitations of these devices that may inhibit achieving removal efficiencies of 99 percent. However, the owner or operator may elect to install and operate a waste incinerator rather than a TFE to treat benzene containing waste sludges with solids. In addition,

solvent extraction processes have been determined as a viable alternative to TFE for treatment of sludges. As part of the LDR, EPA evaluated the effectiveness of removing specific waste constituents from a variety of hazardous waste forms and concluded that solvent extraction and incineration were BDAT for removal of benzene in various hazardous wastes (e.g., K048 nonwastewater (53 FR 31161)). Therefore, EPA maintains that technologies are demonstrated and available for treating benzene waste sludges containing solids; these technologies can be utilized efficiently and effectively as alternative technologies to TFE under the final benzene waste operations rule.

Several commenters questioned the technical feasibility of steam stripping wastewaters that contain dilute concentrations of benzene (just over 10 ppmw), emulsified oil, and solids. Steam stripper test data collected by EPA show that dilute concentrations of benzene are easily stripped, even when the wastewater contains solids and high levels of other organics. Benzene is highly volatile in water and is easily removed by steam stripping. The steam stripper design that was used as the cost basis included a large storage tank with a long residence time that would permit the removal of any solids that settle out or the decanting of any separate organic or oil phase layer that might form. In addition, some steam strippers are routinely designed with an oil-water separator prior to the stripping column; others include methods for solids removal prior to steam stripping. Removal of any separate oil or solid phase in the wastewater prior to the stripper will improve performance and minimize maintenance problems. Also, steam stripping is commonly and successfully used to treat sour condensate, a wastewater at refineries, without encountering fouling problems. The EPA therefore has concluded that steam stripping is technically feasible for treatment of benzene containing waste streams such as wastewaters.

b. Alternative Treatment Technologies

A major concern of the commenters regarding the proposed alternative treatment standard (§ 61.342(b)(2)) was the requirement for formal rulemaking under § 61.353. As proposed, owners or operators wishing to use technologies other than the three specified in the rule for waste treatment would have had to demonstrate to the Administrator that the alternative means achieves equivalent emission reductions. The Administrator would then publish in the **Federal Register** a notice permitting the use of the alternative means of emission limitation, only after notice (of intent) and an opportunity for a hearing. This process is quite time consuming and could lead to substantial delays in applying controls. The commenters suggested several alternatives that should be accepted as equivalent controls without the need for conducting a performance test or formally applying for an equivalency determination by EPA. The commenters recommended that the rule allow use of any treatment technology that would perform as well as steam stripping in reducing benzene concentrations below 10 ppmw or achieve a removal efficiency of 99 percent for benzene in the waste stream, without the public hearing requirements and without the prior approval of EPA as was proposed under § 61.353.

The EPA considered these comments and concluded that the demonstration and notice requirements associated with the use of alternative treatment technologies may not be necessary to ensure benzene emissions are adequately controlled. Alternative treatment devices in many cases may provide the same degree of control of benzene emissions and the formal equivalency procedures required for use of alternative technologies under § 61.353, Alternative Means of Emission Limitation, would be burdensome to both industry and EPA. Therefore, in an effort to (1) reduce the burden imposed by requiring alternative treatment determinations to go through formal equivalence procedures prior to use, and (2) provide greater flexibility and encourage innovation that might lead to more efficient and costeffective methods of controlling emissions from benzene-containing wastes, EPA has revised the regulation regarding approaches for meeting the treatment requirements of the benzene waste standards. These changes are described below.

Revisions to the proposed rule would allow facilities to use any other available treatment technologies to reduce the benzene concentration of an affected waste stream to a level below 10 ppmw (without the aid of dilution). Furthermore, those provisions of the proposed rule that require the owner or operator to demonstrate that the alternative control device or treatment process achieves a mass emission reduction of 99 percent and requiring a formal equivalency demonstration, which is subject to a formal public hearing, were deleted. Under the final rule, the owner or operator has the option of demonstrating that any treatment process reduces the benzene concentration of the waste to less than 10 ppmw or achieves an overall benzene destruction or removal efficiency of 99 percent or greater.

Owners or operators of affected facilities that choose to use their wastewater treatment system to treat benzene containing wastes must not only meet the concentration requirement but must also comply with a limit on the total annual quantity of benzene in the waste in order to handle the waste in uncontrolled units in the overall wastewater treatment system. A discussion of the requirements for wastewater treatment systems is presented in the Selection of Standards section.

In § 61.342(b)(2) of the proposed rule, alternative treatment processes were required to demonstrate a mass emission reduction of 99 percent for benzene in the waste stream. Upon further consideration, EPA has concluded that formatting the performance requirement in terms of a percent emission reduction is inappropriate for units treating a benzene containing waste. The goal of treatment is to reduce the benzene concentration of the waste and thereby reduce the benzene emission potential of the waste. Therefore, in the final rule, treatment technologies may demonstrate a 99 percent removal efficiency for benzene in the waste as an alternative to meeting the concentration criteria. Formatting the performance requirement in terms of a removal or destruction efficiency rather than an emission reduction also avoids problems associated with interpretation and demonstration of an "emission reduction." The term emission reduction implies that a baseline or uncontrolled level of emissions first must be determined and, as a requirement of the benzene waste operations rule, these emissions would be controlled or reduced. Determination of the percent emission reduction achieved by treating a waste with an alternative treatment device would be complex and unnecessarily burdensome; this was not EPA's intent. Therefore, the requirement for alternative treatment devices, not meeting the concentration criteria, is stated in terms of a removal efficiency for benzene in the waste.

In summary the requirements for treatment technologies in the final rule no longer require formal rulemaking; the **Federal Register** notice and public hearing requirement for approval of alternative treatment technologies has been removed. A demonstration of the effectiveness of the treatment technology is still required in some cases; however, the demonstration does

not necessarily include a performance test. Engineering calculations or adequately documented knowledge of the treatment process are allowed by the final rule for the demonstration of benzene removal or destruction efficiency.

c. Equivalent Control Systems

The revisions to the standards also specifically include allowance of certain control systems or treatment technologies as equivalent to those listed in the proposed standards. The equivalent control systems were selected on the basis that EPA believes these technologies are fully capable of reducing the emission potential of the waste to levels that meet or exceed the treatment levels required by the final rule and as a result are considered protective of public health.

(1) Treatment Technologies

Wastes treated with an equivalent control system would be considered in compliance with the 10 ppmw waste concentration requirement in § 61.348 (i.e., Standards: Treatment Processes) and the unit would be exempt from the 99 percent benzene removal requirement of § 61.342(b)(2). Among the treatment and disposal technologies that are accepted as equivalent are deep well injection, the "Best Demonstrated Available Technologies" used to comply with the LDR for benzene containing waste in 40 CFR part 268, and waste combustion devices (such as an incinerator or cement kiln) that are subject to and operating in compliance with the standards for hazardous waste burned in boilers and industrial furnaces in 40 CFR part 266, subpart D. These treatment technologies are discussed in more detail below.

The EPA agrees with the comment that there is no need to require incineration or steam stripping of a waste that is being disposed of by deep well injection, since there will be little or no ambient air emissions of benzene from waste that is injected into a deep well. Therefore, benzene-containing wastes that are injected into deep wells are specifically exempted in the final rule from the treatment requirements. However, should the benzene concentration of the waste stream at the point of generation exceed 10 ppmw, waste management units located upstream of deep well injection would be required to meet applicable control requirements.

In allowing the exemption for deep well injection EPA is not suggesting that deep well injection is in all cases an appropriate disposal method for benzene containing wastes. Deep well injection should only be utilized to dispose of benzene containing waste (or any other waste) to the extent it is allowed under applicable statutory or regulatory authority specific to the waste. The conclusion reached herein is that once a benzene containing waste is disposed of by deep well injection it has little or no emission potential and at this point does not present a public health risk as a result of benzene emissions to the ambient air.

The LDR, developed under section 3004(m) of HSWA to RCRA, require that hazardous waste be treated to reduce concentrations of specific chemicals or hazardous properties to certain performance levels or by certain methods before the waste may be disposed of on land. Because LDR BDAT treatment standards are capable of reducing the concentration of benzene in a waste to less than 10 ppmw, EPA has revised the benzene waste operations rule such that treatment units used to comply with LDR treatment standards prescribed by EPA in 40 CFR part 268 for the treatment of benzene containing hazardous wastes are considered equivalent control systems. As equivalent control systems, wastes treated by these technologies to meet benzene-specific LDR treatment standards, expressed as either a concentration limit or a specified technology, would be considered in compliance with the 10 ppmw waste concentration requirement, a level that has been determined to be protective of public health, and these units would be exempt from the 99 percent emission reduction requirement. Nonetheless, if any of the BDAT technologies applicable under LDR for treatment of benzene containing hazardous wastes are used, waste with a benzene concentration exceeding 10 ppmw prior to treatment must be managed in units that comply with the benzene waste operations rule and the LDR treatment process itself must be controlled for air emissions to achieve a minimum 95 percent reduction in total organic emissions.

Similarly, wastes treated to comply with the FWPCA effluent guideline limits for benzene are considered to have a low potential for emission of benzene to the ambient air; therefore in the final rule, wastes discharged from these units are exempt from the benzene waste operation rule. However, if the benzene concentration of the waste stream prior to treatment required under the FWPCA exceeds 10 ppmw, waste management units located upstream of the treatment process as well as the treatment process itself would be required to meet the control requirements of the benzene waste operations rule. As is the case with LDR BDAT technologies, treatment units used to comply with the FWPCA effluent guideline limits for benzene must be controlled for air emissions to achieve a minimum 95 percent reduction in total organic emissions.

A performance test, using the procedures specified in § 61.355, was not required at proposal for waste incinerators subject to and operated in compliance with 40 CFR part 264, subpart O. This provision has been retained in the final rule. In addition, waste combustion units subject to and operated in compliance with the standards for hazardous waste burned in boilers and industrial furnaces proposed (May 6, 1987 (52 FR 16982) and October 26, 1989 (54 FR 43718)) in 40 CFR part 266, subpart D, and issued a final RCRA permit under 40 CFR part 270 that incorporates the requirements of the boiler and furnace standards are considered to comply with § 61.348 of the final benzene waste operations rule. Thus, no additional demonstration is required for these units. Waste incinerators, boilers and industrial furnaces that do not have a RCRA permit will be required to demonstrate a 99 percent destruction efficiency for benzene. However, a performance test is not specifically required; engineering calculations are also allowed as the basis of the demonstration of destruction efficiency.

(2) Drain Systems

Commenters concerns regarding the technical feasibility, cost, and operation of closed drain systems appear to be based on a misunderstanding of the proposed rule. Further clarification of the basis of the drain system standards is therefore needed. The use of a central steam stripper or other treatment device prior to discharge of the waste to the sewer system was considered the technical basis for the standards. The cost and emission reduction analysis is based on the waste streams requiring control being segregated and piped to the treatment device. As an alternative to waste treatment prior to discharge, the facility may choose to enclose the existing sewer system and not segregate the wastes prior to treatment. The waste stream (i.e., the combined flow) would then be treated to meet the concentration cutoff or performance criteria. However, this alternative approach is, as the commenters observed, more costly; and as a res , many plants are not likely to enclose entire sewer systems.

Several commenters felt that the requirements under 40 CFR 60.692-2, subpart QQQ, are adequate to control individual drain systems and should be considered as an alternative to the completely closed system required by the proposed standards. The EPA considered these comments, conducted a number of analyses to evaluate and compare the two control methods, and concluded that the control level achieved under the NSPS for petroleum refinery wastewater with some modifications to the requirements would be equivalent to the level that would be achieved by a completely closed system. Therefore, the standard for individual drain systems in the final rule allows the alternative use of water seals for drains and vents on covers applied to junction boxes as specified in 40 CFR 60.692-2. The EPA has concluded, as a result of analyses performed since proposal, that these controls are equivalent to completely closed drain systems if, under the alternative approach, the junction boxes are isolated such that no air flow occurs through the sewer system and out the junction boxes during normal operation or the junction boxes are vented to a control device. The EPA believes this "no flow" (or emission) requirement can be achieved by use of water seals to isolate the junction boxes or by use of a 95 percent efficient control device, such as a carbon adsorber, on the vent stack of the junction box. This change to the individual drain system requirements makes the benzene waste standards, with the exception of the isolated vent requirement, consistent with the level of control required for the NSPS for petroleum refinery wastewater which may apply to some portions of facilities regulated under § 61.346.

With regard to commenters safety concerns relating to closed drain systems, it should be pointed out that EPA is not requiring the use of such systems. However, closed drain systems, as the commenter notes, are in use although not in widespread use; and the owner or operator has the option of using this type of system to the extent that it can be utilized safely under circumstances particular to the facility. With most commenters recommending that EPA promulgate benzene waste standards for drains consistent with the NSPS regulations, EPA believes that the concerns regarding closed drain systems have been adequately addressed.

(3) Container Controls

With regard to comments on the container standard requirement for submerged fill loading of waste into containers, EPA agrees with the commenters that this method of loading is incompatible for some waste forms (e.g., sludges and solid wastes). Therefore, the final rule includes a clarification that the requirement for submerged fill loading of containers applies only to "pumpable" wastes. Other wastes (i.e., nonpumpable wastes) must be loaded into containers using appropriate good engineering practices to minimize benzene air emissions.

d. Cost of Control

There were two general areas where commenters felt that control costs presented at proposal did not accurately reflect the true cost of achieving the control levels required to comply with the benzene waste standard. Commenters indicated that the steam stripper model unit cost estimates were too low and that the cost of meeting the individual drain system requirements were underestimated because the cost of enclosing sewer systems was not considered.

As a result of comments on steam stripping cost estimates, EPA has revised the model unit steam stripping cost analysis. Changes in the analysis since proposal include a modification to the stripper design assumed for the purpose of developing costs. In the original design, steam requirements were estimated on removal of semi-volatile organics at a high efficiency. This resulted in an overestimate of operating costs because benzene is highly volatile in water and is more readily stripped from the wastewater than a semivolatile organic. An additional component for piping costs was also added to the steam stripper model unit costs to more accurately reflect the cost of transporting the waste to be treated from the process area to the steam stripper unit. This cost estimate was based on installing 5000 feet of piping for waste transfer (as opposed to enclosing existing sewer systems). The changes made to the steam stripper cost analysis since proposal have had the overall impact of increasing the model unit capital costs (because of the additional piping) and decreasing the total annual cost (a result of the reduction in steam requirements). The revised steam stripper costs are based on a design presented in the EPA document "Industrial Wastewater Volatile Organic Compound Emissions-Background Information for BACT/LAER Determinations," for highly volatile compounds like benzene.

With regard to the cost of meeting the individual drain system requirements, the cost of enclosing the entire sewer system was not included in the cost estimates because this action is not a requirement of the benzene waste rule. As pointed out in the discussion on equivalent control systems, enclosing sewer systems is an alternative approach to control of drain systems; it is not the technical basis for the standards. Therefore, costs for this alternative were not presented as an impact of the benzene waste rule.

After incorporating the above changes in model unit costs, and using the revised data base discussed in Data Base and Emission Modeling, the total capital cost of the final rule is estimated to be approximately $250 million and the total annual cost is estimated at about $87 million. These costs are higher than the $65 million capital cost and the $39 million annual cost estimated at proposal. The primary reason for the increase in cost is the estimated higher quantity of waste to be treated than was estimated at proposal. The increase in the steam stripper model unit capital cost discussed above also contributed to the increase in the capital cost since proposal. The decrease in the steam stripper unit annual cost only partially offset the increase in annual cost due to the increase in waste quantity treated.

Monitoring, Recordkeeping, and Reporting

Comment: Numerous commenters considered the monitoring, reporting, and recordkeeping requirements of the proposed standards to be unnecessarily burdensome. Comments on the monitoring requirements of the regulation focused on the extent of waste sampling required to qualify for an exemption from the control requirements of the standards. The commenters maintained that instead of the few waste streams per facility assumed by EPA in their burden estimates, many facilities subject to the regulation would have thousands of waste streams, each of which would have to be sampled to show that the stream would qualify for an exemption. The costs of this sampling would be unnecessarily burdensome. Commenters suggested that methods other than waste sampling (e.g. knowledge of the waste or process generating the waste) should be allowed to demonstrate compliance with the rule. In addition, regarding the monitoring requirements for control and treatment devices, several commenters submitted that the requirements should be made compatible with those in existing regulations. With respect to the recordkeeping and reporting requirements, commenters objected that many facilities that would not be required to install controls would still

incur costs for recordkeeping and reporting. Several commenters maintained that continued reporting and recordkeeping after demonstrating initial compliance or exemption should not be required.

Response: Commenters particularly objected to the monitoring, recordkeeping, and reporting required to qualify for an exemption from the control requirements of the proposed standards. At proposal, a facility could qualify for an exemption if the total annual quantity of waste containing benzene generated or managed at the facility was less than 10 megagrams per year or if the total annual quantity of benzene in the waste managed at the facility was less than 10 megagrams per year. Where the total annual quantity of benzene in the waste at a facility was 10 megagrams per year or more, a waste stream could qualify for an exemption from the control requirements if the waste stream had a benzene concentration less than 10 ppmw.

To make each of the determinations required for the facility or waste stream exemptions, waste sampling and analysis by specified test methods were required by the proposed standards. For facilities handling less than 10 megagrams per year of waste containing benzene and facilities handling less than 1 megagrams per year of benzene in the waste, an initial determination was required with the records to be retained for as long as the waste was generated. No further determinations were required for facilities handling less than 1 megagrams per year of benzene in the waste unless a change occurred that could cause an increase in the total annual quantity of benzene in the waste. For facilities handling between 1 megagrams per year and 10 megagrams per year of benzene in the waste determinations were to be repeated on a monthly basis for one year, then on a semiannual basis if the monthly determinations showed the facility to be consistently below 10 megagrams per year. Records of the determinations were required to be retained for 2 years and initial and quarterly certifications of all inspections and determinations also were required. For facilities handling a total annual quantity of benzene in the waste of 10 megagrams per year, a determination that an individual waste stream had a benzene concentration of less than 10 ppmw was required initially and monthly for one year. The determination frequency could be reduced to a semiannual basis after a year if the test results showed a benzene concentration consistently below 10 ppmw for 12 consecutive sampling periods in accordance with a t-test procedure on each individual waste stream. Two year retention of records and also initial and quarterly certification were required.

The commenters submitted that the treatment device and control device monitoring requirements were inconsistent with existing regulations, including the performance testing of waste incinerators that do not comply with the requirements of subpart O of part 264, the determination of the benzene concentration in treated waste, and the detectable emissions monitoring of closed-vent systems. As proposed, for waste incinerators not complying with the requirements of subpart O of part 264, the owner or operator was required to conduct a performance test initially, and at other times as requested by the Administrator. Also, daily waste sampling and analysis was required to determine the benzene concentration in treated waste. In lieu of measuring the benzene concentration in treated waste, the owner or operator was allowed to demonstrate compliance by monitoring an operational or process parameter (or parameters) on the treatment process that was indicative of proper system operation and thus a benzene concentration less than 10 ppmw in the exit stream from the treatment process. With respect to control devices, the proposed standards required quarterly detectable emissions monitoring of closed-vent systems.

The proposed standards required waste sampling and analysis for waste determinations because this approach would provide the clearest, most definite indication to EPA and the facility of whether controls were required by the standards. The standard test methods would also provide uniform means for documenting the results. The purpose of the recordkeeping and reporting requirements was to confirm to EPA that the facility is complying with the provisions of the standard. The reports would also serve to alert EPA offices of situations that might present potential compliance problems.

Changes that have been made to the standards in response to other comments will reduce the burden of the monitoring, reporting, and recordkeeping requirements of the rule. Also, upon reconsideration, EPA has made specific changes to the monitoring, reporting, and recordkeeping requirements that will reduce the impact of the rule on affected facilities but will still provide sufficient information to determine initial and continued compliance with the rule. These are discussed below.

a. Facility Applicability

The overall monitoring, recordkeeping, and reporting burden of the standards will be reduced by revisions to the industry and facility applicability criteria. These revisions, which were made in response to comments on the applicability of the standards, are discussed earlier in the Regulatory Scope section. The revisions include specifying the industries covered and basing the 10 megagrams per year benzene facility applicability threshold on wastes that contain greater than 10 percent water. In-process recycle, segregated storm water streams, and gases and vapors emitted from process fluids are specifically excluded from the facility applicability determination. To avoid double counting of benzene, oils and sludges recovered from wastes after the point of generation as well as any other stream that could lead to double counting are also excluded from this determination.

The EPA has considered the comments regarding the amount of waste sampling required to qualify for an exemption from control requirements and agrees with the commenters that waste sampling is not needed in all cases to demonstrate that the amount of benzene generated or managed at a facility is less than the facility exemption level of 10 megagrams per year. There are situations where the owner or operator's knowledge of the waste could be used as the basis for an exemption, provided supporting documentation is maintained. For example purchase, production, and inventory records or records of the quantity of benzene waste generated could be used to show that a facility handles less than 10 megagrams per year of benzene. Consequently, EPA revised the proposed standards to allow the use of knowledge of the waste as a means of demonstrating that a facility qualifies for an exemption from the control requirements of the standards. This change will reduce and in some cases eliminate the expense related to waste stream sampling. However, in cases where knowledge of the waste does not provide conclusive proof that a facility is below the cutoff level, waste sampling may be required.

In the proposed standards, a facility generating or managing less than 10 megagrams per year of waste that contains benzene was exempt from the control requirement of the regulation. This exemption was included to provide an easily determined exemption for facilities handling small quantities of benzene containing wastes without the

need to calculate the total quantity of benzene in waste. In the final rule, knowledge of the waste is allowed as a means of determining the quantities of both waste and benzene in waste managed at a facility. Because of this revision, a demonstration that a facility manages less than 10 megagrams per year of benzene-containing waste can be made without waste testing as required in the proposed rule. This demonstration will also serve to demonstrate that the amount of benzene in the waste managed is less than 10 megagrams per year. As a result, EPA concluded that the specific exemption provision based on 10 megagrams per year of total benzene-containing waste in the proposal is not needed in the final rule. Therefore, for the sake of simplifying the language in the final rule the exemption was eliminated.

In another revision that will reduce the monitoring and recordkeeping requirements, a facility that is exempt because of generating or managing less than 1 megagrams per year of benzene in the waste must only do a redetermination if a process change occurs that could cause annual benzene throughput to exceed 1 megagram per year. This change will reduce the burden for a facility that experiences small fluctuations in the annual quantity of benzene in the waste handled.

Finally, a facility that generates or manages between 1 and 10 megagrams per year of benzene in the waste must do only an annual recertification (in the form of an annual report on the regulatory status of each benzene-containing waste stream) rather than quarterly that the benzene throughput has not exceeded 10 megagrams per year. This change was made to reduce the reporting burden of the standards. However, it should be noted that an exempt facility that becomes subject to the control requirements because of increased quantities of benzene waste managed must be in compliance when the benzene throughput increases.

b. Waste Stream Applicability

As discussed above for the industry and facility applicability criteria, the overall monitoring, recordkeeping, and reporting burden of the standards will be reduced by revisions to the waste stream applicability criteria. These revisions include allowing knowledge in place of sampling, basing the 10 ppmw waste stream concentration on an annual average, and adding a low flow cutoff.

Again, as is the case for the facility exemption, EPA agrees with the commenters that waste sampling is not needed in all cases to demonstrate that the benzene content of a particular waste stream is less than the waste stream exemption level of 10 ppmw. There are situations where the owner or operator's knowledge of the waste could be used as the basis for an exemption. To qualify for the 10 ppmw benzene waste stream concentration exemption, a facility might use mass balance calculations, information documenting that the waste is identical to another waste at the same facility that has previously been demonstrated by direct measurement to have a benzene content less than 10 ppmw, or prior analytical results on the waste stream where it can be documented that no process changes that could affect the waste benzene concentration have occurred since that analysis. Therefore, the proposed standard has been revised to allow the use of knowledge of the waste as a means of demonstrating that a waste stream qualifies for an exemption from the control requirements of the standard, thereby reducing and in some cases eliminating the expense related to waste stream sampling. However if knowledge is used, the owner or operator must also provide an estimate of the variability of the benzene concentration of the waste stream as part of the demonstration that the annual average benzene concentration is less than 10 ppmw. This will allow enforcement personnel to assess whether a waste stream is out of compliance based on the measurement results from samples collected during a compliance inspection, rather than requiring the facility to sample the waste stream over the period of a year.

In the proposed standards, an owner or operator seeking an exemption from control for a waste stream on the basis that it contained less than 10 ppmw of benzene was required to report the results of waste determinations initially and quarterly. The final standards require a report on the regulatory status of each waste stream that contains benzene, including the basis of any waste stream control exemptions claimed. The owners or operators of all facilities subject to the final rule must submit this report initially. The owners or operators of facilities that manage 1 megagram per year or more of benzene must update and resubmit this report annually. This means that facilities that seek an exemption from control for waste streams based on the 10 ppmw criterion will be required to submit fewer reports than were required under the proposed rule. However, the reports must identify the regulatory status of all benzene-containing waste streams at each facility, rather than only those not being controlled.

In addition, as discussed in the Regulatory Scope section of this preamble, because of changes to the standards making the 10 ppmw determination an annual average and allowing the use of knowledge, the t-test requirement for the waste sampling results has been dropped. This change is expected to substantially reduce the monitoring and recordkeeping burden for a facility.

c. Control/Treatment Devices

Commenters submitted that the performance testing requirements for incinerators under § 61.355(p) are duplicative of requirements under 40 CFR parts 264 and 266 of RCRA. As proposed, performance testing of waste incinerators would only be required for incinerators not subject to or not complying with subpart O of 40 CFR part 264. Therefore, the proposed performance testing requirements were not duplicative of requirements under part 264 for hazardous waste incinerators, including boilers or industrial furnaces which the owner or operator has elected to be regulated under subpart O. However, EPA agrees that the proposed requirements for boilers and industrial furnaces under subpart D of part 266 also will be sufficient to demonstrate compliance with the destruction efficiency specified by the benzene waste requirements. Furthermore, to reduce the monitoring burden of the standards, engineering calculations documenting destruction efficiency will be allowed instead of performance testing to demonstrate that treatment devices meet the requirements of the standards. Therefore the standards have been revised so that certification of performance will not be required of boilers and industrial furnaces with final permits issued under the proposed revisions to subpart D of part 266. However until the revisions to subpart D are promulgated, owners and operators of boilers or industrial furnaces used to incinerate benzene-containing hazardous waste must either be permitted under the requirements of subpart O or demonstrate compliance with the benzene waste requirements through engineering calculations or a performance test.

According to commenters, the proposed monitoring requirements for treatment devices are inconsistent with the monitoring and testing requirements under the LDR prescribed pursuant to section 3004(m) of RCRA. As discussed in the Control Technology section, EPA agrees that the benzene waste requirements should be consistent with

the LDR treatment standards. Therefore, under the final standards, wastes that meet the LDR treatment standards are assumed to be in compliance with the final benzene waste rule. Furthermore, in a revision to reduce the monitoring and recordkeeping burden of the standards, for facilities that choose to measure the benzene concentration in the treated waste, monthly rather than daily benzene concentration measurements will be required.

Regarding the proposed control device monitoring requirements, commenters noted that the method 21 detectable emissions monitoring requirements for closed-vent systems should be consistent with the requirements of the NESHAP for benzene equipment leaks (40 CFR part 61, subpart V). As proposed, quarterly method 21 detectable emissions monitoring was required; subpart V requires annual method 21 detectable emissions monitoring. The EPA agrees that since the same control device could be used to comply wth both subparts, the detectable emissions monitoring requirements should be consistent. The EPA could see no reason why more frequent monitoring would further reduce emissions from the systems and having different requirements for different standards could increase the potential for confusion over the standards and complicate enforcement. Therefore, the promulgated standards have been revised to require annual method 21 detectable emissions monitoring of closed-vent systems.

5. Gasoline Marketing System

Comment: Several commenters thought that the decision to propose NESHAP for the gasoline marketing source categories was inconsistent with decisions on other benzene source categories. These commenters recommended that EPA reevaluate the need for control for these source categories considering that the risks were much lower than EPA's presumptive benchmark and lower than the risk remaining after application of controls for other benzene source categories. The commenters concluded that EPA inappropriately considered VOC cocontrol benefits in the gasoline marketing decisions.

Response: As discussed earlier in this notice, EPA has reexamined the decisions for the gasoline marketing system source categories. The EPA concluded from this reexamination that, based on the final NESHAP policy, it is unnecessary to establish a NESHAP for any of these source categories in order to protect public health with an ample margin of safety. Consequently, EPA is withdrawing the proposed standards for the gasoline marketing source categories. The bases for these decisions are presented in detail below.

Decision on Acceptable Risk. The baseline MIR is estimated to be 5×10^{-5} for bulk gasoline terminals; 1×10^{-5} for bulk gasoline plants and 5×10^{-6} for service stations. These baseline MIR are below the presumptive benchmark of approximately 1×10^{-4} and are judged to be acceptable after considering several factors.

First, although the emission and risk estimates were derived using an average benzene concentration in gasoline (1.47 percent), the possible range in benzene concentrations in gasoline is such that it is extremely unlikely that the MIR would exceed the benchmark of approximately 1×10^{-4}. Second, these estimates of MIR reflect consideration of typical groupings of bulk terminals, bulk plants, and service stations. The MIR estimates are viewed as providing reasonable worst-case analysis estimates. It is unlikely that the MIR would be significantly affected by additional colocation of facilities.

The nationwide incidence of cancer from exposure to emissions from these sources is estimated to be about 0.1 case/year for bulk terminals, about 0.05 case/year for bulk plants, and about 0.1 case/year for service stations. These estimates were calculated based on modeled average ambient concentrations and conditions for model areas which were projected to a nationwide total. Thus, EPA could not calculate meaningful estimates of the number of people and the incidence at different risk levels.

The EPA also considered the noncancer health effects associated with benzene exposure at levels comparable to baseline MIR. Noncancer health effects are not expected because the modeled exposures are at least three orders of magnitude lower than benzene exposure levels reported to produce noncancer health effects in animals. More importantly, these exposures are below the inhalation Reference Dose (RfD) currently under discussion within EPA. (The RfD is an estimate (with uncertainty spanning perhaps an order of magnitude) of a daily exposure to the human population (including sensitive subgroups) that is likely to be without appreciable risk of noncancer health effects during a lifetime.)

After considering all these factors, EPA concluded that the baseline emission levels for each of the gasoline marketing source categories are acceptable.

Decision on Ample Margin of Safety: For each of the source categories, EPA considered several control levels more stringent than the baseline level. Table E-4 in the proposal notice (September 14, 1989; 53 FR 38109–38110) presented a summary of the estimates of the control cost and emission reduction. This information was used with the exception that for service stations, the Alternative 1 cost was revised upward from $20 to $49 million/year. (The control cost of Alternative 1 was revised after considering public comments. The basis for the revised cost estimate is contained in the docket.) In evaluating the alternatives for each source category, EPA considered these estimates and the quantitative estimates of the benzene risks as well as technical feasibility, economic impacts, and qualitative information on risk distributions. Specific considerations in the qualitative assessments of benzene risks for these categories were the number of facilities, the proximity of facilities to residential areas and the potential population at risk levels greater than 10^{-6} and estimates of the risk to the vast majority of the population. It was also recognized that judgments on the population at risk levels greater than 10^{-6} would be among the more uncertain parameters considered.

Bulk gasoline terminals: For bulk gasoline terminals, EPA considered three alternative control levels and concluded that existing emission levels provided an ample margin of safety based on the following considerations. Alternative 2 would reduce the MIR from approximately 5×10^{-5} to 1×10^{-5}. (Alterntive 1 was not considered because it achieved less emission reduction and cost more than Alternative 2.) These controls were also estimated to reduce the nationwide incidence by about 0.04 case/year, leaving an incidence of 0.08 case/year. The incidence and incidence reduction are relatively small considering the entire population of the country is exposed. While EPA was not able to estimate the population risk distribution, it is expected that the vast majority of the current exposure and risk reduction would occur in the population exposed to risks below 10^{-6}. This expectation is based on the magnitude of the MIR and typical rate of decrease in concentration with downwind distance from an emission source. Noncancer health effects are not expected at the exposures associated with the baseline MIR of 5×10^{-5}. This maximum exposure is about three orders of magnitude lower

than the exposures reported to produce noncancer health effects in animals.

Alternative 2 would reduce emissions from baseline by about 60 percent, or reduce benzene emissions from 1,900 to 800 megagrams/year and VOC emissions from 306,000 to 132,000 megagrams/year. To achieve this emission reduction would cost about $48 million (in 1984 dollars) per year for application of controls at approximately 500 facilities. This cost is considered high relative to the small risk and incidence reductions achieved. The costs of Alternative 3 were also judged to be disproportionately high relative to the incidence and risk reduction achieved.

After considering all relevant quantitative and qualitative information on the health benefits, costs, and the uncertainties of the health benefits, EPA concluded that the existing emission level provides an ample margin of safety. In addition, since all new or modified facilities will have to meet the NSPS, emissions and risks from bulk terminals will be reduced over time. Therefore, EPA is withdrawing the proposed standard for bulk gasoline terminals.

Bulk gasoline plants: For bulk gasoline plants, EPA considered two alternative control levels and concluded that existing emission levels provided an ample margin of safety based on the following considerations. Alterative 1 would reduce the MIR from approximately 1×10^{-5} to approximately 2×10^{-6}. These controls were estimated to reduce the nationwide incidence by about 0.03 case/year, leaving an incidence of 0.02 case/year. Again, due to the small incidence and incidence reduction, it is expected that the vast majority of the population is exposed to risk below 10^{-6}.

Alternative 1 would reduce emissions from baseline by about 65 percent, or by 800 megagrams/year of benzene and 130,000 megagrams/year of VOC. To achieve this emission reduction would cost about $32 million/year (1984 dollars) from application of controls at about 11,000 facilities. These costs are considered high in relation to the small additional health benefits which would be achieved. The costs of Alternative 2 were also judged to be disproportionately high relative to the incidence and risk reduction achieved.

Based on consideration of all relevant qualitative and quantitative information on the health benefits of the controls, costs, and uncertainties of the health benefits, EPA decided that the existing emission level would protect the public health with an ample margin of safety. Therefore, EPA is withdrawing the proposed standard for bulk gasoline plants.

Service station storage vessels: For storage vessels at service stations, EPA considered two alternative levels and concluded that the public health is protected with an ample margin of safety at existing emission levels based on the following considerations. Alternative 1 would reduce the MIR from approximately 5×10^{-6} to approximately 2×10^{-7}. Although no estimates of population and incidence at different risk levels could be developed, Alternative 1 would ensure no one would be at risk greater than 1×10^{-6}. However, due to the decrease in concentration with distance from an emission source, it is expected that the vast majority of current exposures and the incidence reduction of 0.07 case/year would occur at risk levels below 10^{-6}. The incidence reduction and risk reduction are considered small. In addition, the maximum exposure at baseline is about four orders of magnitude lower than the exposures reported to produce noncancer health effects in animals. Thus, there are no health benefits expected from reduction of noncancer health effects.

Alternative 1 would reduce emissions from baseline by about 70 percent, or by about 1,200 megagrams/year benzene and 190,000 megagrams/year VOC. This emission reduction would cost about $49 million/year (1984 dollars) from installation of equipment at roughly 77,000 facilities. The EPA considers the cost of this emission reduction to be far in excess of what is acceptable in light of the small additional health benefits that would be achieved.

Alternative 2 would extend controls to an additional 200,000 facilities at a cost of $200 million/year. This control would reduce emissions an additional 6 percent and the incidence would be reduced by 0.008 case/year to 0.05 case/year. The cost of controlling these additional facilities was judged to be disproportionately high considering the very small additional emission and incidence reduction achieved.

Based on consideration of all relevant qualitative and quantitative information on the health benefits of the controls, costs, and uncertainties of the health benefits, EPA concluded that the public health is protected with an ample margin of safety at the existing level of emissions. Therefore, EPA is withdrawing the proposed standard for service stations.

V. Administrative Requirements

A. Paperwork Reduction Act

The information collection requirements contained in these rules have been approved by OMB under the provisions of the PRA, 44 U.S.C. 3501 *et seq.* and have been assigned OMB Control Numbers 2060–0182 and 2060–0183.

The public reporting burden for collection of information, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the collection of information is estimated to average: (1) 291 hours annually per response for the benzene transfer operations source category and (2) 10 hours annually per response for the benzene waste operations source category.

No standards are being promulgated for benzene emissions from the chemical manufacturing process vents, industrial solvent use, and the gasoline marketing source categories. Therefore, there are no associated recordkeeping and reporting burdens. Send comments regarding the burden estimates or any other aspect of each collection of information, including suggestions for reducing these burdens, to Chief, Information Policy Branch (PM–223), U. S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires EPA to consider potential impacts of regulations on small business "entities." If a preliminary analysis indicates that a regulation would have a significant economic impact on 20 percent or more of small entities, then an RFA must be prepared.

Present Regulatory Flexibility Act guidelines indicate that an economic impact should be considered significant if it meets one of the following criteria: (1) Compliance increases annual production costs by more than 5 percent, assuming costs are passed on to consumers; (2) compliance costs as a percentage of sales for small entities are at least 10 percent more than compliance costs as a percentage of sales for large entities; (3) capital costs of compliance represent a "significant" portion of capital available to small entities, considering internal cash flow plus external financial capabilities; and

(4) regulatory requirements are likely to result in closures of small entities.

1. Benzene Emissions from Chemical Manufacturing Process Vents

The source category of chemical manufacturing process vents is not being regulated. Therefore, there is no impact on these sources and an RFA is not required.

2. Benzene Transfer Operations

The source category of benzene transfer operations includes benzene production facilities and bulk terminals at which benzene is loaded into tank trucks, railcars, or marine vessels. Tank trucks, railcars, and marine vessels are included in SIC 44, 4742, 4212, 4213, and 4214. Because of the uncertainty concerning the actual cost distribution of tank trucks, railcars, and marine vessels, assessment of the likelihood of a significant economic impact on small entities is difficult. However, the entities involved in benzene transfer operations are expected to constitute less than 20 percent of all the small entities involved in SIC 44, 4742, 4212, 4213, and 4214. Therefore, since a substantial number of small entities are not being regulated, an RFA is not required.

In regard to benzene producers and bulk terminals, less than five percent of benzene storage facilities are owned by independent bulk storage terminal operators. The rest are owned by benzene producers and consumers which are generally large chemical companies. The standard exempts facilities with an annual throughput of less than 1.3 million gallons or those loading liquids with less than 70 weight-percent benzene. These exemptions allow facilities that only load benzene periodically throughout the year and those loading other products such as gasoline that are not predominately benzene to not be required to install additional control. The annualized capital costs for the smallest bulk terminal not exempted would only be $222/year. Volatility of benzene supply has lead to price swings as dramatic as that of $0.80 to $2.50 a gallon between 1986 and 1987 without significant changes in the quantity of benzene used. Therefore, the less than two percent anticipated increase in the cost of producing benzene is expected to be passed through as an increase in the price of benzene. Because the impacts are not expected to be significant, an RFA is not required.

3. Benzene Waste Operations

This source category includes chemical manufacturing plants, petroleum refineries, coke by-product recovery plants, and treatment, storage, and disposal facilities handling wastes from these three industries. The SBA's definition of small entities in SIC 28 (Chemicals and Allied Products) ranges from 500 to 1,000 employees as an upper bound for an entity to be considered small. Similarly, the upper bound for employees in SIC 29 (Petroleum Refining and Related Industries) is 1,500 employees. There are few small entities in these two industries. Therefore, it is very unlikely that the regulated facilities are owned by small entities. There is a cutoff for applicability of control requirements for sources generating small quantities of benzene waste measured as the total annual quantity of benzene in the waste. Facilities subject to the cutoff are required only to keep records and make reports to verify their exemption. Therefore, since a substantial number of small entities are not being regulated, an RFA is not required.

4. Industrial Solvent Use

The industrial solvent use source category includes benzene solvent use in the manufacture of rubber tires and pharmaceuticals. This source category is not being regulated. Therefore, an RFA is not required.

5. Gasoline Marketing System

This group of source categories includes bulk gasoline terminals, bulk plants, and gasoline service stations. These source categories are not being regulated. Therefore, no RFA is required.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that these rules will not have a significant economic impact on a substantial number of small business entities.

C. Docket

The docket is an organized and complete file of all the information submitted to or otherwise considered by EPA in the development of this rulemaking. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the statement of basis and purpose of the proposed and promulgated standards, and EPA responses to significant comments, the contents of the docket, except for interagency review materials, will serve as the record in case of judicial review (section 307(d)(7)(A)).

D. Executive Order 12291

Under Executive Order 12291, EPA is required to judge whether a regulation is a "major rule' and therefore subject to certain requirements of the Order. The EPA has determined that the regulations for benzene transfer operations and benzene waste operations source categories will result in none of the adverse economic effects set forth in Section 1 of the Order as grounds for finding a regulation to be a "major rule."

With regard to the regulations for benzene waste operations and benzene transfer operations, the nationwide annualized control costs per year are estimated to be $87 million and $30 million, respectively. These regulations are not major because: (1) Nationwide annual compliance costs are below the threshold of $100 million; (2) the regulations do not significantly increase prices or production costs; and (3) the regulations do not cause significant, adverse effects on domestic competition, employment, investment productivity, innovation, or competition in foreign markets.

The regulations presented in this notice were submitted to OMB for review as required by Executive Order 12291. Any written comments from OMB to EPA and any written EPA responses to those comments are included in the dockets listed at the beginning of today's notice under "Dockets." These dockets are available for public inspection at the EPA's Air Docket Section, which is listed in the **ADDRESSES** section of this preamble.

E. Miscellaneous

As prescribed by section 112 of the CAA, as amended, establishment of today's final national emission standards was preceded by the Administrator's listing of benzene as a hazardous air pollutant on June 8, 1977 (42 FR 29332).

In accordance with section 117 of the Act, publication of these actions on benzene was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies to the maximum extent practical.

In addition to provisions regarding removal and remedial actions to clean up hazardous substance releases, CERCLA includes requirements for reporting releases of hazardous substances. Under section 103 of CERCLA, the person in charge of a facility or vessel must notify the National Response Center of releases of benzene in a reportable quantity of 10 pounds or more. Under CERCLA section 107, responsible parties may be liable for costs incurred in responding to such releases and for natural resources damages. Release reports also must be

made to State and local officials under section 304 of title III of SARA. Federally permitted releases are exempt from CERCLA liability and from the emergency release reporting requirements under CERCLA and SARA. The CERCLA section 101(10) definition of federally permitted release includes "any emission into the air subject to a permit or control regulation under * * * section 112 * * * of the Clean Air Act * * *" Thus, releases of benzene from facilities subject to a NESHAP may be exempt from reporting and liability under the federally permitted release provisions of CERCLA. Releases of hazardous substances not specifically controlled under one of the environmental regulations listed under CERCLA section 101(10) are not federally permitted and, therefore, are subject to the release reporting and liability provisions under CERCLA and SARA title III. CERCLA section 103(f)(2), however, does provide some reporting relief for facilities that release CERCLA hazardous substances in a "continuous" and "stable" manner in amounts that equal or exceed a reportable quantity. The EPA published a proposed rule on April 19, 1988, on continuous release reporting (53 FR 12868); a final rule is scheduled for promulgation in April 1990. To receive available guidance materials on the continuous release reporting requirements, call the RCRA/Superfund Hotline at 1-800/424-9346; in Washington, DC at 1-202/382-3000.

List of Subjects in 40 CFR Part 61

Air pollution control, Arsenic, Asbestos, Benzene, Beryllium, Coke oven emissions, Hazardous substances, Incorporations by reference, Intergovernmental relations, Mercury, Radionuclides, Reporting and recordkeeping requirements, Vinyl chloride, Volatile hazardous air pollutants.

Dated: February 27, 1990.

William K. Reilly,

Administrator.

For the reasons set out in the preamble, 40 CFR part 61 is amended by adding paragraph (c) to § 61.18 and by adding subpart BB and subpart FF as follows:

PART 61—[AMENDED]

1. The authority for part 61 continues to read as follows:

Authority: Secs. 101, 112, 114, 116, 301 of the Clean Air Act, as amended (42 U.S.C. 7401, 7412, 7414, 7416, 7601).

2. Section 61.8 is amended by adding paragraph (c) to read as follows:

§ 61.18 Incorporations by reference.

* * * * *

(c) The following material is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402-9325, telephone (202) 783-3238.

(1) Test Methods for Evaluating Solid Waste, Physical/Chemical Methods; EPA Publication SW-846, Third Edition, November 1986, as amended by Revision I, December 1987, Order Number 955-001-00000-1:

(i) Method 8020, Aromatic Volatile Organics, IBR approved March 7, 1990, for § 61.355(c)(2)(iv)(A).

(ii) Method 8021, Volatile Organic Compounds in Water by Purge and Trap Capillary Column Gas Chromatography with Photoionization and Electrolytic Conductivity Detectors in Series, IBR approved March 7, 1990, for § 61.355(c)(2)(iv)(B).

(iii) Method 8240, Gas Chromatography/Mass Spectrometry for Volatile Organics, IBR approved March 7, 1990, for § 61.355(c)(2)(iv)(C).

(iv) Method 8260, Gas Chromatography/Mass Spectrometry for Volatile Organics: Capillary Column Technique, IBR approved March 7, 1990, for § 61.355(c)(2)(iv)(D).

3. Subpart BB is added to read as follows:

Subpart BB—National Emission Standard for Benzene Emissions from Benzene Transfer Operations

Sec.
61.300 Applicability.
61.301 Definitions.
61.302 Standards.
61.303 Monitoring requirements.
61.304 Test methods and procedures.
61.305 Reporting and recordkeeping.
61.306 Delegation of authority.

Subpart BB—National Emission Standard for Benzene Emissions from Benzene Transfer Operations

§ 61.300 Applicability.

(a) The affected facility to which this subpart applies is the total of all loading racks at which benzene is loaded into tank trucks, railcars, or marine vessels at each benzene production facility and each bulk terminal. However, specifically exempted from this regulation are loading racks at which only the following are loaded: benzene-laden waste (covered under subpart FF of this part), gasoline, or benzene-laden liquid from coke by-product recovery plants.

(b) Any affected facility under paragraph (a) of this section which loads only liquid containing less than 70 weight-percent benzene is exempt from the requirements of this subpart, except for the recordkeeping and reporting requirements in § 61.305(i).

(c) Any affected facility under paragraph (a) of this section shall comply with the standards in § 61.302 at each loading rack that is handling a liquid containing 70 weight-percent or more benzene.

(d) Any affected facility under paragraph (a) of this section whose annual benzene loading is less than 1.3 million liters of 70 weight-percent or more benzene is exempt from the requirements of this subpart, except for the recordkeeping and reporting requirements in § 61.305(i)

(e) The owner or operator of an affected facility, as defined in § 61.300(a) that loads a marine vessel shall be in compliance with the provisions of this subpart on and after February 28, 1991. If an affected facility that loads a marine vessel also loads a tank truck or railcar, the marine vessel loading racks shall be in compliance with the provisions of this subpart on and after February 28, 1991, while the tank truck loading racks and the railcar loading racks shall be in compliance as required by § 61.12.

§ 61.301 Definitions.

As used in this subpart, all terms not defined herein shall have the meaning given them in the Act, or in subpart A or subpart V of part 61.

Bulk terminal means any facility which receives liquid product containing benzene by pipelines, marine vessels, tank trucks, or railcars, and loads the product for further distribution into tank trucks, railcars, or marine vessels.

Car-sealed means having a seal that is placed on the device used to change the position of a valve (e.g., from open to closed) such that the position of the valve cannot be changed without breaking the seal and requiring the replacement of the old seal, once broken, with a new seal.

Control device means all equipment used for recovering or oxidizing benzene vapors displaced from the affected facility.

Incinerator means any enclosed combustion device that is used for destroying organic compounds and that does not extract energy in the form of steam or process heat. These devices do not rely on the heating value of the waste gas to sustain efficient combustion. Auxiliary fuel is burned in the device and the heat from the fuel flame heats the waste gas to combustion temperature. Temperature is controlled by controlling combustion air or fuel.

Leak means any instrument reading of 10,000 ppmv or greater using method 21 of 40 CFR part 60, appendix A.

Loading cycle means the time period from the beginning of filling a tank truck, railcar, or marine vessel until flow to the control device ceases, as measured by the flow indicator.

Loading rack means the loading arms, pumps, meters, shutoff valves, relief valves, and other piping and valves necessary to fill tank trucks, railcars, or marine vessels.

Marine vessel means any tank ship or tank barge which transports liquid product such as benzene.

Nonvapor tight means any tank truck, railcar, or marine vessel that does not pass the required vapor-tightness test.

Process heater means a device that transfers heat liberated by burning fuel to fluids contained in tubes, except water that is heated to produce steam.

Steam generating unit means any enclosed combustion device that uses fuel energy in the form of steam.

Vapor collection system means any equipment located at the affected facility used for containing benzene vapors displaced during the loading of tank trucks, railcars, or marine vessels. This does not include the vapor collection system that is part of any tank truck, railcar, or marine vessel vapor collection manifold system.

Vapor-tight marine vessel means a marine vessel with a benzene product tank that has been demonstrated within the preceding 12 months to have no leaks. This demonstration shall be made using method 21 of part 60, appendix A, during the last 20 percent of loading and during a period when the vessel is being loaded at its maximum loading rate. A reading of greater than 10,000 ppm as methane shall constitute a leak. As an alternative, a marine vessel owner or operator may use the vapor-tightness test described in § 61.304(f) to demonstrate vapor tightness. A marine vessel operated at negative pressure is assumed to be vapor-tight for the purpose of this standard.

Vapor-tight tank truck or *vapor-tight railcar* means a tank truck or railcar for which it has been demonstrated within the preceding 12 months that its product tank will sustain a pressure change of not more than 750 pascals within 5 minutes after it is pressurized to a minimum of 4,500 pascals. This capability is to be demonstrated using the pressure test procedure specified in method 27 of part 60, appendix A, and a pressure measurement device which has a precision of ±2.5 mm water and which is capable of measuring above the pressure at which the tank truck or railcar is to be tested for vapor tightness.

§ 61.302 Standards.

(a) The owner or operator of an affected facility shall equip each loading rack with a vapor collection system that is:

(1) Designed to collect all benzene vapors displaced from tank trucks, railcars, or marine vessels during loading, and

(2) Designed to prevent any benzene vapors collected at one loading rack from passing through another loading rack to the atmosphere.

(b) The owner or operator of an affected facility shall install a control device and reduce benzene emissions routed to the atmosphere through the control device by 98 weight percent. If a boiler or process heater is used to comply with the percent reduction requirement, then the vent stream shall be introduced into the flame zone of such a device.

(c) The owner or operator of an affected facility shall operate any flare used to comply with paragraph (b) of this section in accordance with the requirements of § 60.18 (b) through (f).

(d) The owner or operator of an affected facility shall limit loading of benzene into vapor-tight tank trucks and vapor-tight railcars using the following procedures:

(1) The owner or operator shall obtain the vapor-tightness documentation described in § 61.305(h) for each tank truck or railcar loaded at the affected facility. The test date in the documentation must be within the preceding 12 months. The vapor-tightness test to be used for tank trucks and railcars is method 27 of part 60, appendix A.

(2) The owner or operator shall cross-check the identification number for each tank truck or railcar to be loaded with the file of vapor-tightness documentation before the corresponding tank truck or railcar is loaded. If no documentation is on file, the owner or operator shall obtain a copy of the information from the tank truck or railcar operator before the tank truck or railcar is loaded.

(3) Alternate procedures to those described in paragraphs (d)(1) and (d)(2) of this section may be used upon application to, and approval by, the Administrator.

(e) The owner or operator of an affected facility shall limit the loading of marine vessels to those vessels that are vapor tight as determined by either paragraph (e)(1), (e)(2), (e)(3), or (e)(4) of this section.

(1) The owner or operator of an affected facility shall ensure that each marine vessel is loaded with the benzene product tank below atmospheric pressure (i.e., at negative pressure). If the pressure is measured at the interface between the shoreside vapor collection pipe and the marine vessel vapor line, the pressure measured according to the procedures in § 61.303(f) must be below atmospheric pressure.

(2) The owner or operator of an affected facility shall use the following procedure to obtain the vapor-tightness documentation described in § 61.305(h). The vapor-tightness test for marine vessels is method 21 of part 60, appendix A, and shall be applied to any potential sources of vapor leaks. A reading of 10,000 ppmv or greater as methane shall constitute a leak.

(i) The owner or operator of an affected facility shall obtain the leak test documentation described in § 61.305(h) for each marine vessel prior to loading, if available. The date of the test listed in the documentation must be within the 12 preceding months.

(ii) If there is no documentation of a successful leak test conducted on the marine vessel in the preceding 12 months, the owner or operator of an affected facility shall require that a leak test of the marine vessel be conducted during the final 20 percent of loading of the marine vessel or shall not load the vessel. The test shall be conducted when the marine vessel is being loaded at the maximum allowable loading rate.

(A) If no leak is detected, the owner or operator of an affected facility shall require that the documentation described in § 61.305(h) is completed prior to departure of the vessel. The owner or operator of the affected facility shall retain a copy of the vapor-tightness documentation on file.

(B) If any leak is detected, the owner or operator of an affected facility shall require that the vapor-tightness failure be documented for the marine vessel owner or operator prior to departure of the vessel. The owner or operator of the affected facility shall retain a copy of the vapor-tightness documentation on file. Delay of repair of equipment for which leaks have been detected will be allowed if the repair is technically infeasible without dry-docking the vessel. This equipment will be excluded from future method 21 tests until repairs are effected. Repair of this equipment shall occur the next time the vessel is dry-docked.

(iii) If the marine vessel has failed its most recent vapor-tightness test as described in § 61.302(e)(2)(ii), the owner

or operator of the affected facility shall require that the owner or operator of the nonvapor-tight marine vessel provide documentation that the leaks detected during the previous vapor-tightness test have been repaired, or proof that repair is technically infeasible without dry-docking the vessel. Once the repair documentation has been provided, the owner or operator may load the marine vessel. The owner or operator shall require that the vapor-tightness test described in § 61.302(e)(2)(ii) be conducted during loading, and shall retain a copy of the vapor-tightness documentation on file.

(3) The owner or operator of an affected facility shall obtain a copy of the marine vessel's vapor-tightness documentation described in § 61.305(h) for a test conducted within the preceding 12 months in accordance with § 61.304(f).

(4) Alternate procedures to those described in paragraphs (e)(1), (e)(2) and (e)(3) of this section may be used upon application to, and approval by, the Administrator.

(f) The owner or operator of an affected facility shall limit loading of benzene to tank trucks, railcars, and marine vessels equipped with vapor collection equipment that is compatible with the affected facility's vapor collection system.

(g) The owner or operator of an affected facility shall limit loading of tank trucks, railcars, and marine vessels to tank trucks, railcars, and marine vessels whose collection systems are connected to the affected facility's vapor collection systems.

(h) The owner or operator of an affected facility shall ensure that the vapor collection and benzene loading equipment of tank trucks and railcars shall be designed and operated to prevent gauge pressure in the tank truck or railcar tank from exceeding, during loading, the initial pressure the tank was pressured up to and shown to be vapor tight at during the most recent vapor-tightness test using method 27 of part 60, appendix A. This vapor-tightness test pressure is not to be exceeded when measured by the procedures specified in § 61.304(c).

(i) The owner or operator of an affected facility shall ensure that no pressure-vacuum vent in the affected facility's vapor collection system for tank trucks and railcars shall begin to open at a system pressure less than the maximum pressure at which the tank truck or railcar is operated.

(j) The owner or operator of an affected facility shall ensure that the maximum normal operating pressure of the marine vessel's vapor collection equipment shall not exceed 0.8 times the relief set pressure of the pressure-vacuum vents. This level is not to be exceeded when measured by the procedures specified in § 61.304(d).

(k) The owner or operator of an affected facility shall inspect the vapor collection system and the control device for detectable emissions, and shall repair any leaks detected, in accordance with § 61.242-11 (e) and (f). This inspection of the vapor collection system and control device shall be done during the loading of tank trucks, railcars, or marine vessels.

(l) Vent systems that contain valves that could divert a vent stream from a control device shall have car-sealed opened all valves in the vent system from the emission source to the control device, and car-sealed closed all valves in the vent system that would lead the vent stream to the atmosphere, either directly or indirectly, bypassing the control device.

§ 61.303 Monitoring requirements.

(a) Each owner or operator of an affected facility that uses an incinerator to comply with the percent reduction requirement specified under § 61.302(b) shall install, calibrate, maintain, and operate according to manufacturer's specifications a temperature monitoring device equipped with a continuous recorder and having an accuracy of ±1 percent of the combustion temperature being measured expressed in degrees Celsius or ±0.5° C, whichever is greater.

(1) Where an incinerator other than a catalytic incinerator is used, the owner or operator of the affected facility shall install a temperature monitoring device in the firebox.

(2) Where a catalytic incinerator is used, the owner or operator shall install temperature monitoring devices in the gas stream immediately before and after the catalyst bed.

(b) Each owner or operator of an affected facility that uses a flare to comply with § 61.302(b) shall install, calibrate, maintain, and operate according to manufacturer's specifications a heat sensing device, such as an ultraviolet beam sensor or thermocouple, at the pilot light to indicate the presence of a flame during the entire loading cycle.

(c) Each owner or operator of an affected facility that uses a steam generating unit or process heater to comply with § 61.302(b) shall comply with the following requirements. Where a steam generating unit with a design heat input capacity of less than 44 MW is used to comply with § 61.302(b), the owner or operator of an affected facility shall comply with paragraph (c)(1) of this section. Where a steam generating unit or process heater with a design heat input capacity of 44 MW or greater is used to comply with § 61.302(b), the owner or operator of an affected facility shall comply with paragraph (c)(2) of this section.

(1) Install in the firebox, calibrate, maintain, and operate according to manufacturer's specifications a temperature monitoring device equipped with a continuous recorder and having an accuracy of ±1 percent of the temperature being measured expressed in degrees Celsius or ±0.5° C, whichever is greater, for steam generating units or process heaters of less than 44 MW design heat input capacity.

(2) Monitor and record the periods of operation of the steam generating units or process heater if the design heat input capacity of the steam generating unit or process heater is 44 MW or greater. The records must be readily available for inspection.

(d) Each owner or operator of an affected facility that uses a carbon adsorption system to comply with the percent reduction requirement specified under § 61.302(b) shall install, calibrate, maintain, and operate according to manufacturer's specifications a device that continuously indicates and records the concentration or reading of organic compounds in the outlet gas stream of each carbon adsorber bed.

(e) The owner or operator of an affected facility who wishes to demonstrate compliance with the standards specified under § 61.302(b) using control devices other than an incinerator, steam generating unit, process heater, carbon adsorber, or flare shall provide the Administrator with information describing the operation of the control device and the process parameter(s) that would indicate proper operation and maintenance of the device. The Administrator may request further information and will specify appropriate monitoring procedures or requirements.

(f) Each owner or operator of an affected facility complying with § 61.302(e)(1) shall install, calibrate, maintain, and operate a recording pressure measurement device (magnehelic gauge or equivalent device) and an audible and visible alarm system that is activated when the pressure vacuum specified in § 61.302(e)(1) is not attained. The owner or operator shall place the alarm system so that it can be seen and heard where cargo transfer is controlled and on the open deck.

(g) Owners or operators using a vent system that contains valves that could divert a vent stream from a control

device used to comply with the provisions of this subpart shall do one or a combination of the following:

(1) Install a flow indicator immediately downstream of each valve that if opened would allow a vent stream to bypass the control device and be emitted, either directly or indirectly, to the atmosphere. The flow indicator shall be capable of recording flow at least once every 15 minutes.

(2) Monitor the valves once a month, checking the position of the valves and the condition of the car seal, and identify all times when the car seals have been broken and the valve position has been changed (*i.e.*, from opened to closed for valves in the vent piping to the control device and from closed to open for valves that allow the stream to be vented directly or indirectly to the atmosphere). (Approved by the Office of Management and Budget under control number 2060–0182)

§ 61.304 Test methods and procedures.

(a) The procedures for determining compliance with § 61.30.2(b) for all control devices other than flares is as follows:

(1) All testing equipment shall be prepared and installed as specified in the appropriate test methods.

(2) The time period for a performance test shall be not less than 6 hours, during which at least 300,000 liters of benzene are loaded. If the throughput criterion is not met during the initial 6 hours, the test may be either continued until the throughput criterion is met, or resumed the next day with at least another 6 complete hours of testing.

(3) For intermittent control devices:

(i) The vapor holder level of the intermittent control device shall be recorded at the start of the performance test. The end of the performance test shall coincide with the time when the vapor holder is at its original level.

(ii) At least two startups and shutdowns of the control device shall occur during the performance test. If this does not occur under an automatically controlled operation, the system shall be manually controlled.

(4) An emission testing interval shall consist of each 5-minute period during the performance test. For each interval:

(i) The reading from each measurement instrument shall be recorded.

(ii) Method 1 or 1A of part 60, appendix A, as appropriate, shall be used for selection of the sampling site,

(iii) The volume exhausted shall be determined using method 2, 2A, 2C, or 2D of part 60, appendix A, as appropriate.

(iv) The average benzene concentration upstream and downstream of the control device in the vent shall be determined using method 25A or method 25B of appendix A of this part, using benzene as the calibration gas. The average benzene concentration shall correspond to the volume measurement by taking into account the sampling system response time.

(5) The mass emitted during each testing interval shall be calculated as follows:

$M_i = FKV_{LS}C$

where:

M_i = Mass of benzene emitted during testing interval i, kg.

V_s = Volume of air-vapor mixture exhausted, m^3 at standard conditions.

C = Benzene concentration (as measured) at the exhaust vent, ppmv.

K = Density, (kg/m^3 benzene), standard conditions.

K = 3.25 for benzene.

F = Conversion factor, (m^3 benzene/m^3 air)(1/ppmv).

$F = 10^{-6}$.

s = Standard conditions, 20 °C and 760 mm Hg.

(6) The benzene mass emission rates before and after the control device shall be calculated as follows:

$$E = \frac{\sum_{i=1}^{n} M_i}{T}$$

where:

E = Mass flow rate of benzene emitted, kg/hr.

M_i = Mass of benzene emitted during testing interval i, kg.

T = Total time of all testing intervals, hr.

n = Number of testing intervals.

(7) The percent reduction across the control device shall be calculated as follows:

$$R = \frac{E_b - E_a}{E_b}(100)$$

where:

R = Control efficiency of control device, %.

E_b = Mass flow rate of benzene prior to control device, kg/hr.

E_a = Mass flow rate of benzene after control device, kg/hr.

(b) When a flare is used to comply with § 61.302(b), a performance test according to method 22 of appendix A of this part, shall be performed to determine visible emissions. The observation period shall be at least 2 hours and shall be conducted according to method 22. Performance testing shall be conducted during at least three complete loading cycles with a separate test run for each loading cycle. The observation period for detecting visible emissions shall encompass each loading cycle. Integrated sampling to measure process vent stream flow rate shall be performed continuously during each loading cycle.

(c) For the purpose of determining compliance with § 61.302(h), the following procedures shall be used:

(1) Calibrate and install a pressure measurement device (liquid manometer, magnehelic gauge, or equivalent instrument), which has a precision of ±2.5 mm H_2O in the range that the tank truck or railcar was initially pressured to during the most recent vapor-tightness test.

(2) Connect the pressure measurement device to a pressure tap in the affected facility's vapor collection system, located as close as possible to the connection with the tank truck or railcar.

(3) During the performance test, record the pressure every 5 minutes while a tank truck or railcar is being loaded, and record the highest instantaneous pressure that occurs during each loading cycle. Every loading rack shall be tested at least once during the performance test.

(4) If more than one loading rack is used simultaneously, then the performance test shall be conducted simultaneously to represent the maximum capacity.

(d) For the purpose of determining compliance with § 61.302(j), the following procedures shall be used:

(1) Calibrate and install a pressure measurement device (liquid manometer, magnehelic gauge, or equivalent instrument), capable of measuring up to the relief set pressure of the pressure-vacuum vents.

(2) Connect the pressure measurement device to a pressure tap in the affected facility's vapor collection system, located as close as possible to the connection with the marine vessel.

(3) During the performance test, record the pressure every 5 minutes while a marine vessel is being loaded, and record the highest instantaneous pressure that occurs during each loading cycle.

(e) Immediately prior to a performance test required for determination of compliance with § 61.302(b), all potential sources of vapor leakage in the affected facility's vapor collection system equipment shall be inspected for detectable emissions as required in § 61.302(k). The monitoring shall be conducted only while a vapor-tight tank truck, railcar, or marine vessel is being loaded. All identified leaks in

the terminal's vapor collection system shall be repaired prior to conducting the performance test.

(f) The following test method shall be used to comply with the marine vessel vapor-tightness requirements of § 61.302(e)(3):

(1) Each benzene product tank shall be pressurized with dry air or inert gas to not less than 1.0 psig and not more than the pressure of the lowest relief valve setting.

(2) Once the pressure is obtained, the dry air or inert gas source shall be shut off.

(3) At the end of one-half hour, the pressure in the benzene product tank and piping shall be measured. The change in pressure shall be calculated using the following formula:

$\Delta P = P_i - P_f$

where:

ΔP = Change in pressure, inches of water.

P_i = Pressure in tank when air/gas source is shut off, inches of water.

P_f = Pressure in tank at the end of one-half hour after air/gas source is shut off, inches of water.

(4) The change in pressure, ΔP, shall be compared to the pressure drop calculated using the following formula:

$\Delta PM = 0.861\ P_{ia}\ L/V$

where:

ΔPM = Maximum allowable pressure change, inches of water.

P_{ia} = Pressure in tank when air/gas source is shut off, pounds per square inch, absolute (psia).

L = Maximum permitted loading rate of vessel, barrels per hour.

V = Total volume of product tank, barrels.

(5) If $\Delta P < \Delta PM$, the vessel is vapor tight.

(6) If $\Delta P > \Delta PM$, the vessel is not vapor tight and the source of the leak must be identified and repaired prior to retesting.

§ 61.305 Reporting and recordkeeping.

(a) Each owner or operator of an affected facility subject to the provisions of this subpart shall keep an up-to-date, readily accessible record of the following data measured during each performance test, and also include the following data in the report of the initial performance test required under § 61.13. Where a steam generating unit or process heater with a design heat input capacity of 44 MW or greater is used to comply with § 61.302(b), a report containing performance test data need not be submitted, but a report containing the information in § 61.305(a)(3)(i) is required.

(1) Where an owner or operator subject to the provisions of this subpart is complying with § 61.302(b) through use of an incinerator:

(i) The average firebox temperature of the incinerator (or the average temperature upstream and downstream of the catalyst bed), measured at least every 2 minutes during a loading cycle if the total time period of the loading cycle is less than 3 hours and every 15 minutes if the total time period of the loading cycle is equal to or greater than 3 hours. The measured temperature shall be averaged over the loading cycle.

(ii) The percent reduction of benzene determined as specified in § 61.304(a) achieved by the incinerator.

(iii) The duration of the loading cycle.

(2) Where an owner or operator subject to the provisions of this subpart is complying with § 61.302 (b) and (c) through use of a smokeless flare or other flare design (i.e., steam-assisted, air-assisted or nonassisted), all visible emission readings, heat content determination, flow rate measurements, maximum permitted velocity calculations, and exit velocity determinations made during the performance test, continuous records of the flare pilot flame monitoring measured continuously during the loading cycle, duration of all loading cycles and records of all loading cycles during which the pilot flame is absent for each vent stream.

(3) Where an owner or operator subject to the provisions of this subpart is complying with § 61.302(b) through the use of a steam generating unit or process heater:

(i) A description of the location at which the vent stream is introduced into the steam generating unit or process heater.

(ii) The average combustion temperature of the steam generating unit or process heater with a design heat input capacity of less than 44 MW measured at least every 2 minutes during a loading cycle if the total time period of the loading cycle is less than 3 hours and every 15 minutes if the total time period of the loading cycle is equal to or greater than 3 hours. The measured temperature shall be averaged over the loading cycle.

(iii) The duration of the loading cycle.

(4) Where an owner or operator subject to the provisions of this subpart is complying with § 61.302(b) through the use of a carbon adsorption system, the control efficiency, R, of the carbon adsorption system, and all supporting performance test data and calculations used to determine that value.

(5) Each owner or operator subject to the provisions of this subpart shall submit with the initial performance test an engineering report describing in detail the vent system used to vent each affected vent stream to a control device. This report shall include all valves and vent pipes that could vent the stream to the atmosphere, thereby bypassing the control device, and identify which valves are car-sealed opened and which valves are car-sealed closed.

(b) Each owner or operator subject to the provisions of this subpart shall keep up-to-date, readily accessible continuous records of the equipment operating parameters specified to be monitored under § 61.303 (a), (c), and (d) as well as up-to-date, readily accessible records of periods of operation during which the parameter boundaries established during the most recent performance test are exceeded. The Administrator may at any time require a report of these data. Periods of operation during which the parameter boundaries established during the most recent performance tests are exceeded are defined as follows:

(1) For thermal incinerators, all loading cycles during which the average combustion temperature was more than 28°C below the average loading cycle combustion temperature during the most recent performance test at which compliance with § 61.302(b) was determined.

(2) For catalytic incinerators, all loading cycles during which the average temperature of the vent stream immediately before the catalyst bed is more than 28°C below the average temperature of the process vent stream during loading cycles during the most recent performance test at which compliance with § 61.302(b) was determined.

(3) All loading cycles during which the average combustion temperature was more than 28°C below the average combustion temperature during the most recent performance test at which compliance with § 61.302(b) was determined for steam generating units or process heaters with a design heat input capacity of less than 44 MW.

(4) For steam generating units or process heaters, whenever there is a change in the location at which the vent stream is introduced into the flame zone as required under § 61.302(b).

(5) For carbon adsorbers, all 3-hour periods of operation during which the average VOC concentration or reading of organics in the exhaust gases is more than 20 percent greater than the average exhaust gas concentration or reading measured by the organics monitoring device during the most recent determination of the recovery efficiency of the carbon adsorber that demonstrated that the facility was in compliance.

(c) If a vent system containing valves that could divert the emission stream away from the control device is used,

each owner or operator subject to the provisions of this subpart shall keep for at least 2 years up-to-date, readily accessible continuous records of:

(1) All periods when flow is indicated if flow indicators are installed under § 61.303(g)(1).

(2) All times when maintenance is performed on car-sealed valves, when the car seal is broken, and when the valve position is changed (i.e., from open to closed for valves in the vent piping to the control device and from closed to open for valves that vent the stream directly or indirectly to the atmosphere bypassing the control device) if valves are monitored under § 60.303(g)(2).

(d) Each owner or operator of an affected facility subject to the provisions of this subpart who uses a steam generating unit or process heater with a design heat input capacity of 44 MW or greater to comply with § 61.302(b) shall keep an up-to-date, readily accessible record of all periods of operation of the steam generating unit or process heater. Examples of such records could include records of steam use, fuel use, or monitoring data collected pursuant to other State or Federal regulatory requirements.

(e) Each owner or operator of an affected facility subject to the provisions of this subpart shall keep up-to-date, readily accessible records of the flare pilot flame monitoring specified under § 61.303(b), as well as up-to-date, readily accessible records of any absence of the pilot flame during a loading cycle.

(f) Each owner or operator of an affected facility subject to the requirements of § 61.302 shall submit to the Administrator quarterly reports of the following information. The owner or operator shall submit the initial report within 90 days after the effective date of this subpart or 90 days after startup for a source that has an initial startup date after the effective date.

(1) Periods of operation where there were exceedances of monitored parameters recorded under § 61.305(b).

(2) All periods recorded under § 61.305(c)(1) when the vent stream is diverted from the control device.

(3) All periods recorded under § 61.305(d) when the steam generating unit or process heater was not operating.

(4) All periods recorded under § 61.305(e) in which the pilot flame of the flare was absent.

(5) All times recorded under § 61.305(c)(2) when maintenance is performed on car-sealed valves, when the car seal is broken, and when the valve position is changed.

(g) The owner or operator of an affected facility shall keep the vapor-tightness documentation required under § 61.302 (d) and (e) on file at the affected facility in a permanent form available for inspection.

(h) The owner or operator of an affected facility shall update the documentation file required under § 61.302 (d) and (e) for each tank truck, railcar, or marine vessel at least once per year to reflect current test results as determined by the appropriate method. The owner or operator shall include, as a minimum, the following information in this documentation:

(1) Test title;

(2) Tank truck, railcar, or marine vessel owner and address;

(3) Tank truck, railcar, or marine vessel identification number;

(4) Testing location;

(5) Date of test;

(6) Tester name and signature;

(7) Witnessing inspector: name, signature, and affiliation; and

(8) Test results, including, for railcars and tank trucks, the initial pressure up to which the tank was pressured at the start of the test.

(i) Each owner or operator of an affected facility complying with § 61.300(b) or § 61.300(d) shall record the following information. The first year after promulgation the owner or operator shall submit a report containing the requested information to the Director of the Emission Standards Division, (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711. After the first year, the owner or operator shall continue to record; however, no reporting is required. The information shall be made available if requested. The information shall include, as a minimum:

(1) The affected facility's name and address;

(2) The weight percent of the benzene loaded;

(3) The type of vessel loaded (i.e., tank truck, railcar, or marine vessel); and

(4) The annual amount of benzene loaded into each type of vessel.

(Approved by the Office of Management Budget under control number 2060-0182)

§ 61.306 Delegation of authority.

(a) In delegating implementation and enforcement authority to a State under section 112(d) of the Act, the authorities contained in paragraph (b) of this section shall be retained by the Administrator and not transferred to a State.

(b) Authorities which will not be delegated to States: No restrictions.

4. Subpart FF is added to read as follows:

Subpart FF—National Emission Standard for Benzene Waste Operations

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61.340 Applicability.
61.341 Definitions.
61.342 Standards: General.
61.343 Standards: Tanks.
61.344 Standards: Surface impoundments.
61.345 Standards: Containers.
61.346 Standards: Individual drain systems
61.347 Standards: Oil-water separators.
61.348 Standards: Treatment processes.
61.349 Standards: Closed-vent systems and control devices.
61.350 Standards: Delay of repair.
61.351 Alternative standards for tanks.
61.352 Alternative standards for oil-water separators.
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61.357 Reporting requirements.
61.358 Delegation of authority.

Subpart FF—National Emission Standard for Benzene Waste Operations

§ 61.340 Applicability

(a) The provisions of this subpart apply to owners and operators of chemical manufacturing plants, coke by-product recovery plants, and petroleum refineries.

(b) The provisions of this subpart apply to owners and operators of facilities at which waste management units are used to treat, store, or dispose of waste generated by any facility listed in paragraph (a) of this section.

(c) At each facility identified in paragraph (a) or (b) of this section, the following waste is exempt from the requirements of this subpart:

(1) Waste in the form of gases or vapors that is emitted from process fluids:

(2) Waste that is contained in a segregated stormwater sewer system; and

(3) Waste that is not discharged from the process unit which generates the waste stream and, instead, is returned directly to the process. Examples of such waste are intermediate and product distillation reflux streams.

§ 61.341 Definitions.

Benzene concentration means the fraction by weight of benzene in a waste as determined in accordance with the procedures specified in § 61.355 of this subpart.

Chemical manufacturing plant means any facility engaged in the production of

chemicals by chemical, thermal, physical, or biological processes for use as a product, co-product, by-product, or intermediate including but not limited to industrial organic chemicals, organic pesticide products, pharmaceutical preparations, paint and allied products, fertilizers, and agricultural chemicals. Examples of chemical manufacturing plants include facilities at which process units are operated to produce one or more of the following chemicals: benzenesulfonic acid, benzene, chlorobenzene, cumene, cyclohexane, ethylene, ethylbenzene, hydroquinone, linear alklylbenzene, nitrobenzene, resorcinol, sulfolane, or styrene.

Closed-vent system means a system that is not open to the atmosphere and is composed of piping, ductwork, connections, and, if necessary, flow inducing devices that transport gas or vapor from an emission source to a control device.

Coke by-product recovery plant means any facility designed and operated for the separation and recovery of coal tar derivatives (by-products) evolved from coal during the coking process of a coke oven battery.

Container means any portable waste management unit in which a material is stored, transported, treated, or otherwise handled. Examples of containers are drums, barrels, tank trucks, barges, dumpsters, tank cars, dump trucks, and ships.

Control device means an enclosed combustion device, vapor recovery system, or flare.

Cover means a device or system which is placed on or over a waste placed in a waste management unit so that the entire waste surface area is enclosed and sealed to minimize air emissions. A cover may have openings necessary for operation, inspection, and maintenance of the waste management unit such as access hatches, sampling ports, and gauge wells provided that each opening is closed and sealed when not in use. Example of covers include a fixed roof installed on a tank, a lid installed on a container, and an air-supported enclosure installed over a waste management unit.

External floating roof means a pontoon-type or double-deck type cover with certain rim sealing mechanisms that rests on the liquid surface in a waste management unit with no fixed roof.

Facility means all process units and product tanks that generate waste within a stationary source, and all waste management units that are used for waste treatment, storage, or disposal within a stationary source.

Fixed roof means a cover that is mounted on a waste management unit in a stationary manner and that does not move with fluctuations in liquid level.

Floating roof means a cover with certain rim sealing mechanisms consisting of a double deck, pontoon single deck, internal floating cover or covered floating roof, which rests upon and is supported by the liquid being contained, and is equipped with a closure seal or seals to close the space between the roof edge and unit wall.

Individual drain system means the system used to convey waste from a process unit, product storage tank, or waste management unit to a waste management unit. The term includes all process drains and common junction boxes, together their associated sewer lines and other junction boxes, down to the receiving waste management unit.

Internal floating roof means a cover that rests or floats on the liquid surface inside a waste management unit that has a fixed roof.

Liquid-mounted seal means a foam or liquid-filled primary seal mounted in contact with the liquid between the waste management unit wall and the floating roof continuously around the circumference.

Loading means the introduction of waste into a waste management unit but not necessarily to complete capacity (also referred to as filling).

No detectable emissions means less than 500 parts per million by volume (ppmv) above background levels, as measured by a detection instrument reading in accordance with the procedures specified in § 61.355(h) of this subpart.

Oil-water separator means a waste management unit, generally a tank or surface impoundment, used to separate oil from water. An oil-water separator consists of not only the separation unit but also the forebay and other separator basins, skimmers, weirs, grit chambers, sludge hoppers, and bar screens that are located directly after the individual drain system and prior to additional treatment units such as an air flotation unit, clarifier, or biological treatment unit. Examples of an oil-water separator incude an API separator, parallel-plate interceptor, and corrugated-plate interceptor with the associated ancillary equipment.

Petroleum refinery means any facility engaged in producing gasoline, kerosene, distillate fuel oils, residual fuel oils, lubricants, or other products through the distillation of petroleum, or through the redistillation, cracking, or reforming of unfinished petroleum derivatives.

Petroleum means the crude oil removed from the earth and the oils derived from tar sands, shale, and coal.

Point of waste generation means the location where samples of a waste stream are collected for the purpose of determining the waste flow rate, water content, or benzene concentration in accordance with procedures specified in § 61.355 of this subpart. For a chemical manufacturing plant or petroleum refinery, the point of waste generation is a location after the waste stream exits the process unit component, product tank, or waste management unit generating the waste, and before the waste is exposed to the atmosphere or mixed with other wastes. For a coke-by-product recovery plant subject to and complying with the control requirements of §§ 61.132, 61.133, or 61.134 of this part, the point of waste generation is a location after the waste stream exits the process unit component or waste management unit controlled by that subpart, and before the waste is exposed to the atmosphere. For other facilities subject to this subpart, the point of waste generation is a location after the waste enters the facility, and before the waste is exposed to the atmosphere or placed in a facility waste management unit.

Process unit means equipment assembled and connected by pipes or ducts to produce intermediate or final products. A process unit can be operated independently if supplied with sufficient fuel or raw materials and sufficient product storage facilities.

Process wastewater means water which come in contact with benzene during manufacturing or processing operations conducted within a process unit. Process wastewater is not organic wastes, process fluids, product tank drawdown, cooling tower blowdown, steam trap condensate, or landfill leachate.

Process wastewater stream means a waste stream that contains only process wastewater.

Product tank means a stationary unit that is designed to contain an accumulation of materials that are fed to or produced by a process unit, and is constructed primarily of non-earthen materials (e.g., wood, concrete, steel, plastic) which provide structural support.

Product tank drawdown means any material or mixture of materials discharged from a product tank for the purpose of removing water or other contaminants from the product tank.

Segregated stormwater sewer system means a drain and collection system designed and operated for the sole

purpose of collecting rainfall runoff at a facility, and which is segregated from all other individual drain systems.

Sewer line means a lateral, trunk line, branch line, or other enclosed conduit used to convey waste to a downstream waste management unit.

Slop oil means the floating oil and solids that accumulate on the surface of an oil-water separator.

Surface impoundment means a waste management unit which is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials), which is designed to hold an accumulation of liquid wastes or waste containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

Tank means a stationary waste management unit that is designed to contain an accumulation of waste and is constructed primarily of nonearthen materials (e.g., wood, concrete, steel, plastic) which provide structural support.

Treatment process means a stream stripping unit, thin-film evaporation unit, waste incinerator, or any other process used to comply with § 61.348 of this subpart.

Vapor-mounted seal means a foam-filled primary seal mounted continuously around the perimeter of a waste management unit so there is an annular vapor space underneath the seal. The annular vapor space is bounded by the bottom of the primary seal, the unit wall, the liquid surface, and the floating roof.

Waste means any material resulting from industrial, commercial, mining or agricultural operations, or from community activities that is discarded or is being accumulated, stored, or physically, chemically, thermally, or biologically treated prior to being discarded, recycled, or discharged.

Waste management unit means a piece of equipment, structure, or transport mechanism used in handling, storage, treatment, or disposal of waste. Examples of a waste management unit include a tank, surface impoundment, container, oil-water separator, individual drain system, steam stripping unit, thin-film evaporation unit, waste incinerator, and landfill.

Waste stream means the waste generated by a particular process unit, product tank, or waste management unit. The characteristics of the waste stream (e.g., flow rate, benzene concentration, water content) are determined at the point of waste generation. Examples of a waste stream include process wastewater, product tank drawdown, sludge and slop oil removed from waste management units, and landfill leachate.

Wastewater treatment system means any component, piece of equipment, or installation that receives, manages, or treats process wastewater, product tank drawdown, or landfill leachate prior to direct or indirect discharge in accordance with the National Pollutant Discharge Elimination System permit regulations under 40 CFR part 122. These systems typically include individual drain systems, oil-water separators, air flotation units, equalization tanks, and biological treatment units.

Water seal controls means a seal pot, p-leg trap, or other type of trap filled with water that has a design capability to create a water barrier between the sewer line and the atmosphere.

§ 61.342 Standards: General.

(a) An owner or operator of a facility at which the total annual benzene quantity from facility waste is less than 10 megagrams per year (Mg/yr) shall be exempt from the requirements of paragraphs (b) and (c) of this section. The total annual benzene quantity from facility waste is the sum of the annual benzene quantity for each waste streams at the facility that has a flow-weighted annual average water content greater than 10 percent. The total annual benzene quantity from facility waste shall be determined in accordance with the procedures specified in § 61.355(a) of this subpart.

(b) Each owner or operator of a facility at which the total annual benzene quantity from facility waste is equal to or grater than 10 Mg/yr as determined in paragraph (a) of this section shall be in compliance with the requirements of paragraphs (c) through (g) of this section no later than March 7, 1990 or by the initial startup for a new source with an initial startup after this date.

(c) Each owner or operator of a facility at which the total annual benzene quantity from facility waste is equal to or greater than 10 Mg/yr as determined in paragraph (a) of this section shall manage and treat the facility waste as follows:

(1) For each waste stream, the owner or operator shall:

(i) Remove or destroy the benzene contained in the waste using a treatment process or wastewater treatment system that complies with the standards specified in § 61.348 of this subpart.

(ii) Comply with the standards specified in §§ 61.343 through 61.347 of this subpart for each waste management unit that receives or manages the waste stream prior to and during treatment of the waste stream in accordance with paragraph (c)(1)(i) of this section.

(iii) Each waste management unit used to manage or treat waste streams that will be recycled to a process shall comply with the standards specified in §§ 61.343 through 61.347 of this subpart. Once the waste stream is recycled to a process, the material is no longer subject to paragraph (c) of this section.

(2) A waste stream is exempt from paragraph (c)(1) of this section provided that the owner or operator demonstrates initially and, thereafter, at least once per year that the flow-weighted annual average benzene concentration for the waste stream is less than 10 ppmw as determined by the procedures specified in § 61.355(c) of this subpart.

(3) A process wastewater stream is exempt from paragraph (c)(1) of this section provided that the owner or operator demonstrates initially and, thereafter, at least once per year that one of the following conditions is met:

(i) The process wastewater stream flow rate is less than 0.02 liters per mintue; or

(ii) The annual waste quantity of the process wastewater stream is less than 10 Mg/yr.

(d) As an alternative to the requirements specified in paragraph (c) of this section, an owner or operator of a facility at which the total annual benzene quantity from facility waste is equal to or greater than 10 Mg/yr as determined in paragraph (a) of this section may elect to manage and treat the facility waste as follows:

(1) The owner or operator shall manage and treat facility waste other than process wastewater in accordance with the requirements of paragraph (c)(1) of this section.

(2) The owner or operator shall manage and treat process wastewater in accordance with the following requirements:

(1) Process wastewater shall be treated to achieve a total annual benzene quantity from facility process wastewater less than 1 Mg/yr. Total annual benzene from facility process wastewater shall be determined by adding together the annual benzene quantity at the point of waste generation for each untreated process wastewater stream plus the annual benzene quantity exiting the treatment process for each process wastewater stream treated in accordance with the requirements of paragraph (c)(1)(i) of this section.

(ii) Each treated process wastewater stream identified in paragraph (d)(2)(i)

of this section shall be managed and treated in accordance with paragraph (c)(1) of this section.

(iii) Each untreated process wastewater stream identified in paragraph (d)(2)(i) of this section is exempt from the requirements of paragraph (c)(1) of this section.

(e) Rather than treating the waste onsite, an owner or operator may elect to comply with paragraph (c)(1)(i) of this section by transferring the waste offsite to another facility where the waste is treated in accordance with the requirements of paragraph (c)(1)(i) of this section. The owner or operator transferring the waste shall:

(1) Comply with the standards specified in §§ 61.343 through 61.347 of this subpart for each waste management unit that receives or manages the waste prior to shipment of the waste offsite.

(2) Include with each offsite waste shipment a notice stating that the waste contains benzene which is required to be managed and treated in accordance with the provisions of this subpart.

(f) Compliance with this subpart will be determined by review of facility records and results from tests and inspections using methods and procedures specified in § 61.355 of this subpart.

(g) Permission to use an alternative means of compliance to meet the requirements of §§ 61.342 through 61.352 of this subpart may be granted by the Administrator as provided in § 61.353 of this subpart. § 61.343 Standards: Tanks.

(a) Except as provided in § 61.351 of this subpart, the owner or operator shall meet the following standards for each tank in which the waste stream is placed in accordance with § 61.342(c)(1)(ii) of this subpart. The standards in this section apply to the treatment of the waste stream in a tank, including dewatering.

(1) The owner or operator shall install, operate, and maintain a fixed-roof and closed-vent system that routes all organic vapors vented from the tank to a control device.

(i) The fixed-roof shall meet the following requirements:

(A) The cover and all openings (e.g., access hatches, sampling ports, and gauge wells) shall be designed to operate with no detectable emissions as indicated by an instrument reading of less than 500 ppmv above background, as determined initially and thereafter at least once per year by the methods specified in § 61.355(h) of this subpart.

(B) Each opening shall be maintained in a closed, sealed position (e.g., covered by a lid that is gasketed and latched) at all times that waste is in the tank except when it is necessary to use the opening for waste sampling or removal, or for equipment inspection, maintenance, or repair.

(ii) The closed-vent system and control device shall be designed and operated in accordance with the requirements of § 61.349 of this subpart.

(b) Each cover seal, access door, and all other openings shall be checked by visual inspection initially and quarterly thereafter to ensure that no cracks or gaps occur between the cover and tank wall and that access doors and other openings are closed and gasketed properly.

(c) Except as provided in § 61.350 of this subpart, when a broken seal or gasket or other problem is identified, or when detectable emissions are measured, first efforts at repair shall be made as soon as practicable, but not later than 45 calendar days after identification.

§ 61.344 Standards: Surface impoundments.

(a) The owner or operator shall meet the following standards for each surface impoundment in which waste is placed in accordance with § 61.342(c)(1)(ii) of this subpart:

(1) The owner or operator shall install, operate, and maintain on each surface impoundment a cover (e.g., air-supported structure or rigid cover) and closed-vent system that routes all organic vapors vented from the surface impoundment to a control device.

(i) The cover shall meet the following requirements:

(A) The cover and all openings (e.g., access hatches, sampling ports, and gauge wells) shall be designed to operate with no detectable emissions as indicated by an instrument reading of less than 500 ppmv above background, initially and thereafter at least once per year by the methods specified in § 61.355(h) of this subpart.

(B) Each opening shall be maintained in a closed, sealed position (e.g., covered by a lid that is gasketed and latched) at all times that waste is in the surface impoundment except when it is necessary to use the opening for waste sampling or removal, or for equipment inspection, maintenance, or repair.

(C) The cover shall be used at all times that waste is placed in the surface impoundment except during removal of treatment residuals in accordance with 40 CFR 268.4 or closure of the surface impoundment in accordance with 40 CFR 264.228. (Note: the treatment residuals generated by these activities may be subject to the requirements of this part.)

(ii) The closed-vent system and control device shall be designed and operated in accordance with § 61.349 of this subpart.

(b) Each cover seal, access hatch, and all other openings shall be checked by visual inspection initially and quarterly thereafter to ensure that no cracks or gaps occur and that access hatches and other openings are closed and gasketed properly.

(c) Except as provided in § 61.350 of this subpart, when a broken seal or gasket or other problem is identified, or when detectable emissions are measured, first efforts at repair shall be made as soon as practicable, but not later than 15 calendar days after identification.

§ 61.345 Standards: Containers.

(a) The owner or operator shall meet the following standards for each container in which waste is placed in accordance with § 61.342(c)(1)(ii) of this subpart:

(1) The owner or operator shall install, operate, and maintain a cover on each container used to handle, transfer, or store waste in accordance with the following requirements:

(i) The cover and all openings (e.g., bungs, hatches, and sampling ports) shall be designed to operate with no detectable emissions as indicated by an instrument reading of less than 500 ppmv above background, initially and thereafter at least once per year by the methods specified in § 61.355(h) of this subpart.

(ii) Each opening shall be maintained in a closed, sealed position (e.g., covered by a lid that is gasketed and latched) at all times that waste is in the container except when it is necessary to use the opening for waste loading, removal inspection, or sampling.

(2) Loading a pumpable waste into a container shall be performed by the owner or operator using a submerged fill pipe. The submerged fill pipe outlet shall extend to within two fill pipe diameters of the bottom of the container while the container is being loaded. During loading of the waste, the cover shall remain in place and all openings shall be maintained in a closed, sealed position except for those openings required for the submerged fill pipe and for venting of the container to prevent physical damage or permanent deformation of the container or cover.

(3) Treatment of a waste in a container, including aeration, thermal or other treatment, shall be performed by the owner or operator in a manner such that whenever it is necessary for the container to be open while the waste is being treated, the container is located under a cover (e.g., enclosure) with a

closed-vent system that routes all organic vapors vented from the container to a control device.

(i) The cover and all openings (e.g., doors, hatches) shall be designed to operate with no detectable emissions as indicated by an instrument reading of less than 500 ppmv above background, initially and thereafter at least once per year by the methods specified in § 61.355(h) of this subpart.

(ii) The closed-vent system and control device shall be designed and operated in accordance with § 61.349 of this subpart.

(b) Each cover and all openings shall be visually inspected initially and quarterly thereafter to ensure that they are closed and gasketed properly.

(c) Except as provided in § 61.350 of this subpart, when a broken seal or gasket or other problem is identified, first efforts at repair shall be made as soon as practicable, but not later than 15 calendar days after identification.

§ 61.346 Standards: Individual drain systems.

(a) Except as provided in paragraph (b) of this section, the owner or operator shall meet the following standards for each individual drain system in which waste is placed in accordance with § 61.342(c)(1)(ii) of this subpart:

(1) The owner or operator shall install, operate, and maintain on each drain system opening a cover and closed-vent system that routes all organic vapors vented from the drain system to a control device.

(i) The cover shall meet the following requirements:

(A) The cover and all openings (e.g., access hatches, sampling ports) shall be designed to operate with no detactable emissions as indicated by an instrument reading of less than 500 ppmv above background, initially and thereafter at least once per year by the methods specified in § 61.355(h) of this subpart.

(B) Each opening shall be maintained in a closed, sealed position (e.g., covered by a lid that is gasketed and latched) at all times that waste is in the drain system except when it is necessary to use the opening for waste sampling or removal, or for equipment inspection, maintenance, or repair.

(ii) The closed-vent system and control device shall be designed and operated in accordance with § 61.349 of this subpart.

(2) Each cover seal, access hatch, and all other openings shall be checked by visual inspection initially and quarterly thereafter to ensure that no cracks or gaps occur and that access hatches and other openings are closed and gasketed properly.

(3) Except as provided in § 61.350 of this subpart, when a broken seal or gasket or other problem is identified, or when detectable emissions are measured, first efforts at repair shall be made as soon as practicable, but not later than 15 calendar days after identification.

(b) As an alternative to complying with paragraph (a) of this section, an owner or operator may elect to comply with the following requirements:

(1) Each drain shall be equipped with water seal controls or a tightly sealed cap or plug.

(2) Each junction box shall be equipped with a cover and may have a vent pipe. The vent pipe shall be at least 90 cm (3 ft) in length and shall not exceed 10.2 cm (4 in) in diameter.

(i) Junction box covers shall have a tight seal around the edge and shall be kept in place at all times, except during inspection and maintenance.

(ii) One of the following methods shall be used to control emissions from the junction box vent pipe to the atmosphere:

(A) Equip the junction box with a system to prevent the flow of organic vapors from the junction box vent pipe to the atmosphere during normal operation. An example of such a system includes use of water seal controls. A flow indicator shall be installed, operated, and maintained on each junction box vent pipe to ensure that organic vapors are not vented from the junction box to the atmosphere during normal operation.

(B) Connect the junction box vent pipe to a closed-vent system and control device in accordance with § 61.349 of this subpart.

(3) Each sewer line shall not be open to the atmosphere and shall be covered or enclosed in a manner so as to have no visual gaps or cracks in joints, seals, or other emission interfaces.

(4) Equipment installed in accordance with paragraphs (b)(1), (b)(2), or (b)(3) of this section shall be inspected as follows:

(i) Each drain using water seal controls shall be checked by visual or physical inspection initially and thereafter quarterly for indications of low water levels or other conditions that would reduce the effectiveness of water seal controls.

(ii) Each drain using a tightly sealed cap or plug shall be visually inspected initially and thereafter quarterly to ensure caps or plugs are in place and properly installed.

(iii) Each junction box shall be visually inspected initially and thereafter quarterly to ensure that the cover is in place and to ensure that the cover has a tight seal around the edge.

(iv) The unburied portion of each sewer line shall be visually inspected initially and thereafter quarterly for indication of cracks, gaps, or other problems that could result in benzene emissions.

(5) Except as provided in § 61.350 of this subpart, when a broken seal, gap, crack or other problem is identified, first efforts at repair shall be made as soon as practicable, but not later than 15 calendar days after identification.

§ 61.347 Standards: Oil-water separators.

(a) Except as provided in § 61.352 of this subpart, the owner or operator shall meet the following standards for each oil-water separator in which waste is placed in accordance with § 61.342(c)(1)(ii) of this subpart:

(1) The owner or operator shall install, operate, and maintain a fixed-roof and closed-vent system that routes all organic vapors vented from the oil-water separator to a control device.

(i) The fixed-roof shall meet the following requirements:

(A) The cover and all openings (e.g., access hatches, sampling ports, and gauge wells) shall be designed to operate with no detectable emissions as indicated by an instrument reading of less than 500 ppmv above background, as determined initially and thereafter at least once per year by the methods specified in § 61.355(h) of this subpart.

(B) Each opening shall be maintained in a closed, sealed position (e.g., covered by a lid that is gasketed and latched) at all times that waste is in the oil-water separator except when it is necessary to use the opening for waste sampling or removal, or for equipment inspection, maintenance, or repair.

(ii) The closed-vent system and control device shall be designed and operated in accordance with the requirements of § 61.349 of this subpart.

(b) Each cover seal, access hatch, and all other openings shall be checked by visual inspection initially and quarterly thereafter to ensure that no cracks or gaps occur between the cover and oil-water separator wall and that access hatches and other openings are closed and gasketed properly.

(c) Except as provided in § 61.350 of this subpart, when a broken seal or gasket or other problem is identified, or when detectable emissions are measured, first efforts at repair shall be made as soon as practicable, but not later than 15 calendar days after identification.

§ 61.348 Standards: Treatment processes.

(a) Except as provided in paragraph (a)(5) of this section, the owner or operator shall treat the waste stream in accordance with the following requirements:

(1) The owner or operator shall design, install, operate, and maintain a treatment process that either:

(i) Removes benzene from the waste stream to a level less than 10 parts per million by weight (ppmw) on a flow-weighted annual average basis,

(ii) Removes benzene from the waste stream by 99 percent or more on a mass basis, or

(iii) Destroys benzene in the waste stream by incinerating the waste in a combustion unit that achieves a destruction efficiency of 99 percent or greater for benzene.

(2) Each treatment process complying with paragraphs (a)(1)(i) or (a)(1)(ii) of this section shall be designed and operated in accordance with the appropriate waste management unit standards specified in §§ 61.343 through 61.347 of this subpart. For example, if a treatment process is a tank, then the owner or operator shall comply with § 61.343 of this subpart.

(3) For the purpose of complying with the requirements specified in paragraph (a)(1)(i) of this section, the intentional or unintentional reduction in the benzene concentration of a waste stream by dilution of the waste stream with other wastes or materials is not allowed.

(4) An owner or operator may aggregate or mix together individual waste streams to create a combined waste stream for the purpose of facilitating treatment of waste to comply with the requirements of paragraph (a)(1) of this section except as provided in paragraph (a)(5) of this section.

(5) If an owner or operator aggregates or mixes any combination of process wastewater, product tank drawdown, or landfill leachate subject to § 61.342(c)(1) of this subpart together with other waste streams to create a combined waste stream for the purpose of facilitating management or treatment of waste in a wastewater treatment system, then the wastewater treatment system shall be operated in accordance with paragraph (b) of this section.

(b) The owner or operator that aggregates or mixes individual waste streams as defined in paragraph (a)(5) of this section for management and treatment in a wastewater treatment system shall comply with the following requirements:

(1) The owner or operator shall design and operate each waste management unit that comprises the wastewater treatment system in accordance with the appropriate standards specified in §§ 61.343 through 61.347 of this subpart.

(2) The provisions of paragraph (b)(1) of this section do not apply to any waste management unit that the owner or operator demonstrates to meet the following conditions initially and, thereafter, at least once per year:

(i) The benzene content of each waste stream entering the waste management unit is less than 10 ppmw on a flow-weighted annual average basis as determined by the procedures specified in § 61.355(c) of this subpart; and

(ii) The total annual benzene quantity contained in all waste streams managed or treated in exempt waste management units comprising the facility wastewater treatment systems is less than 1 Mg/yr. For this determination, total annual benzene quantity shall be calculated as follows:

(A) The total annual benzene quantity shall be calculated as the sum of the individual benzene quantities determined at each location where a waste stream first enters an exempt waste management unit. The benzene quantity discharged from an exempt waste management unit shall not be included in this calculation.

(B) The annual benzene quantity in a waste stream managed or treated in an enhanced biodegradation unit shall not be included in the calculation of the total annual benzene quantity, if the enhanced biodegradation unit is the first exempt unit in which the waste is managed or treated. A unit shall be considered enhanced biodegradation provided that the process generates biomass, some of which is recycled as well as periodically removed from the unit; and typically operates at a food-to-microorganism ratio in the range of 0.05 to 1.0 kg of biological oxygen demand per kg of biomass per day, a mixed liquor suspended solids ratio in the range of 1 to 8 grams per liter, and a residence time in the range of 3 to 36 hours.

(c) The owner and operator shall demonstrate that each treatment process or wastewater treatment system unit, except as provided in paragraph (d) of this section, achieves the appropriate conditions specified in paragraphs (a) or (b) of this section in accordance with the following requirements:

(1) Engineering calculations in accordance with requirements specified in § 61.356(e) of this subpart; or

(2) Performance tests conducted using the test methods and procedures that meet the requirements specified in § 61.355 of this subpart.

(d) A treatment process or waste stream is in compliance with the requirements of this subpart and exempt from the requirements of paragraph (c) of this section provided that the owner or operator documents that the treatment process or waste stream is in compliance with other regulatory requirements as follows:

(1) The treatment process is a hazardous waste incinerator for which the owner or operator has been issued a final permit under 40 CFR part 270 and complies with the requirements of 40 CFR part 264, subpart O;

(2) The treatment process is an industrial furnace or boiler burning hazardous waste for energy recovery for which the owner or operator has been issued a final permit under 40 CFR part 270 and complies with the requirements of 40 CFR part 266, subpart D;

(3) The waste stream is treated by a means or to a level that meets benzene-specific treatment standards in accordance with the Land Disposal Restrictions under 40 CFR part 268, and the treatment process is designed and operated with a closed-vent system and control device meeting the requirements of § 61.349 of this subpart;

(4) The waste stream is treated by a means or to a level that meets benzene-specific effluent limitations or performance standards in accordance with the Effluent Guidelines and Standards under 40 CFR parts 401–464, and the treatment process is designed and operated with a closed-vent system and control device meeting the requirements of § 61.349 of this subpart; or

(5) The waste stream is discharged to an underground injection well for which the owner or operator has been issued a final permit under 40 CFR part 270 and complies with the requirements of 40 CFR part 122.

(e) If the treatment process or wastewater treatment system unit has any openings (e.g., access doors, hatches, etc.), all such openings shall be sealed (e.g., gasketed, latched, etc.) and kept closed at all times when waste is being treated, except during inspection and maintenance.

(f) Each seal, access door, and all other openings shall be checked by visual inspections initially and quarterly thereafter to ensure that no cracks or gaps occur and that openings are closed and gasketed properly.

(g) Except as provided in § 61.350 of this subpart, when a broken seal or gasket or other problem is identified, first efforts at repair shall be made as soon as practicable, but not later than 15 calendar days after identification.

(h) Except for treatment processes complying with paragraph (d) of this section, the Administrator may request

at any time an owner or operator demonstrate that a treatment process or wastewater treatment system unit meets the applicable requirements specified in paragraphs (a) or (b) of this section by conducting a performance test using the test methods and procedures as required in § 61.355 of this subpart.

(i) The owner or operator of a treatment process or wastewater treatment system unit that is used to comply with the provisions of this section shall monitor the unit in accordance with the applicable requirements in § 61.354 of this subpart.

§ 61.349 Standards: Closed-vent systems and control devices.

(a) For each closed-vent system and control device used to comply with standards in accordance with §§ 61.343 through 61.348 of this subpart, the owner or operator shall properly design, install, operate, and maintain the closed-vent system and control device in accordance with the following requirements:

(1) The closed-vent system shall:

(i) Be designed to operate with no detectable emissions as indicated by an instrument reading of less than 500 ppmv above background, as determined initially and thereafter at least once per year by the methods specified in § 61.355(h) of this subpart.

(ii) A flow indicator shall be installed on each vent stream to the control device to ensure that the vapors are being routed to the device. The flow indicator shall be installed in the event stream at the nearest feasible point to the control device inlet but before being combined with other vent streams.

(iii) All gauging and sampling devices shall be gas-tight except when gauging or sampling is taking place.

(2) The control device shall be designed and operated in accordance with the following conditions:

(i) An enclosed combustion device (e.g., a vapor incinerator, boiler, or process heater) shall meet one of the following conditions:

(A) Reduce the organic emissions vented to it by 95 weight percent or greater;

(B) Achieve a total organic compound concentration of 20 ppmv on a dry basis corrected to 3 percent oxygen; or

(C) Provide a minimum residence time of 0.5 seconds at a minimum temperature of 760°C. If a boiler or process heater issued as the control device, then the vent stream shall be introduced into the flame zone of the boiler or process heater.

(ii) A vapor recovery system (e.g., carbon absorption system or condenser) shall recover the organic emissions vented to it with an efficiency of 95 weight percent or greater.

(iii) A flare shall comply with the requirements of 40 CFR 60.18.

(b) Each closed-vent system and control device used to comply with this subpart shall be operated at all times when waste is placed in the waste management unit vented to the control device except when maintenance or repair of the waste management unit cannot be completed without a shutdown of the control device.

(c) An owner and operator shall demonstrate that each control device, except for a flare, achieves the appropriate conditions specified in paragraph (a)(2) of this section by using one of the following methods:

(i) Engineering calculations in accordance with requirements specified in § 61.356(f) of this subpart; or

(ii) Performance tests conducted using the test methods and procedures that meet the requirements specified in § 61.355 of this subpart.

(d) An owner or operator shall demonstrate compliance of each flare in accordance with paragraph (a)(2)(iii) of this section.

(e) The Administrator may request at any time an owner or operator demonstrate that a control device meets the applicable conditions specified in paragraph (a)(2) of this section by conducting a performance test using the test methods and procedures as required in § 61.355 of this subpart.

(f) Each closed-vent system and control device shall be visually inspected initially and quarterly thereafter. The visual inspection shall include inspection of ductwork and piping and connections to covers and control devices for evidence of visable defects such as holes in ductwork or piping and loose connections.

(g) Except as provided in § 61.350 of this subpart, if visible defects are observed during an inspection, or if other problems are identified, or if detectable emissions are measured, a first effort to repair the closed-vent system and control device shall be made as soon as practicable but no later than 5 calendar days after detection. Repair shall be completed no later than 15 calendar days after the emissions are detected or the visible defect is observed.

(h) The owner or operator of a control device that is used to comply with the provisions of this section shall monitor the control device in accordance with § 61.354(c) of this subpart.

§ 61.350 Standards: Delay of repair.

(a) Delay of repair of facilities or units that are subject to the provisions of this subpart will be allowed if the repair is technically impossible without a complete or partial facility or unit shutdown.

(b) Repair of such equipment shall occur before the end of the next facility or unit shutdown.

§ 61.351 Alternative standards for tanks.

(a) As an alternative to the standards for tanks specified in § 61.343 of this subpart, an owner or operator may elect to comply with one of the following:

(1) A fixed roof and internal floating roof meeting the requirements in 40 CFR 60.112b(a)(1);

(2) An external floating roof meeting the requirements of 40 CFR 60.112 (a)(2); or

(3) An alternative means of emission limitation as described in 40 CFR 60.114b.

(b) If an owner or operator elects to comply with the provisions of this section, then the owner or operator is exempt from the provisions of § 61.343 of this subpart applicable to the same facilities.

§ 61.352 Alternative standards for oil-water separators.

(a) As an alternative to the standards for oil-water separators specified in § 61.347 of this subpart, an owner or operator may elect to comply with one of the following:

(1) A floating roof meeting the requirements in 40 CFR 60.693–2(a); or

(2) An alternative means of emission limitation as described in 40 CFR 60.694.

(b) For portions of the oil-water separator where it is infeasible to construct and operate a floating roof, such as over the weir mechanism, a fixed roof vented to a vapor control device that meets the requirements in §§ 61.347 and 61.349 of this subpart shall be installed and operated.

(c) Except as provided in paragraph (b) of this section, if an owner or operator elects to comply with the provisions of this section, then the owner or operator is exempt from the provisions in § 61.347 of this subpart applicable to the same facilities.

§ 61.353 Alternative means of emission limitation.

(a) If, in the Administrator's judgment, an alternative means of emission limitation will achieve a reduction in benzene emissions at least equivalent to the reduction in benzene emissions achieved by the applicable requirements in §§ 61.342 through 61.349 of this subpart, the Administrator will publish in the **Federal Register** a notice permitting the use of the alternative means for purposes of compliance with

that requirement. The notice may condition the permission on requirements related to the operation and maintenance of the alternative means.

(b) Any notice under paragraph (a) of this section shall be published only after public notice and an opportunity for a hearing.

(c) Any person seeking permission under this section shall collect, verify, and submit to the Administrator information showing that the alternative means achieves equivalent emission reductions.

§ 61.354 Monitoring of operations.

(a) Except for a treatment process or waste stream complying with § 61.348(d), the owner or operator shall monitor each treatment process or wastewater treatment system unit to ensure the unit is properly operated and maintained by one of the following monitoring procedures:

(1) Measure the benzene concentration of the waste stream exiting the treatment process complying with paragraph (a)(1)(i) of this section or the wastewater stream exiting the wastewater treatment unit complying with paragraph (b) of this section at least once per month by collecting and analyzing one or more samples using the procedures specified in § 61.355(c)(2) of this subpart.

(2) Install, calibrate, operate, and maintain according to manufacturer's specifications equipment to continuously monitor and record a process parameter (or parameters) for the treatment process or wastewater treatment system unit that indicates proper system operation. The owner or operator shall inspect at least once each operating day the data recorded by the monitoring equipment (e.g., temperature monitor or flow indicator) to ensure that the unit is operating properly.

(b) If an owner or operator complies with the requirements of § 61.348(b) of this subpart, then the owner or operator shall install, calibrate, operate, and maintain according to manufacturer's specifications equipment to continuously monitor and record the flow rate of each wastewater stream exiting the wastewater treatment system.

(c) An owner or operator subject to the requirements in § 61.349 of this subpart shall install, calibrate, maintain, and operate according to the manufacturer's specifications a device to continuously monitor the control device operation as specified in the following paragraphs, unless alternative monitoring procedures or requirements are approved for that facility by the Administrator. The owner or operator shall inspect at least once each operating day the data recorded by the monitoring equipment (e.g., temperature monitor or flow indicator) to ensure that the control device is operating properly.

(1) For a thermal vapor incinerator, a temperature monitoring device equipped with a continuous recorder. The device shall have an accuracy of ±1 percent of the temperature being monitored in °C or ±0.5°C, whichever is greater. The temperature sensor shall be installed at a representative location in the combustion chamber.

(2) For a catalytic vapor incinerator, a temperature monitoring device equipped with a continuous recorder. The device shall be capable of monitoring temperature at two locations, and have an accuracy of ±1 percent of the temperature being monitored in °C or ±0.5°C, whichever is greater. One temperature sensor shall be installed in the vent stream at the nearest feasible point to the catalyst bed inlet and a second temperature sensor shall be installed in the vent stream at the nearest feasible point to the catalyst bed outlet.

(3) For a flare, a monitoring device in accordance with 40 CFR 60.18(f)(2) equipped with a continuous recorder.

(4) For a boiler or process heater having a design heat input capacity less than 44 megawatts (MW), a temperature monitoring device equipped with a continuous recorder. The device shall have an accuracy of ±1 percent of the temperature being monitored in °C or ±0.5°C, whichever is greater. The temperature sensor shall be installed at a representative location in the combustion chamber.

(5) For a boiler or process heater having a design heat input capacity greater than or equal to 44 MW, a monitoring device equipped with a continuous recorder to measure a parameter(s) that indicates good combustion operating practices are being used.

(6) For a condenser, either: (i) A monitoring device equipped with a continuous recorder to measure the concentration level of the organic compounds in the exhaust vent stream from the condenser; or (ii) A temperature monitoring device equipped with a continuous recorder. The device shall be capable of monitoring temperature at two locations, and have an accuracy of ±1 percent of the temperature being monitored in °C or ±0.5°C, whichever is greater. One temperature sensor shall be installed at a location in the exhaust stream from the condenser, and a second temperature sensor shall be installed at a location in the coolant fluid exiting the condenser.

(7) For a carbon adsorption system that regenerates the carbon bed directly in the control device such as a fixed-bed carbon adsorber, either:

(i) A monitoring device equipped with a continuous recorder to measure the concentration level of the organic compounds in the exhaust vent stream from the carbon bed; or (ii) A monitoring device equipped with a continuous recorder to measure a parameter that indicates the carbon bed is regenerated on a regular, predetermined time cycle.

(8) For a vapor recovery system other than a condenser or carbon adsorption system, a monitoring device equipped with a continuous recorder to measure the concentration level of the organic compounds in the exhaust vent stream from the control device.

(d) For a carbon adsorption system that does not regenerate the carbon bed directly on site in the control device (e.g., a carbon canister), the concentration level of the organic compounds in the exhaust vent stream from the carbon adsorption system shall be monitored on a regular schedule, and the existing carbon shall be replaced with fresh carbon immediately when carbon breakthrough is indicated. The device shall be monitored on a daily basis or at intervals no greater than 20 percent of the design carbon replacement interval, whichever is greater. As an alternative to conducting this monitoring, an owner or operator may replace the carbon in the carbon adsorption system with fresh carbon at a regular predetermined time interval that is less than the carbon replacement interval that is determined by the maximum design flow rate and organic concentration in the gas stream vented to the carbon adsorption system.

(e) An alternative operation or process parameter may be monitored if it can be demonstrated that another parameter will ensure that the control device is operated in conformance with these standards and the control device's design specifications.

§ 61.355 Test methods, procedures, and compliance provisions.

(a) An owner or operator shall determine the total annual benzene quantity from facility waste by the following procedure:

(1) For each waste stream subject to this subpart having a flow-weighted annual average water content greater than 10 percent water, the owner or operator shall:

(1) Determine the annual waste quantity for each waste stream at the

point of waste generation using the procedures specified in paragraph (b) of this section.

(ii) Determine the flow-weighted annual average benzene concentration for each waste stream at the point of waste generation using the procedures specified in paragraph (c) of this section.

(iii) Calculate the annual benzene quantity for each waste stream by multiplying the annual waste quantity of the waste stream times the flow-weighted annual average benzene concentration.

(2) Total annual benzene quantity from facility waste is calculated by adding together the annual benzene quantity for each waste stream.

(3) If the total annual benzene quantity from facility waste is equal to or greater than 10 Mg/yr, then the owner or operator shall comply with the requirements of § 61.342(c) or (d) of this subpart.

(4) If the total annual benzene quantity from facility waste is less than 10 Mg/yr but is equal to or greater than 1 Mg/yr, then the owner or operator shall:

(i) Comply with the recordkeeping requirements of § 61.356 and reporting requirements of § 61.357 of this subpart; and

(ii) Repeat the determination of total annual benzene quantity from facility waste at least once per year whenever there is a change in the process generating the waste that could cause the total annual benzene quantity from facility waste to increase to 10 Mg/yr or more.

(5) If the total annual benzene quantity from facility waste is less than 1 Mg/yr, then the owner or operator shall:

(i) Comply with the recordkeeping requirements of § 61.356 and reporting requirements of § 61.357 of this subpart; and

(ii) Repeat the determination of total annual benzene quantity from facility waste whenever there is a change in the process generating the waste that could cause the total annual benzene quantity from facility waste to increase to 1 Mg/yr or more.

(b) An owner or operator shall determine the annual waste quantity for each waste stream by one of the following methods:

(1) Selecting the highest annual quantity of waste managed from historical records representing the most recent 5 years of operation or, if the facility has been in service for less than 5 years but at least 1 year, from historical records representing the total operating life of the facility;

(2) Using the maximum design capacity of the waste management unit; or

(3) Measurements that are representative of maximum waste generation rates.

(c) An owner or operator shall determine the flow-weighted annual average benzene concentration for each waste stream by one of the following methods:

(1) *Knowledge of the waste.* The owner or operator shall provide sufficient information to document the flow-weighted annual average benzene concentration of each waste stream. Examples of information that could constitute knowledge include material balances, records of chemicals purchases, or previous test results provided the results are still relevant to the current waste stream conditions. If test data are used, then the owner or operator shall provide documentation describing the testing protocol and the means by which sampling variability and analytical variability were accounted for in the determination of the flow-weighted annual average benzene concentration for the waste stream.

(2) Measurements of the benzene concentration in the waste stream in accordance with the following procedures:

(i) Collect a minimum of three representative samples from each waste stream. Where feasible, samples shall be taken from an enclosed pipe prior to the waste being exposed to the atmosphere.

(ii) For waste in enclosed pipes, the following procedures shall be used:

(A) Samples shall be collected prior to the waste being exposed to the atmosphere in order to minimize the loss of benzene prior to sampling.

(B) A static mixer shall be installed in the process line or in a by-pass line unless the owner or operator demonstrates that installation of a static mixer in the line is not necessary to accurately determine the benzene concentration of the waste stream.

(C) The sampling tap shall be located within two pipe diameters of the static mixer outlet.

(D) Prior to the initiation of sampling, sample lines and cooling coil shall be purged with at least four volumes of waste.

(E) After purging, the sample flow shall be directed to a sample container and the tip of the sampling tube shall be kept below the surface of the waste during sampling to minimize contact with the atmosphere.

(F) Samples shall be collected at a flow rate such that the cooling coil is able to maintain a waste temperature less than 10°C.

(G) After filling, the sample container shall be capped immediately (within 5 seconds) to leave a minimum headspace in the container.

(H) The sample containers shall immediately be cooled and maintained at a temperature below 10°C for transfer to the laboratory.

(iii) When sampling from an enclosed pipe is not feasible, a minimum of three representative samples shall be collected in a manner to minimize exposure of the sample to the atmosphere and loss of benzene prior to sampling.

(iv) Each waste sample shall be analyzed using one of the following test methods for determining the benzene concentration in a waste stream:

(A) Method 8020, Aromatic Volatile Organics, in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication No. SW-846 (incorporation by reference as specified in § 61.18 of this part);

(B) Method 8021, Volatile Organic Compounds in Water by Purge and Trap Capillary Column Gas Chromatography with Photoionization and Electrolytic Conductivity Detectors in Series in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication No. SW-846 (incorporation by reference as specified in § 61.18 of this part);

(C) Method 8240, Gas Chromatography/Mass Spectrometry for Volatile Organics in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication No. SW-846 (incorporation by reference as specified in § 61.18 of this part);

(D) Method 8260, Gas Chromatography/Mass Spectrometry for Volatile Organics: Capillary Column Technique in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication No. SW-846 (incorporation by reference as specified in § 61.18 of this part);

(E) Method 602, Purgeable Aromatics, as described in 40 CFR part 136, appendix A, Test Procedures for Analysis of Organic Pollutants, for wastewaters for which this is an approved EPA methods; or

(F) Method 624, Purgeables, as described in 40 CFR part 136, appendix A, Test Procedures for Analysis of Organic Pollutants, for wastewaters for which this is an approved EPA method.

(v) The flow-weighted annual average benzene concentration shall be calculated by averaging the results of the sample analyses as follows:

$$\bar{C} = \frac{1}{Q_t} \times \sum_{i=1}^{n} (Q_i)(C_i)$$

Where:

$\bar{C}$ = Flow-weighted annual average benzene concentration for waste stream, ppmw.

Q_t = Total annual waste quantity for waste stream, kg/yr.

n = Number of waste samples (at least 3).

Q_i = Annual waste quantity for waste stream represented by C_i, kg/yr.

C_i = Measured concentration of benzene in waste sample i, ppmw.

(d) An owner or operator using performance tests to demonstrate compliance of a treatment process with § 61.348(a)(1)(i) of this subpart shall measure the flow-weighted annual average benzene concentration of the waste stream existing the treatment process by collecting and analyzing a minimum of three representative samples of the waste stream using the procedure in paragraph (c)(2) of this section. The test shall be conducted under conditions that exist when the treatment process is operating at the highest inlet waste stream flow rate and benzene content expected to occur. Operations during periods of startup, shutdown, and malfunction shall not constitute representative conditions for the purpose of a test. The owner or operator shall record all process information as is necessary to document the operating conditions during the test.

(e) An owner or operator using performance tests to demonstrate compliance of a treatment process with § 61.348(a)(1)(ii) of this subpart shall determine the percent reduction of benzene in the waste stream on a mass basis by the following procedure:

(1) The test shall be conducted under conditions that exist when the treatment process is operating at the highest inlet waste stream flow rate and benzene content expected to occur. Operations during periods of startup, shutdown, and malfunction shall not constitute representative conditions for the purpose of a test. The owner or operator shall record all process information as is necessary to document the operating conditions during the test.

(2) All testing equipment shall be prepared and installed as specified in the appropriate test methods.

(3) The mass flow rate of benzene entering the treatment process (E_b) shall be determined by computing the product of the flow rate of the waste stream entering the treatment process, as determined by the inlet flow meter, and the benzene concentration of the waste stream, as determined using the sampling and analytical procedures specified in paragraph (c) of this section. Three grab samples of the waste shall be taken at equally spaced time intervals over a 1-hour period. Each 1-hour period constitutes a run, and the performance test shall consist of a minimum of 3 runs conducted over a 3-hour period. The mass flow rate of benzene entering the treatment process is calculated as follows:

$$E_b = \frac{K}{n \times 10^6} \left(\sum_{i=1}^{n} V_i C_i \right)$$

Where:

E_b = Mass flow rate of benzene entering the treatment process, kg/hour.

K = Density of the waste stream, kg/m³.

V_i = Average volume flow rate of waste entering the treatment process during each run i, m³/hour.

C_i = Average concentration of benzene in the waste stream entering the treatment process during each run i, ppmw.

n = Number of runs.

(4) The mass flow rate of benzene exiting the treatment process (E_a) shall be determined by computing the product of the flow rate of the waste stream exiting the treatment process, as determined by the inlet flow meter, and the benzene concentration of the waste stream, as determined using the sampling and analytical procedures specified in paragraph (c) of this section. Three grab samples of the waste shall be taken at equally spaced time intervals over a 1-hour period. Each 1-hour period constitutes a run, and the performance test shall consist of a minimum of 3 runs conducted over the same 3-hour period at which the mass flow rate of benzene entering the treatment process is determined. The mass flow rate of benzene exiting the treatment process is calculated as follows:

$$E_a = \frac{K}{n \times 10^6} \left(\sum_{i=1}^{n} V_i C_i \right)$$

Where:

E_a = Mass flow rate of benzene exiting the treatment process, kg/hour.

K = Density of the waste stream, kg/m³.

V_i = Average volume flow rate of waste exiting the treatment process during each run i, m³/hour.

C_i = Average concentration of benzene in the waste stream exiting the treatment process during each run i, ppmw.

n = Number of runs.

(5) The percent reduction across the treatment process shall be calculated as follows:

$$R = \frac{E_b - E_a}{E_b} \times 100$$

Where:

R = Control efficiency of the treatment process, percent.

E_b = Mass flow rate of benzene entering the treatment process, kg/hour.

E_a = Mass flow rate of benzene exiting the treatment process, kg/hour.

(f) An owner or operator using performance tests to demonstrate compliance of a treatment process with § 61.348(a)(1)(iii) of this subpart shall determine the benzene destruction efficiency for the combustion unit by the following procedure:

(1) The test shall be conducted under conditions that exist when the combustion unit is operating at the highest inlet waste stream flow rate and benzene content expected to occur. Operations during periods of startup, shutdown, and malfunction shall not constitute representative conditions for the purpose of a test. The owner or operator shall record all process information necessary to document the operating conditions during the test.

(2) All testing equipment shall be prepared and installed as specified in the appropriate test methods.

(3) The mass flow rate of benzene entering the combustion unit shall be determined by computing the product of the flow rate of the waste stream entering the combustion unit, as determined by the inlet flow meter, and the benzene concentration of the waste stream, as determined using the sampling procedures in paragraph (c) of this section. Three grab samples of the waste shall be taken at equally spaced time intervals over a 1-hour period. Each 1-hour period constitutes a run, and the performance test shall consist of a minimum of 3 runs conducted over a 3-hour period. The mass flow rate of benzene into the combustion unit is calculated as follows:

$$E_a = \frac{K}{n \times 10^6} \left(\sum_{i=1}^{n} V_i C_i \right)$$

Where:

E_b = Mass flow rate of benzene into the combustion unit, kg/hour.

K = Density of the waste stream, kg/m³.

V_i = Average volume flow rate of waste entering the combustion unit during each run i, m³/hour.

C_i = Average concentration of benzene in the waste stream entering the combustion unit during each run i, ppmw.

n = Number of runs.

(4) The mass flow rate of benzene exiting the combustion unit exhaust stack shall be determined as follows:

(i) The time period for the test shall not be less than 3 hours during which at least 3 stack gas samples are collected and be the same time period at which the mass flow rate of benzene entering the treatment process is determined. Each sample shall be collected over a 1-hour period (e.g., in a tedlar bag) to represent a time-integrated composite sample and each 1-hour period shall correspond to the periods when the waste feed is sampled.

(ii) A run shall consist of a 1-hour period during the test. For each run:

(A) The reading from each measurement shall be recorded;

(B) The volume exhausted shall be determined using method 2, 2A, 2C, or 2D from appendix A of 40 CFR part 60, as appropriate.

(C) The average benzene concentration in the exhaust downstream of the combustion unit shall be determined using method 18 from appendix A of 40 CFR part 60.

(iii) The mass of benzene emitted during each run shall be calculated as follows:

$M_i = KVC(10^{-6})$

Where:

M_i = Mass of benzene emitted during run i, kg.
V = Volume of air-vapor mixture exhausted at standard conditions, m^3.
C = Concentration of benzene measured in the exhaust, ppmv.
K = Conversion factor = 3.24 kg/m^3 for benzene.

(iv) The benzene mass emission rate in the exhaust shall be calculated as follows:

$$E_a = \left(\sum_{i=1}^{n} M_i \right) FT$$

Where:

E_a = Mass flow rate of benzene emitted kg/hour.
M_i = Mass of benzene emitted during run i, kg.
T = Total time of all runs, hour.
n = Number of runs.

(5) The benzene destruction efficiency for the combustion unit shall be calculated as follows:

$$R = \frac{E_b - E_a}{E_b} \times 100$$

Where:

R = Benzene destruction efficiency for the combustion unit, percent.
E_b = Mass flow rate of benzene into the combustion unit, kg/hour.
E_a = Mass flow of benzene from the combustion unit, kg/hour.

(g) An owner or operator using performance tests to demonstrate compliance of a wastewater treatment system unit with § 61.348(b)(1) of this subpart shall measure the flow-weighted annual average benzene concentration of the wastewater stream exiting the unit by collecting and analyzing a minimum of three representative samples of the waste stream using the procedures in paragraph (c)(2) of this section. The test shall be conducted under conditions that exist when the wastewater treatment system is operating at the highest inlet wastewater stream flow rate and benzene content expected to occur. Operations during periods of startup, shutdown, and malfunction shall not constitute representative conditions for the purpose of a test. The owner or operator shall record all process information as is necessary to document the operating conditions during the test.

(h) An owner or operator shall test equipment for compliance with no detectable emissions as required in §§ 61.343 through 61.347, and § 61.349 of this subpart in accordance with the following requirements:

(1) Monitoring shall comply with method 21 from appendix A of 40 CFR part 60.

(2) The detection instrument shall meet the performance criteria of method 21.

(3) The instrument shall be calibrated before use on each day of its use by the procedures specified in method 21.

(4) Calibration gases shall be:

(i) Zero air (less than 10 ppm of hydrocarbon in air); and

(ii) A mixture of methane or n-hexane and air at a concentration of approximately, but less than, 10,000 ppm methane or n-hexane.

(5) The background level shall be determined as set forth in method 21.

(6) The instrument probe shall be traversed around all potential leak interfaces as close as possible to the interface as described in method 21.

(7) The arithmetic difference between the maximum concentration indicated by the instrument and the background level is compared to 500 ppm for determining compliance.

(i) An owner or operator using a performance test to demonstrate compliance of a control device with the organic reduction efficiency requirement specified under § 61.349(a)(2) of this subpart shall use the following procedures:

(1) The test shall be conducted under conditions that exist when the waste management unit vented to the control device is operating at the highest load or capacity level expected to occur. Operations during periods of startup, shutdown, and malfunction shall not constitute representative conditions for the purpose of a test. The owner or operator shall record all process information necessary to document the operating conditions during the test.

(2) Sampling sites shall be selected using method 1 or 1A from appendix A of 40 CFR part 60, as appropriate.

(3) The mass flow rate of organics entering and exiting the control device shall be determined as follows:

(i) The time period for the test shall not be less than 3 hours during which at least 3 stack gas samples are collected. Samples of the vent stream entering and exiting the control device shall be collected during the same time period. Each sample shall be collected over a 1-hour period (e.g., in a tedlar bag) to represent a time-integrated composite sample.

(ii) A run shall consist of a 1-hour period during the test. For each run:

(A) The reading from each measurement shall be recorded;

(B) The volume exhausted shall be determined using method 2, 2A, 2C, or 2D from appendix A of 40 CFR part 60, as appropriate;

(C) The organic concentration in the vent stream entering and exiting the control shall be determined using method 18 from appendix A of 40 CFR part 60.

(iii) The mass of organics entering and exiting the control device during each run shall be calculated as follows:

$$M_{aj} = K\ V_{aj} \left(\sum_{i=1}^{n} C_{aj} MW_i \right) (10^{-6})$$

$$M_{bj} = K\ V_{bj} \left(\sum_{i=1}^{n} C_{bi} MW_i \right) (10^{-6})$$

Where:

M_{aj} = Mass of organics in the vent stream entering the control device during run j, kg.
M_{bj} = Mass of organics in vent stream exiting the control device during run j, kg.
V_{aj} = Volume of vent stream entering the control device during run j at standards conditions, m^3.
V_{bj} = Volume of vent stream exiting the control device during run j at standards conditions, m^3.

C_{ai} = Organic concentration of compound i measured in the vent stream entering the control device as determined by Method 18, ppm by volume on a dry basis.
C_{bi} = Organic concentration of compound i measured in the vent stream exiting the control device as determined by method 18, ppm by volume on a dry basis.
MW_i = Molecular weight of organic compound i in the vent stream kg/kg-mol.
n = Number of organic compounds in the vent stream.
K = Conversion factor for molar volume = 0.0416 kg-mol/m³ (at 293°K and 760 mm Hg).
10^{-6} = Conversion from ppm, ppm^{-1}.

(iv) The mass flow rate of organics entering and exiting the control device shall be calculated as follows:

$$E_a = \left(\sum_{j=1}^{n} M_{aj} \right) / T$$

$$E_b = \left(\sum_{j=1} M_{bj} \right) / T$$

Where:
E_a = Mass flow rate of organics entering the control device, kg/hour.
E_b = Mass flow rate of organics exiting the control device, kg/hour.
M_{aj} = Mass of organics in the vent stream entering the control device during run j, kg.
M_{bj} = Mass of organics in vent stream exiting the control device during run j, kg.
T = Total time of all runs, hour.
n = Number of runs.

(4) The organic reduction efficiency for the control device shall be calculated as follows:

$$R = \frac{E_b - E_a}{E_b} \times 100$$

Where:
R = Total organic reduction efficiency for the control device, percent.
E_b = Mass flow rate of organics entering the control device, kg/hr.
E_a = Mass flow rate of organics exiting the control device, kg/hr.

§ 61.356 Recordkeeping requirements.

(a) Each owner or operator of a facility subject to the provisions of this subpart shall comply with the recordkeeping requirements of this section. Each record shall be maintained in a readily accessible location at the facility site for a period not less than two years from the date the information is recorded unless otherwise specified.

(b) Each owner or operator shall maintain records that identify each waste stream at the facility subject to this subpart, and indicate whether or not the waste stream is controlled for benzene emissions in accordance with this subpart. In addition the owner or operator shall maintain the following records:

(1) For each waste stream not controlled for benzene emissions in accordance with this subpart, the records shall include all test results, measurements, calculations, and other documentation used to determine the following information for the waste stream: waste stream identification, water content, whether or not the waste stream is a process wastewater stream, annual waste quantity, range of benzene concentrations, annual average flow-weighted benzene concentration; and annual benzene quantity.

(2) For each process wastewater stream not contolled for benzene emissions in accordance with § 61.342(c)(3) of this subpart, the records shall include all measurements, calculations, and other documentation used to determine that the continuous flow of process wastewater is less than 0.02 liters per minute or the annual waste quantity of process wastewater is less than 10 Mg/yr.

(3) For each facility where process wastewater streams are controlled for benzene emissions in accordance with § 61.342(d) of this subpart, the records shall include for each treated process wastewater stream all measurements, calculations, and other documentation used to determine the annual benzene quantity in the process wastewater stream exiting the treatment process.

(4) For each facility where wastewater streams are controlled for benzene emissions in accordance with § 61.348(b)(1)(i) of this subpart, the records shall include all measurements, calculations, and other documentation used to determine the annual benzene quantity in the wastewater streams exiting wastewater treatment systems at the facility.

(c) An owner or operator transferring waste off-site to another facility for treatment in accordance with § 61.342(e) of this subpart shall maintain documentation for each offsite waste shipment that includes the following information: date waste is shipped offsite, quantity of waste shipped offsite, name and address of the facility receiving the waste, and a copy of the notice sent with the waste shipment.

(d) An owner or operator using control equipment in accordance with § 61.343 through 61.347 of this subpart shall maintain engineering design documentation for all control equipment that is installed on the waste management unit. The documentation shall be retained for the life of the control equipment. If a cover is used, then the documentation shall include the following information: cover type, name of company manufacturing or fabricating the cover, manufacturer model number, cover dimensions, materials used to fabricate cover, mechanism used to install cover on the waste management unit and seal the cover perimeter; type, dimensions, and location of each opening; and mechanism used to close and seal each opening. If a control device is used, then the owner or operator shall maintain the control device records required by paragraph (f) of this section.

(e) An owner or operator using a treatment process or wastewater treatment system unit in accordance with § 61.348 of this subpart shall maintain the following records. The documentation shall be retained for the life of the unit.

(1) A statement signed and dated by the owner or operator certifying that the unit is designed to operate at the documented performance level when the waste stream entering the unit is at the highest waste stream flow rate and benzene content expected to occur.

(2) If engineering calculations are used to determine treatment process or wastewater treatment system unit performance, then the owner or operator shall maintain the complete design analysis for the unit. The design analysis shall include the following information: a list of all information references and sources used in preparing the documentation; design specifications, drawings, schematics, and piping and instrumentation diagrams; and other documentation necessary to demonstrate the unit performance.

(3) If performance tests are used to determine treatment process or wastewater treatment system unit performance, then the owner or operator shall maintain all test information necessary to demonstrate the unit performance.

(i) A description of the unit including the following information: type of treatment process; manufacturer name and model number; and for each waste stream entering and exiting the unit, the waste stream type (e.g., process wastewater, sludge, slurry, etc.), and the design flow rate and benzene content.

(ii) Documentation describing the test protocol and the means by which sampling variability and analytical variability were accounted for in the

determination of the unit performance. The description of the test protocol shall include the following information: sampling locations, sampling method, sampling frequency, and analytical procedures used for sample analysis.

(iii) Records of unit operating conditions during each test run including all key process parameters.

(iv) All test results.

(4) If a control device is used, then the owner or operator shall maintain the control device records required by paragraph (f) of this section.

(f) An owner or operator using a closed-vent system and control device in accordance with § 61.349 of this subpart shall maintain the following records. The documentation shall be retained for the life of the control device.

(1) A statement signed and dated by the owner or operator certifying that the closed-vent system and control device is designed to operate at the documented performance level when the waste management unit vented to the control device is or would be operating at the highest load or capacity expected to occur.

(2) If engineering calculations are used to determine control device performance in accordance with § 61.349(c) of this subpart, then a design analysis for the control device that includes:

(i) A list of all information references and sources used in preparing the documentation,

(ii) Specifications, drawings, schematics, and piping and instrumentation diagrams prepared by the owner or operator, or the control device manufacturer or vendor that describe the control device design based on acceptable engineering texts. The design analysis shall address the following vent stream characteristics and control device operating parameters:

(A) For a thermal vapor incinerator, the design analysis shall consider the vent stream composition, constituent concentrations, and flow rate. The design analysis shall also establish the design minimum and average temperature in the combustion zone and the combustion zone residence time.

(B) For a catalytic vapor incinerator, the design analysis shall consider the vent stream composition, constituent concentrations, and flow rate. The design analysis shall also establish the design minimum and average temperatures across the catalyst bed inlet and outlet.

(C) For a boiler or process heater, the design analysis shall consider the vent stream composition, constituent concentrations, and flow rate. The design analysis shall also establish the design minimum and average flame zone temperatures, combustion zone residence time, and description of method and location where the vent stream is introduced into the flame zone.

(D) For a flare, the design analysis shall consider the vent stream composition, constituent concentrations, and flow rate. The design analysis shall also consider the requirements specified in 40 CFR 60.18.

(E) For a condenser, the design analysis shall consider the vent stream composition, constituent concentrations, flow rate, relative humidity, and temperature. The design analysis shall also establish the design outlet organic compound concentration level, design average temperature of the condenser exhaust vent stream, and the design average temperatures of the coolant fluid at the condenser inlet and outlet.

(F) For a carbon adsorption system that regenerates the carbon bed directly on-site in the control device such as a fixed-bed adsorber, the design analysis shall consider the vent stream composition, constituent concentrations, flow rate, relative humidity, and temperature. The design analysis shall also establish the design exhaust vent stream organic compound concentration level, number and capacity of carbon beds, type and working capacity of activated carbon used for carbon beds, design total steam flow over the period of each complete carbon bed regeneration cycle, duration of the carbon bed steaming and cooling/drying cycles, design carbon bed temperature after regeneration, design carbon bed regeneration time, and design service life of carbon.

(G) For a carbon adsorption system that does not regenerate the carbon bed directly on-site in the control device such as a carbon canister, the design analysis shall consider the vent stream composition, constituent concentrations, flow rate, relative humidity, and temperature. The design analysis shall also establish the design exhaust vent stream organic compound concentration level, capacity of carbon bed, type and working capacity of activated carbon used for carbon bed, and design carbon replacement interval based on the total carbon working capacity of the control device and source operating schedule.

(3) If performance tests are used to determine control device performance in accordance with § 61.349(c) of this subpart:

(i) A description of how it is determined that the test is conducted when the waste management unit or treatment process is operating at the highest load or capacity level. This description shall include the estimated or design flow rate and organic content of each vent stream and definition of the acceptable operating ranges of key process and control parameters during the test program.

(ii) A description of the control device including the type of control device, control device manufacturer's name and model number, control device dimensions, capacity, and construction materials.

(iii) A detailed description of sampling and monitoring procedures, including sampling and monitoring locations in the system, the equipment to be used, sampling and monitoring frequency, and planned analytical procedures for sample analysis.

(iv) All test results.

(g) An owner or operator shall maintain a record for each visual inspection required by §§ 61.343 through 61.347 of this subpart that identifies a problem (such as a broken seal, gap of other problem) which could result in benzene emissions. The record shall include the date of the inspection, waste management unit and control equipment location where the problem is identified, a description of the problem, a description of the corrective action taken, and the date the corrective action was completed.

(h) An owner or operator shall maintain a record for each test of no detectable emissions required by §§ 61.343 through 61.347 and § 61.349 of this subpart. The record shall include the following information: date the test is performed, background level measured during test, and maximum concentration indicated by the instrument reading measured for each potential leak interface. If detectable emissions are measured at a leak interface, then the record shall also include the waste management unit, control equipment, and leak interface location where detectable emissions were measured, a description of the problem, a description of the corrective action taken, and the date the corrective action was completed.

(i) For each treatment process and wastewater treatment system unit operated to comply with § 61.348, the owner or operator shall maintain documentation that includes the following information regarding the unit operation:

(1) Dates of startup and shutdown of the unit.

(2) If measurements of waste stream benzene concentration are performed in accordance with § 61.354(a)(1) of this subpart, the owner or operator shall maintain records that include date each test is performed and all test results.

(3) If a process parameter is continuously monitored in accordance with § 61.354(a)(2) of this subpart, the owner or operator shall maintain records that include a description of the operating parameter (or parameters) to be monitored to ensure that the unit will be operated in conformance with these standards and the unit's design specifications, and an explanation of the criteria used for selection of that parameter (or parameters). This documentation shall be kept for the life of the unit.

(4) Periods when the unit is not operated as designed.

(j) For each control device, the owner or operator shall maintain documentation that includes the following information regarding the control device operation:

Dates of startup and shutdown of the closed-vent system and control device.

(2) A description of the operating parameter (or parameters) to be monitored to ensure that the control device will be operated in conformance with these standards and the control device's design specifications and an explanation of the criteria used for selection of that parameter (or parameters). This documentation shall be kept for the life of the control device.

(3) Periods when the closed-vent system and control device is not operated as designed including periods when a flare pilot does not have a flame.

(4) If a thermal vapor incinerator is used, then the owner or operator shall maintain continuous records of the temperature of the gas stream in the combustion zone of the incinerator and records of all 3-hour periods of operation during which the average temperature of the gas stream in the combustion zone is more than 28 °C below the design combustion zone temperature.

(5) If a catalytic vapor incinerator is used, then the owner or operator shall maintain continuous records of the temperature of the gas stream both upstream and downstream of the catalyst bed of the incinerator, records of all 3-hour periods of operation during which the average temperature measured before the catalyst bed is more than 28 °C below the design gas stream temperature, and records of all 3-hour periods of operation during which the average temperature difference across the catalyst bed is less than 80 percent of the design temperature difference.

(6) If a boiler or process heater is used, then the owner or operator shall maintain records of each occurrence when there is a change in the location at which the vent stream is introduced into the flame zone as required by § 61.349(a)(2)(i)(C) of this subpart. For a boiler or process heater having a design heat input capacity less than 44 MW, the owner or operator shall maintain continuous records of the temperature of the gas stream in the combustion zone of the boiler or process heater and records of all 3-hour periods of operation during which the average temperature of the gas stream in the combustion zone is more than 28 °C below the design combustion zone temperature. For a boiler or process heater having a design heat input capacity greater than or equal to 44 MW, the owner or operator shall maintain continuous records of the parameter(s) monitored in accordance with the requirements of § 61.354(b)(5) of this subpart.

(7) If a flare is used, then the owner or operator shall maintain continuous records of the flare pilot flame monitoring and records of all periods during which the pilot flame is absent.

(8) If a condenser is used, then the owner or operator shall maintain continuous records of the parameters selected shall maintain continuous records of the parameters selected to be monitored in accordance with § 61.354(c)(6) of this subpart. If concentration of organics in the control device outlet gas stream is monitored, then the owner or operator shall record all 3-hour periods of operation during which the concentration of organics in the exhaust stream is more than 20 percent greater than the design value. If the temperature of the condenser exhaust stream and coolant fluid is monitored, then the owner or operator shall record all 3-hour periods of operation during which the temperature of the condenser exhaust vent stream is more than 6 °C above the design average exhaust vent stream temperature, or the temperature of the coolant fluid existing the condenser is more than 6 °C above the design average coolant fluid temperature at the condenser outlet.

(9) If a carbon adsorber is used, then the owner or operator shall maintain continuous records of the concentration of organics in the control device outlet gas stream. If concentration of organics in the control device outlet gas stream is monitored, then the owner or operator shall record all 3-hour periods of operation during which the concentration of organics in the exhaust stream is more than 20 percent greater than the design value. If the carbon bed regeneration interval is monitored, then the owner or operator shall each occurrence when the vent stream continues to flow through the control device beyond the predetermined carbon bed regeneration time.

(10) If a carbon adsorber that is not regenerated directly on site in the control device is used, then the owner or operator shall maintain records of dates and times when the control device is monitored, when breakthrough is measured, and shall record the date and time then the existing carbon in the control device is replaced with fresh carbon.

(11) If an alternative operational or process parameter is monitored for a control device, as allowed in § 61.354(b) of this subpart, then the owner or operator shall maintain records of the continuously monitored parameter, including periods when the device is not operated as designed.

(k) An owner or operator who elects to install and operate the control equipment in § 61.351 of this subpart shall comply with the recordkeeping requirements in 40 CFR 60.115b.

(l) An owner or operator who elects to install and operate the control equipment in § 61.352 of this subpart shall maintain records of the following:

(1) The date, location, and corrective action for each visual inspection required by 40 CFR 60.693–2(a)(5), during which a broken seal, gap, or other problem is identified that could result in benzene emissions.

(2) Results of the seal gap measurements required by 40 CFR 60.693–2(a).

(Approved by the Office of Management and Budget under control number 2060–0183)

§ 61.357 Reporting requirements.

(a) Each owner or operator subject to this subpart shall submit to the Administrator within 90 days after the effective date of this subpart, or by the initial startup for a new source with an initial startup after the effective date, a report that summarizes the regulatory status of each waste stream subject to this subpart and is determined by the procedures specified in § 61.355(c) of this subpart to contain benzene. The report shall include the following information:

(1) Total annual benzene quantity from facility waste determined in accordance with § 61.355(a) of this subpart.

(2) A table identifying each waste stream and whether or not the waste stream will be controlled for benzene emissions in accordance with the requirements of this subpart.

(3) For each waste stream identified as not being controlled for benzene emissions in accordance with the requirements of this subpart the following information shall be added to the table:

(i) Whether or not the water content of the waste stream is greater than 10 percent;

(ii) Whether or not the waste stream is a process wastewater stream, product tank drawdown, or landfill leachate;

(iii) Annual waste quantity for the waste stream;

(iv) Range of benzene concentrations for the waste stream;

(v) Annual average flow-weighted benzene concentration for the waste stream; and

(vi) Annual benzene quantity for the waste stream.

(b) If the total annual benzene quantity from facility waste is less than 1 Mg/yr, then the owner or operator shall submit to the Administrator a report that updates the information listed in paragraphs (a)(1) through (a)(3) of this section whenever there is a change in the process generating the waste stream that could cause the total annual benzene quantity from facility waste to increase to 10 Mg/yr or more.

(c) If the total annual benzene quantity from facility waste is less than 10 Mg/yr but is equal to or greater than 1 Mg/yr, then the owner or operator shall submit to the Administrator a report that updates the information listed in paragraphs (a)(1) through (a)(3) of this section. The report shall be submitted annually and whenever there is a change in the process generating the waste stream that could cause the total annual benzene quantity from facility waste to increase to 10 Mg/yr or more.

(d) If the total annual benzene quantity from facility waste is equal to or greater than 10 Mg/yr, then the owner or operator shall submit to the Administrator the following reports:

(1) Within 2 years after March 7, 1990, or by the date of initial startup for a new source with an initial startup after the effective date, a certification that the equipment necessary to comply with these standards has been installed and that the required initial inspections or tests have been carried out in accordance with this subpart.

(2) Beginning on the date that the equipment necessary to comply with these standards has been certified in accordance with paragraph (d)(1) of this section, the owner or operator shall submit annually to the Administrator a report that updates the information listed in paragraphs (a)(1) through (a)(3) of this section.

(3) If an owner or operator elects to comply with the alternative requirements of § 61.342(d) of this subpart, then he shall include in the report required by paragraph (d)(2) of this section a table presenting the following information for each process wastewater stream:

(i) Whether or not the process wastewater stream is being controlled for benzene emissions in accordance with the requirements of this subpart;

(ii) For each process wastewater stream identified as not being controlled for benzene emissions in accordance with the requirements of this subpart, the table shall report the following information for the process wastewater stream as determined at the point of waste generation: annual waste quantity, range of benzene concentrations, annual average flow-weighted benzene concentration, and annual benzene quantity;

(iii) For each process wastewater stream identified as being controlled for benzene emissions in accordance with the requirements of this subpart, the table shall report the following information for the process wastewater stream as determined at the exit to the treatment process: Annual waste quantity, range of benzene concentrations, annual average flow-weighted benzene concentration, and annual benzene quantity.

(4) If an owner or operator complys with the requirements of § 61.348(b) of this subpart, then he shall include in the report required by paragraph (d)(2) of this section a table presenting the annual benzene quantity in each wastewater stream exiting wastewater treatment systems at the facility.

(5) Beginning 3 months after the date that the equipment necessary to comply with these standards has been certified in accordance with paragraph (d)(1) of this section, the owner or operator shall submit quarterly to the Administrator a certification that all of the required inspections have been carried out in accordance with the requirements of this subpart.

(6) Beginning 3 months after the date that the equipment necessary to comply with these standards has been certified in accordance with paragraph (d)(1) of this section, the owner or operator shall submit a report quarterly to the Administrator that includes:

(i) If a treatment process or wastewater treatment system unit is monitored in accordance with § 61.354(a)(1) of this subpart, then each period of operation during which the concentration of benzene in the monitored waste stream exiting the unit is equal to or greater than 10 ppmw.

(ii) If a treatment process or wastewater treatment system unit is monitored in accordance with § 61.354(a)(2) of this subpart, then each 3-hour period of operation during which the average value of the monitored parameter is outside the range of acceptable values or during which the unit is not operating as designed.

(iii) For a control device monitored in accordance with § 61.354(c) of this subpart, each period of operation monitored during which any of the following conditions occur, as applicable to the control device:

(A) Each 3-hour period of operation during which the average temperature of the gas stream in the combustion zone of a thermal vapor incinerator, as measured by the temperature monitoring device, is more than 28°C below the design combustion zone temperature.

(B) Each 3-hour period of operation during which the average temperature of the gas stream immediately before the catalyst bed of a catalytic vapor incinerator, as measured by the temperature monitoring device, is more than 28°C below the design gas stream temperature, and any 3-hour period during which the average temperature difference across the catalyst bed (i.e., the difference between the temperatures of the gas stream immediately before and after the catalyst bed), as measured by the temperature monitoring device, is less than 80 percent of the design temperature difference.

(C) Each 3-hour period of operation during which the average temperature of the gas stream in the combustion zone of a boiler or process heater having a design heat input capacity less than 44 MW, as mesured by the temperature monitoring device, is more than 28°C below the design combustion zone temperature.

(D) Each 3-hour period of operation during which the average concentration of organics in the exhaust gases from a carbon adsorber, condenser, or other vapor recovery system is more than 20 percent greater than the design exhaust gas concentration level.

(E) Each 3-hour period of operation during which the temperature of the condenser exhaust vent stream is more than 6°C above the design average exhaust vent stream temperature, or the temperature of the coolant fluid exiting the condenser is more than 6°C above the design average coolant fluid temperature at the condenser outlet.

(F) Each period in which the pilot flame of a flare is absent.

(G) Each occurrence when there is a change in the location at which the vent stream is introduced into the flame zone of a boiler or process heater as required by § 61.349(a)(2)(i)(C) of this subpart.

(H) Each occurrence when the carbon in a carbon adsorber system that is regenerated directly on site in the control device is not regenerated at the

predetermined carbon bed regeneration time.

(I) Each occurrence when the carbon in a carbon adsorber system that is not regenerated directly on site in the control device is not replaced at the predetermined interval specified in § 61.354(c) of this subpart.

(7) Beginning one year after the date that the equipment necessary to comply with these standards has been certified in accordance with paragraph (d)(1) of this section, the owner or operator shall submit annually to the Administrator a report that summarizes all inspections required by §§ 61.342 through 61.352 of this subpart during which detectable emissions are measured or a problem (such as a broken seal, gap or other problem) that could result in benzene emissions is identified, including information about the repairs or corrective action taken.

(e) An owner or operator electing to comply with the provisions of §§ 61.351 or 61.352 of this subpart shall notify the Administrator of the alternative standard selected in the report required under § 61.07 or § 61.10 of this part.

(f) An owner or operator who elects to install and operate the control equipment in § 61.351 of this subpart shall comply with the reporting requirements in 40 CFR 60.115b.

(g) An owner or operator who elects to install and operate the control equipment in § 61.352 of this subpart shall submit initial and quarterly reports that identify all seal gap measurements, as required in 40 CFR 60.693-2(a), that are outside the prescribed limits.

(Approved by the Office of Management and Budget under control number 2060-0183)

§ 61.358 Delegation of authority.

(a) In delegating implementation and enforcement authority to a State under section 112(d) of the Clean Air Act, the authorities contained in paragraph (b) of this section shall be retained by the Administrator and not transferred to a State.

(b) Alternative means of emission limitation under § 61.353 of this subpart will not be delegated to States.

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Wednesday
March 7. 1990

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 121 et al.
Prohibition Against Smoking; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121, 129 and 135

[Docket No. 25590; Amdt. Nos. 121-213, 129-20, and 135-35]

RIN 2120-AC 83

Prohibition Against Smoking

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule and request for comments.

SUMMARY: This rule implements the prohibition against smoking contained in Public Law 101-164 enacted on November 21, 1989. This legislation makes it unlawful for any person to smoke in the passenger cabin or lavatory of an airplane during most scheduled flight segments in the United States. The statutory prohibition applies to U.S. and foreign air carriers.

In addition to implementing the smoking prohibition, this rule amends the Federal Aviation Regulations to conform with an amendment to the Federal Aviation Act of 1958 that prohibits persons from tampering with smoke detectors installed in airplane lavatories.

DATES: Effective Date: February 25, 1990.

Comments By: April 23, 1990.

ADDRESSES: Send comments on the rule in duplicate to Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-204), Docket No. 25590, 800 Independence Avenue, SW., Washington, DC 20591. One may deliver comments in duplicate to FAA Rules Docket, Room 915G, 800 Independence Avenue, SW., Washington, DC. All comments must be marked Docket No. 25590. Comments may be examined in the Rules Docket weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Larry Youngblut, Project Development Branch (AFS-240), Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC. 20591, Telephone (202) 267-3755.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons may participate in this rulemaking by submitting written comments. All comments received, as well as a report summarizing any substantive contact with FAA personnel on this rulemaking, will be filed in the docket. The docket is available for public inspection both before and after the closing date for comments.

The Administrator will consider any comment received by the closing date for comments. This final rule may be amended after considering the comments received.

The FAA will acknowledge receipt of a comment if the commenter submits with the comment a pre-addressed, stamped postcard with the statement: "Comment to Docket No. 25590." When the comment is received, the postcard will be dated, time stamped, and returned to the commenter.

Availability of Final Rule

Any person may request a copy of this final rule from the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center (APA-430), 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Requests should be identified by the docket number of this rule. Persons interested in being placed on a mailing list for future rulemaking actions should also request a copy of Advisory Circular 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

In 1973, the Civil Aeronautics Board (CAB) issued the first rules regulating smoking aboard airplanes for passenger comfort and convenience. The CAB required U.S. operators of commercial flights to provide a nonsmoking seating section on board airplanes. The CAB continued to administer regulations restricting smoking on domestic flights until 1984, when the agency ceased to exist and oversight of regulation was transferred to the Department of Transportation.

In 1984, Congress enacted Pub. L. 98-466. This legislation directed the Secretary of Transportation to commission the National Academy of Sciences (NAS) to conduct an independent study on the cabin air quality in airliners. NAS formed the Committee on Airliner Cabin Air Quality (Committee), which published a study in August 1986. The Committee presented 21 recommendations, one of which included a proposed smoking ban on all commercial domestic flights.

In December 1987, Congress enacted Pub. L. 100-202, which amended section 404 of the Federal Aviation Act of 1958 (Act). The amendment (section 404(d)(1)(A)) (smoking ban or ban) banned smoking in the passenger cabin or lavatory aboard domestic flights scheduled for 2 hours or less. Congress required that the ban take effect on April 23, 1988, and last for a period of 2 years.

Congress also added section 404(d)(2) to the Act which provides for a civil penalty of up to $2,000 for any passenger who tampers with, disables, or destroys a smoke detector in the lavatory of an aircraft. The civil penalty provision took effect immediately and has no expiration date.

The Federal Aviation Administration (FAA) issued a final rule implementing the 1987 statutory provisions on April 11, 1988, and published it in the **Federal Register** on April 13, 1988 (52 FR 12358).

New Legislative Requirement

In November 1989, Congress enacted the Department of Transportation and Related Agencies Appropriation Act of 1990 (Pub. L. 101-164). In section 335 of the legislation, Congress amended section 404 of the Federal Aviation Act (Pub. L. 101-164). This amendment (section 404(d)(1)(A)) (smoking prohibition or prohibition) prohibits smoking in the passenger cabin or lavatory of any scheduled airline flight segment in air transportation or intrastate air transportation, which is:

(i) Between any two points within Puerto Rico, the United States Virgin Islands, the District of Columbia, or any State of the United States (other than Alaska and Hawaii), or between any point in any one of the aforesaid jurisdictions (other than Alaska and Hawaii) and any point in any other of such jurisdiction;

(ii) Within the State of Alaska or within the State of Hawaii; or

(iii) Scheduled for 6 hours or less in duration, and between any point described in (i) and any point in Alaska or Hawaii, or between any point in Alaska and any point in Hawaii.

The legislation deletes the current 2-hour smoking ban and provides that the new prohibition take effect February 25, 1990.

Under the law, smoking is not prohibited on flight segments originating or terminating outside of the United States, or on flights scheduled for longer than 6 hours in duration between Alaska and Hawaii, or on flights scheduled for longer than 6 hours in duration and between Alaska or Hawaii and any other point in the United States described in the legislation.

The smoking prohibition is contained in title IV, section 404 of the Federal Aviation Act. Title IV governs the economic and consumer protection aspects of air transportation. It is the Office of the Secretary of Transportation that has the authority to promulgate

rules under title IV. The Secretary has decided that certain rules necessary to carry out the smoking prohibition should be administered by the FAA in addition to the Office of the Secretary, which issued its own rule separately (55 FR 4991; February 13, 1990). This decision is based on the fact that the passenger information signs, posted placards, and passenger briefings used to inform passengers of the smoking prohibition are regulated by the FAA. Therefore, the Secretary of Transportation has delegated to the Administrator some of the authority to promulgate rules that implement and enforce the statutory prohibition against smoking contained in section 404 of the Act, as amended by section 335 of the Department of Transportation and Related Agencies Appropriations Act of 1990. This delegation appears elsewhere in this publication.

Foreign Air Carriers

Since the enactment of the legislation, many people have asked whether the smoking prohibition applies to scheduled flight segments operated by foreign air carriers. Under Public Law 101-164, smoking is prohibited on all scheduled flight segments in air transportation between the locations specified in the legislation, including those flight segments operated by foreign air carriers.

The legislation provides that:

> It shall be unlawful to smoke in the passenger cabin or lavatory on any scheduled airline flight segment in air transportation or intrastate air transportation. * * *

In section 101 of the Act, the definition of "air transportation" includes interstate, overseas, and foreign air transportation. Therefore, by definition, foreign air transportation by foreign air carriers is air transportation within the meaning of the smoking prohibition. Consequently, the only limitations on the application of the smoking prohibition are the geographic locations described in the legislation. Thus, it is the geographic location of the flight segment, not who conducts it, that determines whether the prohibition applies. Moreover, the Conference Report on Public Law 101-164 confirms Congress' intent to include the flight segments of foreign carriers. The report states that:

> The ban would apply to foreign carriers operating on any of these routes as well as to domestic carriers.

Therefore, the scheduled flight segments of foreign air carriers that are operated between the points described in the legislation are subject to the prohibition.

Discussion of Rule

Scheduled Flight Segments

To apply the current 2-hour smoking ban, the FAA had to determine which flights were "scheduled" flights and which flights were 2 hours or less in duration. The FAA concluded that the North American Edition of the *Official Airline Guide* (OAG) would be used to define "scheduled" flights and to determine the duration of flights (52 FR 12358). The rationale for using the OAG was that passengers, air carriers, and FAA inspectors should use the same resource to determine which flights were subject to the smoking ban. A comprehensive and accessible list of scheduled flights was needed and the OAG provides such a list.

Experience with the 2-hour smoking ban has shown that the OAG contains the most comprehensive and accessible listing of flight segments. For these reasons, the application and enforcement of the smoking ban has been efficient and trouble free. Therefore, the FAA will continue to use the OAG to define which flight segments are scheduled and to determine the duration of flight segments originating or terminating in Alaska and Hawaii. Thus, for the purpose of the smoking prohibition, "scheduled flight segments" are nonstop flights between two airports that are listed in either the Worldwide or North American Editions of the OAG. The following examples are helpful in understanding the new rule.

(1) The Worldwide Edition of the OAG lists a flight from San Francisco to Madrid, with one intermediate stop. Because there is an intermediate stop, the flight can be located in the OAG flight itinerary section. In the flight itinerary section, the flight is listed as San Francisco-Dallas-Madrid. Smoking is prohibited on the San Francisco to Dallas flight segment. Smoking is permitted on the flight segment from Dallas to Madrid because it is not between two points within the United States.

(2) The Worldwide Edition of the OAG lists a flight from Manila to New York with 3 intermediate stops. In the flight itinerary section, the flight is listed as Manila-Honolulu-San Francisco-Los Angeles-New York. Smoking is permitted on the flight segment between Manila and Honolulu. Smoking is permitted on the flight segment between Honolulu and San Francisco if that flight segment is scheduled for more than 6 hours in duration. However, if the flight segment between Honolulu and San Francisco is scheduled for 6 hours or less, smoking is prohibited. The exception to the smoking prohibition for flight segments scheduled for longer than 6 hours in duration only applies to flight segments that are between the U.S. jurisdictions described in the legislation and originating or terminating in Alaska or Hawaii, or flight segments between Alaska and Hawaii. Therefore, the smoking prohibition applies to all the remaining U.S. flight segments of this flight itinerary despite the scheduled duration of the flight segment.

The domestic flight segments in the two examples, i.e., San Francisco-Dallas, and Honolulu-San Francisco-Los Angeles-New York, appear in the flight itinerary section of the Worldwide Edition of the OAG as intermediate stops. These flight segments also appear in the schedules section of the North American Edition of the OAG as nonstop domestic flights. A flight segment listed in either edition of the OAG, and in any section of the OAG, is a "scheduled" flight for the purpose of applying the smoking prohibition.

Part 121

Section 121.317, Passenger Information, is amended by removing the current 2-hour smoking ban and replacing it with the smoking prohibition. The amended section provides that no person may conduct a scheduled flight segment on which smoking is prohibitited unless the "No Smoking" passenger information signs are turned on during the entire flight segment, or one or more "No Smoking" placards meeting the requirements of title 14, § 25.1541 of the FAR are posted during the entire flight segment. The air carrier may use both the passenger information signs and posted placards during the entire flight segment. The amended section also describes the flight segments on which smoking is prohibited.

The regulation requires that the passenger information signs be either on or off during the entire flight segment when smoking is prohibited. If a certificate holder uses both the posted placards and the passenger information signs, the placards must be posted, and the signs must be turned on for the entire flight segment. The regulation does not permit a certificate holder to turn the passenger information signs on during takeoff, turn them off while in flight and rely upon the posted "No Smoking" placards, and turn the information signs back on during landing. Turning the inforation signs on and off will confuse passengers and make enforcement of the prohibition difficult.

Paragraph (g) of § 121.317 is amended so passengers are required to comply

with the "No Smoking" placards. Current paragraph (g) only requires passenger compliance with the lighted passenger information signs.

Paragraph (i) of § 121.317 is completely revised. The current paragraph is the expiration date of the 2-hour smoking ban. That language is deleted and new paragraph (i) incorporates a 1987 amendment to the Act which made it unlawful for any person to tamper with the smoke detector installed in an airplane lavatory.

Part 129

Section 129.29, Prohibition Against Smoking, is a new section that makes smoking unlawful during scheduled flight segments of foreign carriers in the United States between the locations specified by Congress in Public Law 101-164. The FAA believes that foreign air carriers can best determine how to implement the prohibition during scheduled flight segments in the United States. Therefore, new § 129.29 does not require that the passenger information signs be lighted or that "No Smoking" placards be posted during flight segments when smoking is prohibited.

The FAA encourages foreign air carriers to comment on this final rule. The FAA will consider all comments received and may amend the rule based on those comments.

Part 135

Section 135.127, Passenger Information, is amended by removing the current 2-hour smoking ban provision and replacing it with the new smoking prohibition. The amended section contains the same provisions as § 121.317 and will be similarly applied.

Paragraph (b) of § 135.127 is amended so passengers must comply with posted "No Smoking" placards. Current paragraph (b) only requires compliance with the lighted passenger information signs.

Paragraph (e) of § 135.127 is completely revised. The current paragraph is the expiration date of the 2-hour smoking ban. That language is deleted and new paragraph (e) incorporates the 1987 amendment to the Act which made it unlawful for any person to tamper with the smoke detector installed in any airplane lavatory.

Compliance

Several air carriers have asked questions regarding their role in the application of the prohibition against smoking. The FAA expects that air carriers will enforce the prohibition in a manner similar to the enforcement of the current 2-hour smoking ban. Air carriers should provide instructions to crewmembers and other appropriate personnel regarding the procedures for ensuring compliance with the prohibition against smoking and tampering with the smoke detector. These procedures should include methods for reporting cases where passengers have violated the smoking prohibition or tampered with a smoke detector. A separate and complementary Office of the Secretary of Transportation rule (14 CFR part 252) also requires air carriers to enforce the smoking prohibition.

Economic Summary

This rule incorporates the provisions of section 335 of Public Law 101-164 into the Federal Aviation Regulations (FAR) and, as such, is incorporated into the Code of Federal Regulations in 14 CFR part 121, part 129, and part 135. The FAA's responsibility is to devise and promulgate a set of procedures to require a total prohibition on smoking in the passenger cabin or lavatory on virtually all scheduled airline flights within the United States.

Specifically, the prohibition against smoking is effective: (1) Between any two points within Puerto Rico, the United States Virgin Islands, the District of Columbia, or any State of the United States (other than Alaska and Hawaii), or between any point in any one of the aforesaid jurisdictions (other than Alaska and Hawaii) and any point in any other of such jurisdictions; (2) within the State of Alaska or within the State of Hawaii; or (3) scheduled in the current *Official Airline Guide* for 6 hours or less in duration and between any point described in (1) above and any point in Alaska or any point in Hawaii, or between any point in Alaska and any point in Hawaii.

Each of the changes in parts 121, 129, and 135 is identified and explained in the analysis in the full Regulatory Evaluation contained in the docket.

The methods that will be used to inform passengers of the smoking prohibition are the lighted passenger information sign or posted "No Smoking" placards, and the required safety briefing. Thus, the costs involved with this rule are minor.

Air carriers will realize savings from this rule. There will be less wear and tear on the ventilation systems in airplanes, and each airplane may have to be cleaned less often. In addition, there appear to be health benefits to nonsmoking passengers and to flight attendants from prohibiting smoking aboard aircraft.

The FAA concludes that there are benefits to both the air carriers and to a large portion of the flying public and flight attendants from prohibiting smoking on these domestic flights. As the costs of compliance are minimal, the FAA finds that this rule is cost beneficial.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. The RFA requires Federal agencies to review rules which may have a "significant economic impact on a substantial number of small entities."

The FAA's criteria for a "substantial number" are a number which is not less than 11 and which is more than one third of the small entities subject to the rule. For air carriers, a small entity has been defined as one who owns, but does not necessarily operate, nine or less aircraft. The FAA's criteria for a "significant impact" are at least $3,800 per year for an unscheduled carrier, $53,500 for a scheduled carrier having airplanes with only 60 or fewer seats, and $95,800 per year for a scheduled carrier having an airplane with 61 or more seats.

As was discussed above, there is little or no cost associated with this rule. Therefore, the FAA certifies that the rule does not have a significant economic impact on a substantial number of small entities.

Trade Impact Assessment

This rule affects both U.S. air carriers and foreign air carriers who conduct scheduled air transportation and intrastate air transportation on those flight segments described above. It does not affect either U.S. or foreign air carriers conducting flight segments that originate or terminate in a foreign country. Because the rule imposes negligible costs and impacts U.S. and foreign carriers equally in international transportation, the FAA has determined that these regulations do not have an impact on international trade.

Federalism Implications

The regulations set forth in this amendment are being adopted pursuant to authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, et seq.). That statute preempts State law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that this amendment does not have federalism implications

warranting the preparation of a Federalism Assessment.

Conclusion

The FAA has determined that this amendment is not major under Executive Order 12291. It will not result in an annual effect on the economy of $100 million or more. It is also determined that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment is significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11034, February 26, 1979) because it involves a subject of substantial public interest. A copy of the full Regulatory Evaluation is filed in the docket.

List of Subjects in 14 CFR Parts 121, 129 and 135

Air carriers, Aircraft, Airmen, Air taxis, Aviation safety, Charter flights, Drug testing, Reporting and recordkeeping requirements, Safety, Security measures, Smoking, Transportation.

For the reasons set out in this preamble, parts 121, 129 and 135 of title 14, chapter I of the Code of Federal Regulations are amended as set forth below.

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

1. The authority citation for part 121 is revised to read as follows:

Authority: 49 U.S.C. 1354 (a), 1355, 1356, 1357, 1374 (d) (as amended by Pub. L. 101-164 and Pub. L. 100-202), 1401, 1421-1430, 1472, 1485, and 1502; 49 U.S.C. 106 (g) (Revised, Pub. L. 97-449, January 12, 1983).

2. Section 121.317 is amended by revising paragraphs (c), (g), and (i) and adding a new paragraph (j) to read as follows:

§ 121.317 Passenger information.

* * * * *

(c) No person may operate an aircraft on a flight segment on which smoking is prohibited unless the "No Smoking" passenger information signs are lighted during the entire flight segment, or one or more "No Smoking" placards meeting the requirements of § 25.1541 are posted during the entire flight segment. If both the lighted signs and the placards are used, the signs must remain lighted during the entire flight segment. Smoking is prohibited on scheduled flight segments:

(1) Between any two points within Puerto Rico, the United States Virgin Islands, the District of Columbia, or any State of the United States (other than Alaska or Hawaii) or between any two points in any one of the above-mentioned jurisdictions (other than Alaska or Hawaii);

(2) Within the State of Alaska or within the State of Hawaii; or

(3) Scheduled in the current Worldwide or North American Edition of the *Official Airline Guide* for 6 hours or less in duration and between any point listed in paragraph (c) (1) of this section and any point in Alaska or Hawaii, or between any point in Alaska and any point in Hawaii.

* * * * *

(g) No person may smoke while a "No Smoking" sign is lighted or if "No Smoking" placards are posted, except that the pilot in command may authorize smoking on the flight deck except during landings and takeoffs.

* * * * *

(i) No person may tamper with, disable, or destroy any smoke detector installed in any airplane lavatory.

(j) On flight segments other than those described in paragraph (c) of this section, the "No Smoking" sign must be turned on for each takeoff and landing and at any other time considered necessary by the pilot in command.

PART 129—OPERATIONS: FOREIGN AIR CARRIERS AND FOREIGN OPERATORS OF U.S.—REGISTERED AIRCRAFT ENGAGED IN COMMON CARRIAGE

3. The authority citation for part 129 is revised to read as follows:

Authority: 49 U.S.C. 1346, 1354(a), 1356, 1357, 1421, 1502, and 1511; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983; 49 U.S.C. 1374(d) Public Law 101-164, November 21, 1989).

4. By adding new § 129.29 to read as follows:

§ 129.29 Prohibition against smoking.

No person may smoked and no operator shall permit smoking in the passenger cabin or lavatory during any scheduled airline flight segment in air transportation or intrastate air transportation which is:

(a) Between any two points within Puerto Rico, the United States Virgin Islands, the District of Columbia, or any State of the United States (other than Alaska or Hawaii) or between any two points in any one of the above-mentioned jurisdictions (other than Alaska or Hawaii);

(b) Within the State of Alaska or within the State of Hawaii; or

(c) Scheduled in the current Worldwide or North American Edition of the *Official Airline Guide* for 6 hours or less in duration and between any point listed in paragraph (a) of this section and any point in Alaska or Hawaii, or between any point in Alaska and any point in Hawaii.

PART 135—AIR TAXI OPERATORS AND COMMERCIAL OPERATORS

5. The authority citation for part 135 is revised to read as follows:

Authority: 49 U.S.C. 1354(a), 1355(a), 1374(d) (as amended by Pub. L. 101-164 and Pub. L. 100-202), 1421 through 1431, and 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

6. Section 135.127 is revised to read as follows:

§ 135.127 Passenger information.

(a) No person may conduct a scheduled flight segment on which smoking is prohibited unless the "No Smoking" passenger information signs are lighted during the entire flight segment, or one or more "No Smoking" placards meeting the requirements of § 25.1541 are posted during the entire flight segment. If both the lighted signs and the placards are used, the signs must remain lighted during the entire flight segment. Smoking is prohibited on scheduled flight segments:

(1) Between any two points within Puerto Rico, the United States Virgin Islands, the District of Columbia, or any State of the United States (other than Alaska or Hawaii) or between any two points in any one of the above-mentioned jurisdictions (other than Alaska or Hawaii);

(2) Within the State of Alaska or within the State of Hawaii; or

(3) Scheduled in the current Worldwide or North American Edition of the *Official Airline Guide* or 6 hours or less in duration and between any point listed in paragraph (a)(1) of this section and any point in Alaska or Hawaii, or between any point in Alaska and any point in Hawaii.

(b) No person may smoke while a "No Smoking" sign is lighted or while "No Smoking" placards are posted, except that the pilot in command may authorize smoking on the flight deck (if it is physically separated from the passenger cabin) except during takeoff and landing.

(c) No person may smoke in any aircraft lavatory.

(d) No person may tamper with, disable, or destroy any smoke detector installed in any aircraft lavatory.

(e) On flight segments other than those described in paragraph (a) of this section, the "No Smoking" signs

required by § 135.177 (a) (3) of this part must be turned on for each takeoff and landing and at any other time considered necessary by the pilot in command.

Issued in Washington, DC, on February 28, 1990.

James B. Busey,

Administrator.

[FR Doc. 90-4983 Filed 3-2-90; 8:45 am]

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Wednesday
March 7, 1990

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 39

Airworthiness Directives; Boeing Model 727, 737, 747, and 707/720 Series Airplanes; Final Rules and Notices of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89-NM-60-AD; Amdt. 39-6488]

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 727 series airplanes, which would require incorporation of certain structural modifications. This amendment is prompted by reports of recent incidents involving fatigue cracking and corrosion in transport category airplanes that are approaching or have exceeded their design life goal. These incidents jeopardized the airworthiness of the affected airplanes. These conditions, if not corrected, could result in a degradation in the structural capabilities of the affected airplanes. This action also reflects the FAA's decision that long term continued operational safety should be assured by actual modification of the airframe rather than repetitive inspection.

DATES: Effective April 17, 1990. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 17, 1990.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington; at the Seattle Aircraft Certification Office, FAA, Northwest Mountain Regin, 9010 East Marginal Way South, Seattle, Washington; or at the Office of the Federal Register, 1100 L Street NW., Room 8301, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Stanton R. Wood, Airframe Branch, ANM-120S; telephone (206) 431-1924. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to Boeing 727 series airplanes, which requires incorporation of certain structural modifications, was published in the **Federal Register** on May 23, 1989 (54 FR 22302).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The manufacturer suggested that the latest revision to Boeing Document D6-54860 be used to reflect the current service bulletin revision levels. The FAA concurs and the final rule has been revised to reflect Document D6-54860, Revision C as the appropriate service document. The changes to Document D6-54860 do not add or delete any identified service bulletins, but merely clarify and correct the document. Acceptable service bulletin revision levels that are identified in the document have been increased.

Several commenters suggested that the age of the airplane should be made available to the traveling public when the flight reservation is made. The FAA considers this suggestion to be beyond the scope of this rulemaking action. However, the FAA has determined that an airplane properly maintained will be safe beyond its designed economic life goal. Therefore, the FAA does not consider that stating the age of an airplane will do anything to improve the level of safety. The most important thing is to assure that older airplanes are properly maintained, and this is the basis for the actions taken by the FAA with regard to the modification program mandated by this AD action, and the soon-to-be-proposed mandatory corrosion progam.

One commenter proposed that all older airplanes be retired upon reaching 20 years. The FAA does not concur. Airplanes maintained in accordance with the actions required by this final rule, existing AD's, as well as other new actions to be proposed by the FAA based on the recommendations of the Aging Aircraft Task Force, should be able to remain in service indefinitely.

One commenter requested that the compliance requirements be clarified, and questioned whether it was necessary to comply with certain service bulletins upon the airplane reaching 20 years of age or within 4 years. The FAA considers the compliance requirements to be clearly stated in paragraph A. of the final rule. In general, however, the modifications must be completed before an airplane reaches 20 years of service or within 4 years after the effective date of the AD, whichever is later.

Another commenter requested that FAA Designated Engineering Representatives (DER) at the manufacturer's facility be allowed to approve certain alternate means of compliance to this AD. The FAA does not concur. Airworthiness directives are a primary responsibility of the FAA, and alternate means of compliance must be approved by the Manager, Seattle Aircraft Certification Office. This function cannot be delegated to a DER. While DER's are authorized to determine whether an alternate design complies with a specific requirement, they are not authorized to make discretionary determinations as to what the applicable requirement is.

Another commenter requested that the rule be revised to allow operators to perform minor deviations from the AD without obtaining FAA approval. The FAA does not concur, because what is "minor" is open to interpretation. The FAA must continue to approve all deviations.

An operator of an executive Model 727 stated that low utilization operators were not involved in the Aging Aircraft Task Force working group and, therefore, their concerns were not considered when the mandatory modification program was developed. Further, the commenter did not understand the basis for incorporation of certain modifications on airplanes that are 20 years old. The FAA notes that the working group did have members that were considered to be low utilization operators. The working group selected certain service bulletins for incorporation on airplanes that were 20 years old. The procedures described in those service bulletins address problems associated with corrosion and/or stress corrosion that are time-dependent; as such, these problems are more appropriately corrected by modification of the airplane prior to reaching 20 years of age, rather than 60,000 flight cycles.

This commenter further stated that if the 20-year compliance time was selected because of corrosion, the emphasis should be placed upon a corrosion control program. The FAA concurs that corrosion control is important, and has initiated rulemaking to propose a corrosion program that will affect Model 727 airplanes. A Notice of Proposed Rulemaking is being issued concurrently with this amendment. However, the actions required by this final rule, prior to an aircraft reaching 20 years of age, are all related to known, frequent problems related to corrosion that can be alleviated after the modifications described in the service bulletins are incorporated.

Finally, this commenter stated that the FAA appears to be relying upon the mandatory modification program while reducing reliance on non-destructive testing. The FAA does not agree. This mandatory modification program will not replace the diligent, continuing

inspection of the airplane fleet for defects, as required by the FAA-approved maintenance programs and other existing AD's.

Another Model 727 executive operator stated that it has not experienced the problems associated with corrosion, cracking, or delamination. Therefore, the commenter proposed that only inspections be required for low-utilization aircraft. The FAA does not concur with this suggestion for the reasons noted in the above paragraph as well as in the preamble to the Notice.

Several commenters expressed concern regarding the ability of the manufacturer to supply the parts necessary to complete the modifications. The FAA considered this concern during the development of the compliance time for this AD action. The manufacturer has confirmed that ample parts will be available to meet the schedule mandated by this final rule.

Various foreign airworthiness authorities stated that (1) compliance times were arbitrarily chosen, independent of any fatigue history; (2) no mandatory inspections were required for all areas not affected by an existing AD; and (3) no post-modification inspections were proposed.

As for item (1), the FAA does not concur with the suggestion that the compliance times for the modifications were arbitrarily chosen. On the contrary, in developing the appropriate compliance times for this AD action, the FAA, with input from the aviation industry/community, considered not only the degree of urgency associated with addressing the identified unsafe condition, but the practical aspects of the availability of required parts, the time necessary to install the required modifications, and the availability of overhaul facilities to perform the necessary work. Further, fatigue history is always considered when assessing inspection thresholds for problems caused by fatigue. Likewise, repetitive inspection intervals are based on damage tolerance assessments when appropriate.

As for item (2), the FAA does not fully agree. While several of the service bulletins included in Boeing Document D6-54860 are the subject of currently existing AD's (which require inspections and optional modifications), other service bulletins and their related inspections are under consideration for mandatory action, and will be handled on a case-by-case basis. As was explained in detail in the preamble to the Notice, safety will continue to be maintained by various means currently in place that are considered satisfactory to detect damage prior to the occurrence of an unsafe condition. These include on-going basic maintenance programs, inspections/modifications required by existing AD's, Supplemental Structural Inspection Document programs, and the like.

As for item (3), the FAA has determined that there is no need to stipulate special "post-modification inspections" since the operators' existing on-going inspection programs include such inspections and are acceptable to monitor the affected area.

Accordingly, the FAA has determined that no change to the final rule is warranted based on these comments made by the foreign airworthiness authorities.

Several commenters requested that the FAA accept alternate means of compliance involving inspections if required modification parts cannot be obtained. The FAA will review each case individually to consider alternate means of compliance, as provided for in paragraph B of the final rule.

One commenter questioned whether there is adequate maintenance capability to comply with this rule and similar rules affecting other aging airplanes. As discussed above, the FAA considered this aspect when developing the compliance times for this action. At this point, the FAA considers there to be adequate facilities for accomplishing the requirements of this rule in a timely manner.

Finally, a commenter questioned the accuracy of the number of aircraft affected by the proposed rule and the estimated costs. This commenter, however, provided no new figures to contradict those reflected in the Notice. The FAA based the number of airplanes and cost estimates upon the best data that was currently available. The cost estimates represent the average costs and rates based on overall industry standards.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will not increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 1,710 Model 727 series airplanes of the affected design in the worldwide fleet. It is estimated that 67 airplanes of U.S. registry will be affected by this AD within the initial threshold of 4 years. The cost to modify each airplane is estimated to be $1,057,212. This cost includes the price of modification kits, which is $362,932 per airplane, and the estimated number of manhours to accomplish the modifications, which is approximately 17,357 manhours at $40 per manhour. It does not include the cost of downtime, planning, set up, familiarization, or tool acquisition costs. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $70,833,204 within the initial threshold of 4 years.

Additional airplanes will be affected as they accumulate time-in-service and reach the threshold for modification.

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

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

List of Subjects in 14 CFR part 39

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

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 727 series airplanes, listed in Boeing Document No. D6-54860, Revision C, dated December 11, 1989, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent structural failure, accomplish the following:

A. Except as provided below, prior to reaching the incorporation thresholds listed in Boeing Document No. D6-54860, Revision C, dated December 11, 1989, "Aging Airplane Service Bulletin Structural Modification Program—Model 727" (hereinafter called "the Document"), or within the next 4 years after the effective date of this AD, whichever occurs later, accomplish the structural modifications listed in section 3 of the Document. Modifications for which the incorporation threshold is identified in the Document as a specific date must be accomplished by that date in lieu of the 4 years specified in this paragraph.

Note: The modifications required by this paragraph do not terminate the inspection requirements of any other AD unless that AD specified that any such modification constitutes terminating action of the inspection requirements.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment, and then send it to the Manager, Seattle Aircraft Certification Office.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

The modifications shall be done in accordance with Boeing Document D6-54860, Revision C, dated December 11, 1989, "Aging Airplane Service Bulletin Structural Modification Program—Model 727." This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. Copies may be inspected at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington; or at the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington; or at the Office of the Federal Register, 1100 L Street NW., Room 8301, Washington, DC.

This amendment becomes effective April 17, 1990.

Issued in Seattle, Washington, on January 16, 1990.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-5131 Filed 3-6-90; 11:59 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-NM-67-AD; Amdt. 39-6489]

Airworthiness Directives: Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 737 series airplanes, which requires incorporation of certain structural modifications. This amendment is prompted by reports of recent incidents involving fatigue cracking and corrosion in transport category airplanes that are approaching or have exceeded their design life goal. These incidents jeopardized the airworthiness of the affected airplanes. These conditions, if not corrected, could result in a degradation in the structural capabilities of the affected airplanes. This action also reflects FAA's decision that long term continued operational safety should be assured by actual modification of the airframe rather than repetitive inspection.

DATES: Effective April 17, 1990. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 17, 1990.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington; at the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington; or at the Office of the Federal Register, 1100 L Street NW., Room 8301, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Steven C. Fox, Airframe Branch, ANM-120S; telephone (206) 431-1923. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to Boeing Model 737 series airplanes, which requires incorporation of certain structural modifications, was published in the **Federal Register** on May 23, 1989 (54 FR 22304).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The manufacturer suggested that the latest revision to Boeing Document D6-38505, be used to reflect the current service bulletin revision levels. The FAA concurs and the final rule has been revised to reflect Document D6-38505, Revision C, dated December 11, 1989, as the appropriate service document. The changes to Document D6-38505 do not add or delete any identified service bulletins, but merely clarify and correct the document. Acceptable service bulletin revision levels that are identified in the document have been increased.

The Air Transport Association (ATA) of America commented on behalf of its members. While the ATA supports this program, two primary concerns were raised: First, that all service bulletins be in final form prior to the issuance date of the AD; and second, that required modification parts are available in order to accomplish the required modifications. The FAA has addressed these two concerns. All associated service bulleting will be released prior to the issuance date of this final rule, and the manufacturer has confirmed that parts will be available to meet the mandatory requirements.

Another commenter requested that FAA Designated Engineering Representatives (DER) at the manufacturer's facility be allowed to approve certain alternate means of compliance to this AD. The FAA does not concur. Airworthiness Directives are a primary responsibility of the FAA, and alternate means of compliance must be approved by the Manager, Seattle Aircraft Certification Office. This function cannot be delegated to a DER. While DER's are authorized to determine whether an alternate design complies with a specific requirement, they are not authorized to make discretionary determinations as to what the applicable requirement is.

Another commenter requested that the rule be revised to allow operators to perform minor deviations from the AD without obtaining FAA approval. The FAA does not concur, because what is "minor" is open to interpretation. The FAA must continue to approve all deviations.

Another commenter requested the compliance period for a particular service bulletin be changed and that alternate means of compliance should be available for airplanes previously repaired. The FAA does not concur with

the compliance time extension. The compliance times were based on the combined service experience of the Service Working Group (as part of the Aging Aircraft Task Force), and represent a generally accepted maximum interval of time allowable for all affected airplanes to continue to operate prior to accomplishing the modifications and still maintain an acceptable level of safety. However, paragraph B. of the final rule does provide for approval of adjustments to the compliance time if adequate justifying data is provided.

Another commenter stated that the manhours required to accomplish a modification were based on the manufacturer's estimate and that this operator may require significantly more time to accomplish the modifications; therefore, the commenter requested that the cost estimate be revised. The FAA does not concur. The cost estimate represents the average costs and rates, based on overall industry standards; it cannot be tailored to reflect an individual operator's expenditures.

Another commenter had several comments concerning the validity of existing alternate means of compliances to AD's. The FAA considers that existing alternate means of compliance would still be acceptable.

Various foreign airworthiness authorities stated that (1) the compliance times were arbitrarily chosen, independent of any fatigue history; (2) no mandatory inspections were required for all areas not affected by an existing AD; and (3) no post-modification inspections were proposed.

As for item (1), the FAA does not concur with the suggestion that the compliance times for the modifications were arbitrarily chosen. On the contrary, in developing the appropriate compliance times for this AD action, the FAA, with input from the aviation industry/community, considered not only the degree of urgency associated with addressing the identified unsafe condition, but the practical aspects of the availability of required parts, the time necessary to install the required modifications, and the availability of overhaul facilities to perform the necessary work. Further, fatigue history is always considered when assessing inspection thresholds for problems caused by fatigue. Likewise, repetitive inspection intervals are based on damage tolerance assessments when appropriate.

As for item (2), the FAA does not fully agree. While several of the service bulletins included in Boeing Document D6-38505 are the subject of current existing AD's (which require inspections and optional modifications), other service bulletins are currently under consideration for mandatory action, and will be handled on a case-by-case basis. As was explained in detail in the preamble to the Notice, safety will continue to be maintained by various means currently in place that are considered satisfactory to detect damage prior to the occurrence of an unsafe condition. These include on-going basic maintenance programs, inspections/modifications required by existing AD's, Supplemental Structural Inspection Document programs, and the like.

As for item (3), the FAA has determined that there is no need to stipulate special "post-modification inspections" since the operators' existing on-going inspection programs include such inspections and are acceptable to monitor the affected area.

Accordingly, the FAA has determined that no change to the final rule is warranted based on these comments made by the foreign airworthiness authorities.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the burden on any operator nor increase the scope of the AD.

There are approximately 1500 Model 737 series airplanes of the affected design in the worldwide fleet. It is estimated that 28 airplanes of U.S. registry will be affected by this AD within the initial threshold of 4 years. The cost to modify each airplane is estimated to be $898,070. This cost includes the price of modification kits, which is $324,670 per airplane, and the estimated number of manhours to accomplish the modifications, which is 14,335 manhours at $40 per manhour. It does not include downtime, planning, set up, familiarization, or tool acquisition costs. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $25,145,960 within the initial threshold of 4 years.

Additional airplanes will be affected as they accumulate time-in-service and reach the threshold for modifications.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 737 series airplanes, listed in Boeing Document No. D6-38505, Revision C, dated December 11, 1989, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent structural failure, accomplish the following:

A. Except as provided below, prior to reaching the incorporation thresholds listed in Boeing Document No. D6-38505, Revision C, dated December 11, 1989, "Aging Airplane Service Bulletin Structural Modification Program—Model 737-100/-200/-200C" (hereinafter called "the Document"), or within the next 4 years after the effective date of this AD, whichever occurs later, accomplish the structural modifications listed in section 3 of the Document. Modifications for which the incorporation threshold is identified in the Document as a specific date must be accomplished by that date in lieu of the 4 years specified in this paragraph.

Note: The modifications required by this paragraph do not terminate the inspection requirements of any other AD unless that AD specifies that any such modification constitutes terminating action for the inspection requirements.

B. An alternate means of compliance or adjustment of the compliance time, which

provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Seattle Aircraft Certification Office.

C. Special flight permits may be issued in accordance with FARs 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

The modifications shall be done in accordance with Boeing Document D6-38505, Revision C, dated December 11, 1989, "Aging Airplane Service Bulletin Structrual Modification Program—Model 737-100/-200/-200C." This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. Copies may be inspected at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington; or at the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington; or at the Office of the Federal Register, 1100 L Street, NW., Room 8301, Washington, DC.

This amendment becomes effective April 17, 1990.

Issued in Seattle, Washington, on January 16, 1990.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-5130 Filed 3-6-90; 11:59 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-NM-68-AD; Amdt. 39-6490]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, which requires incorporation of certain structural modifications. This amendment is prompted by reports of recent incidents involving fatigue cracking and corrosion in transport category airplanes that are approaching or have exceeded their design life goal. These incidents jeopardized the airworthiness of the affected airplanes. These conditions, if not corrected, could result in a degradation in the structural capabilities of the affected airplanes. This action also reflects FAA's decision that long term continued operational safety should be assured by actual modification of the airframe rather than repetitive inspection.

DATES: Effective April 17, 1990. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 17, 1990.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington; at the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington; or at the Office of the Federal Register, 1100 L Street NW., Room 8301, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Richard H. Yarges, Airframe Branch, ANM-120S, Seattle Aircraft Certification Office; telephone (206) 431-1923. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to Boeing Model 747 series airplanes, which requires incorporation of certain structural modifications, was published in the **Federal Register** on May 23, 1989 (54 FR 22304).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The Air Transport Association (ATA) of America commented on behalf of its members. While the ATA supports this program, it raised two primary concerns: First, that all service bulletins be in final form prior to the effective date of the AD; second, that parts are available in order to accomplish the required modifications. The FAA has addressed these two concerns. All associated service bulletins have been released prior to the issuance of this final rule and the manufacturer has confirmed that ample parts will be available to meet the mandatory requirements.

Another commenter requested that FAA Designated Engineering Representatives (DER) at the manufacturer's facility be allowed to approve certain alternate means of compliance to this AD. The FAA does not concur. Airworthiness directives are a primary responsibility of the FAA, and alternate means of compliance must be approved by the Manager of the Seattle Aircraft Certification Office. This function cannot be delegated to a DER. While DER's are authorized to determine whether an alternate design complies with a specific requirement, they are not authorized to make discretionary determinations as to what the applicable requirement is.

Another commenter requested that the rule be revised to allow operators to perform minor deviations from the AD without obtaining FAA approval. The FAA does not concur, because what is "minor" is open to interpretation. The FAA must continue to approve all deviations.

Two commenters requested that the threshold for modification of certain pressurization sensitive structure (e.g., reference Boeing Service Bulletins 747-53-2277, 747-53-3375 and 747-53-2283) be increased for Model 747SR series airplanes. These commenters pointed out that the Model 747SR is operated at typically lower cabin differential pressures and will thereby not be subject to cracking as early as other Model 747's. The airworthiness directives that currently apply to these structures allow the adjustment of compliance times by a factor of 1.2 or 1.3. These commenters requested that the same factors be allowed to adjust the modification thresholds for the pressure sensitive structures for Model 747SR airplanes. The FAA does not concur with the request. The FAA is aware that the operators who initially receive the Model 747SR airplanes are probably operating them at less than the maximum cabin differential pressure. Such operating procedures would allow the modification thresholds for pressure sensitive structure to be increased by some appropriate factor. However, since the Model 747SR can be pressurized to the maximum differential pressure by the present operators, or by anyone who flies these airplanes, the FAA does not consider it appropriate to include in this final rule higher values for these particular thresholds when, in fact, the airplanes might not be operated at some lesser specified values. It is far more appropriate that those operators which can justify a threshold increase present data to the FAA in accordance with the alternate means provision of this rule (paragraph C.) to substantiate any threshold increase. Further, for the reasons explained above, the FAA is

considering deleting increased thresholds from existing AD's which include such specific threshold increases.

One commenter requested that the compliance time for replacement of a cracked 1241 bulkhead splice strap, in accordance with Service Bulletin 747-53-2283, be revised to allow a reasonable time period to accomplish the action if the crack discovery is made after the effective date of the AD and the airplane has nearly, or more than, 20,000 flight cycles. The FAA agrees with this comment. The final rule has been revised to allow at least two years to accomplish the replacement of the strap if it is found cracked. Safety will be maintained by the existing inspection requirements of AD 84-18-01, Amendment 39-4905, until the cracked strap is replaced.

One commenter requested that the compliance time for replacement of the trailing edge flaps specified in paragraph B.1., be revised from "within 5 years after the effective date of the AD" to "within 5 years after the effective date of the AD or within 5 years after rework in accordance with Boeing Service Bulletin 747-57A2229, whichever is later." The FAA does not consider this change to be warranted. Because of the timing of this final rule and AD 89-05-04, Amendment 39-6148 (54 FR 7759, February 23, 1989), which addresses Boeing Service Bulletin 747-57A2229, there will be little or no difference between the effective date of this AD and the date by which rework in accordance with Service Bulletin 747-57A2229 is required.

One commenter requested that the compliance time specified in paragraph B.2. be revised to read ". . . shall be accomplished within 6 years after the effective date of this AD, or prior to the accumulation of 20,000 flights on the landing gear, whichever occurs later." This comment was directed at FAA's concern that a "hard time" be established for accomplishment of the landing gear related bulletins, but also allow additional time if the landing gear has not yet accumulated 20,000 flight cycles. This is consistent with the threshold for modification of airframe related items, except that is it referenced to landing gear time. The FAA concurs. Landing gear time is tracked separately from airframe time because landing gear units may be transferred between airplanes. The final rule has been revised accordingly. With this change, there is no need to call out ". . . at next overhaul after 10,000 flight cycles" for replacement of the wing landing gear jury strut spindle, and that phrase has been deleted from the final rule.

One commenter requested that the AD be clarified to state that replacement of flap tracks in accordance with Boeing Service Bulletins 747-57A2229, Revision 7, or 747-57-2146, Revision 3, is equivalent to replacement in accordance with Boeing Service Bulletin 747-57A2229, Revision 8, as specified in the NPRM. The FAA concurs and has added a clarifying note to this effect in the final rule.

Various foreign airworthiness authorities stated that (1) the compliance times were arbitrarily chosen, independent of any fatigue history; (2) no mandatory inspections were required for all areas not affected by an existing AD; and (3) no post-modification inspections were proposed.

As for item (1), the FAA does not concur with the suggestion that the compliance times for the modifications were arbitrarily chosen. On the contrary, in developing the appropriate compliance times for this AD action, the FAA, with input from the aviation industry/community, considered not only the degree of urgency associated with addressing the identified unsafe condition, but the practical aspects of the availability of required parts, the time necessary to install the required modifications, and the availability of overhaul facilities to perform the necessary work. Further, fatigue history is always considered when assessing inspection thresholds for problems caused by fatigue. Likewise, repetitive inspection intervals are based on damage tolerance assessments when appropriate.

As for item (2), the FAA does not fully agree. While several of the service bulletins included in Boeing Document DD-38505 are the subject of current existing AD's (which require inspections and optional modifications), other service bulletins and their related inspections are currently under consideration for mandatory action, and will be handled on a case-by-case basis. As was explained in detail in the preamble to the Notice, safety will continue to be maintained by various means currently in place that are considered satisfactory to detect damage prior to the occurrence of an unsafe condition. These include on-going basic maintenance programs, inspections/modifications required by existing AD's, Supplemental Structural Inspection Document programs, and the like.

As for item (3), the FAA has determined that there is no need to stipulate special "post-modification inspections" since the operators' existing on-going inspection programs include such inspections and are acceptable to monitor the affected area.

Accordingly, the FAA has determined that no change to the final rule is warranted based on these comments made by the foreign airworthiness authorities.

One commenter asked that, for the longitudinal floor beam modifications, the equivalence of the terminating action between Service Bulletin 747-53-2224 and Service Bulletins 747-53-2176 and 747-53-2183 be explicitly stated in the AD. The FAA concurs and the AD has been revised accordingly.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 680 Model 747 series airplanes of the affected design in the worldwide fleet. It is estimated that 20 airplanes of U.S. registry will be affected by this AD within the initial threshold of 4 years. The cost to modify each airplane is estimated to be $2,300,000. This cost includes the price of modifications kits, which is $900,000 per airplane, and the estimated number of manhours to accomplish the modifications, which is approximately 35,000 manhours at $40 per manhour. It does not include downtime, planning, set up, familiarization, or tool acquisition costs. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $46,000,000 over the initial threshold of 4 years.

Additional airplanes will be affected as they accumulate time-in-service and reach the threshold for modifications.

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

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will

not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

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

Boeing: Applies to Model 747 series airplanes, listed in Boeing Document No. D6–35999, dated March 31, 1989, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent structural failure, accomplish the following:

A. Prior to reaching the incorporation thresholds listed in Boeing Document No. D6–35999, dated March 31, 1989 (hereinafter called "the Document"), or within the next 4 years after the effective date of this AD, whichever occurs later, except as noted in paragraph B., below, accomplish the structural modifications listed in section 3 of the Document.

B. 1. Accomplish replacement of the trailing edge flap tracks in accordance with Boeing Alert Service Bulletin 747–57A2229, Revision 8, dated January 31, 1989, within the next 5 years after the effective date of this AD.

Note: For the purpose of complying with this AD, replacement of trailing edge flap tracks in accordance with Boeing Alert Service Bulletin 747–53A2229, Revision 8, dated January 31, 1989, is considered equivalent to replacement in accordance with either Boeing Alert Service Bulletin 747–57A2229, Revision 7, dated October 13, 1988, or Revision 9, dated November 2, 1989, or Boeing Service Bulletin 747–57–2146, Revision 3, dated May 9, 1986.

2. Incorporation thresholds expressed as "at next overhaul," shall be accomplished within the next 6 years after the effective date of this AD, or prior to the accumulation of 20,000 flights, whichever occurs later.

3. Accomplish the APU cutout reinforcement in accordance with Boeing Service Bulletin 747–53–2275, Revision 3, dated January 25, 1990, prior to the accumulation of 20,000 flights, or within the next 5,000 flights after the effective date of this AD, whichever occurs later.

4. If the 1241 bulkhead splice strap is cracked, replace the strap in accordance with Boeing Service Bulletin 747–53–2283, Revision 3, dated November 1, 1989, within the next 4 years after effective date of the AD, or prior to the accumulation of 20,000 flight cycles, or within 2 years of crack discovery, whichever occurs latest.

Note: For the purpose of complying with this AD, the incorporation of the terminating modification for the longitudinal floor beams contained in Boeing Service Bulletin 747–53–2224, Revision 6, dated July 27, 1989, is considered equivalent to the incorporation of the terminating actions contained in Service Bulletins 747–53–2176, Revision 3, dated December 15, 1978, and 747–53–2183, Revision 1, dated March 14, 1980.

Note: The modifications required by paragraphs A. and B., above, do not terminate the inspection requirements of any other AD unless that AD specifies that any such modification constitutes terminating action of the inspection requirements.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Seattle Aircraft Certification Office.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

The modifications shall be done in accordance with Boeing Document No. D6–35999, dated March 1989, "Aging Airplane Service Bulletin Structural Modification Program—Model 747." This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commerical Airplanes, P.O. Box 3707, Seattle, Washington 98124. Copies may be inspected at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington; or at the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington; or at the Office of the Federal Register, 1100 L Street NW., Room 8301, Washington, DC.

This amendment becomes effective April 17, 1990.

Issued in Seattle, Washington, on January 16, 1990.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90–5132 Filed 3–6–90; 11:59 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89-NM-268-AD]

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to Boeing Model 727 series airplanes, which would require the implementation of a corrosion control program. This proposal is prompted by reports of recent incidents involving fatigue cracking and corrosion in transport category airplanes that are approaching or have exceeded their economic design goal. These incidents have jeopardized the airworthiness of the affected airplanes. These conditions, if not corrected, could result in a degradation in the structural capabilities of the affected airplanes.

DATES: Comments must be received no later than June 1, 1990.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-268-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Stanton R. Wood, Airframe Branch, ANM-120S; telephone (206) 431-1924. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and agency aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-268-AD." The post card will be date/time stamped and returned to the commenter.

Discussion:

In April 1988, a high-cycle Boeing Model 737 suffered major structural damage in flight. The airplane had numerous fatigue cracks and a great deal of corrosion. Subsequent inspections conducted by the operator on the high-cycle airplanes in its fleet revealed that two other airplanes had extensive fatigue cracking and corrosion. These airplanes were taken out of service.

In June 1988, the FAA sponsored a conference on aging airplanes. It became obvious, because of the huge increase in air travel, the relatively slow pace of new airplane production, and the apparent economic feasibility of operating older technology airplanes, that older airplanes will continue to be operated rather than be retired. Because of the problems revealed by the accident described above, it was generally agreed that increased attention needed to be focused on this aging fleet and maintaining its continued operational safety.

The Air Transport Association (ATA) of America and the Aerospace Industries Association (AIA) of America committed to identifying and implementing procedures to ensure continuing structural airworthiness of aging transport category airplanes. An Aging Aircraft Task Force, with representatives from the aircraft operators, manufacturers, regulatory authorities, and other aviation representatives, was established in August 1988. The objective of the Task Force was to sponsor "Working Groups" to (1) select service bulletins, applicable to each airplane model in the transport fleet, to be recommended for mandatory modification of aging airplanes, (2) develop corrosion-directed inspections and prevention programs, (3) review the adequacy of each operator's structural maintenance program, (4) review and update the Supplemental Structural Inspection Documents (SSID), and (5) assess repair quality.

The Working Group assigned to review Boeing Model 727 series airplanes completed its work on Item (1), above, in March 1989. The Working Group's, proposal is contained in Boeing Document Number D6-54860, "Aging Airplane Service Bulletin Structural Modification Program—Model 727." The FAA recently issued an NPRM, Docket Number 89-NM-60-AD, published in the **Federal Register** on May 23, 1989 (54 FR 2290), which proposes to mandate the installation of the modifications identified in that Document.

The Working Group has now completed its work on Item (2) and has developed a baseline program for controlling corrosion problems that may jeopardize the continued airworthiness of the Boeing Model 727 fleet. This program is contained in Boeing Document Number D6-54929, "Aging Airplane Corrosion Prevention and Control Program—Model 727," dated July 28, 1989, which the FAA has reviewed and approved.

Section 1.1 of the Document defines three levels of corrosion: Level 1 is corrosion which does not exceed certain limits. Level 2 corrosion is that which exceeds those limits. Level 3 corrosion is significant corrosion which is potentially an urgent airworthiness concern.

Section 4.1 of the Document describes the "Basic Task" to be accomplished in each defined airplane area as part of the Baseline Program. This task includes visual inspections of all primary and secondary structure, and may also include detailed visual and non-destructive inspections (NDI). Where NDI is employed, adequate standards and procedures must be developed and properly recorded for the area inspected. Any corrosion or other damage found as a result of these inspections must be repaired.

Section 4.2 of the Document sets forth the general implementation requirements for the corrosion inspection/control program. As described in that section, each airplane area is assigned an "Implementation Age" and a "Repeat Interval." The program is applicable in each area to all Model 727 airplanes whose age has

reached or exceeded the Implementation Age for that area. For each airplane area, the program must be implemented on all affected airplanes within the period identified as the Repeat Interval for that area. For airplanes that have already exceeded the applicable Implementation Age, this period is to be measured starting from the date the operator adopts the program. For airplanes whose age exceeds 20 years, the maximum period for implementing the program in any area is 6 years or the Repeat Interval for that area, whichever is less. Finally, section 4.2 establishes a minimum implementation rate of one airplane per year for each area.

Section 4.3 of the Document identifies the specific airplane areas that are subject to the program, the Implementation Age and Repeat Interval for each area, and other information necessary to carry out the program for each area.

In addition to the specific sections discussed above, the Document contains extensive discussion of the program, which is useful for background and guidance.

Since corrosion is likely to exist or develop on airplanes of this type design, an AD is proposed which would require adoption of a corrosion prevention control program that is equivalent to or better than the program specified in the Boeing Document previously described.

Paragraph A. of the proposed rule would require a revision to the FAA-approved maintenance program to incorporate a corrosion control program equivalent to that described in sections 4.1, 4.2, and 4.3 of the Document. This paragraph would also require repair of all corroded or cracked structure prior to further flight. This paragraph would, therefore, require implementation of the basic corrosion control program described in the Document.

Paragraph B. would require that, if Level 3 corrosion is found, the operator take action to ensure that any such corrosion in other airplanes of its fleet be detected in a timely manner. This paragraph is intended to expedite the detection and correction of the most severe types of corrosion where there are indications it may exist on other airplanes of an operator's fleet.

Paragraph C. would allow minor adjustment to repetitive inspection intervals to accommodate unanticipated scheduling requirements. This paragraph recognizes that an adequate corrosion inspection program can permit some flexibility in scheduling. However, this adjustment is only to be utilized for unanticipated events and will not be allowed in the planning of inspection schedules.

Paragraph D. would require that all Level 2 corrosion be reported to Boeing within 30 days, and all Level 3 corrosion be reported within 10 days, in accordance with section 5 of the Document. Boeing, in turn, will immediately advise the FAA of all Level 3 corrosion reports received, so that appropriate corrective action can follow. The FAA will review all Level 2 corrosion reports on a quarterly basis. It should be noted that this reporting requirement would be in addition to the existing reporting requirements of FAR § 121.703, which requires reporting of "corrosion of aircraft structures, if more than the maximum acceptable to the manufacturer or the FAA."

Paragraph E. would preclude operators, whose corrosion inspection programs currently provide for more frequent inspections than those specified in the Document, from extending the intervals for those inspections without approval by the FAA. This is to ensure that existing inspection programs are not degraded as a result of this AD.

Paragraph F. would require that operators ensure that newly acquired aircraft comply with their corrosion inspection programs before being operated. This paragraph is intended to ensure that frequently transferred aircraft are not permitted to operate without proper corrosion control. Areas of a newly acquired airplane that have not been inspected for corrosion would be required to be inspected in accordance with the new carrier's program, and repaired if necessary, prior to further operations under the carrier's certificate.

Paragraph G. would require that operators, upon finding corrosion exceeding Level 1 during a repetitive inspection, adjust their program to ensure that future corrosion findings are limited to Level 1 or better. This paragraph establishes the mechanism for "fine tuning" an operator's program to ensure that future significant corrosion is detected in a timely manner.

Paragraph H. would permit operators to request that inspection intervals and thresholds be increased if data is provided to substantiate that, during previous inspections of the area, no significant corrosion was found, and that the requested increase will continue to provide an acceptable level of safety. Without such data, or without the FAA's first-hand experience, there would be no basis to justify such an increase. The FAA intends to initiate a program wherein FAA engineers will gain experience as to the affected operators' corrosion problems. This program will be beneficial to the FAA when assessing requests for increases in inspection intervals.

There are approximately 1,710 Model 727 series airplanes of the affected design in the worldwide fleet. It is estimated that 1,143 airplanes of U.S. registry would be affected by this AD, that it would take approximately 16 manhours per area to accomplish the required actions. There are 125 areas called out in the Boeing document, and for an average labor cost of $40 per manhour, the total cost to inspect each airplane would be $80,000. Based on these figures, the total cost impact of the AD on U.S. operators for the estimated 6 year average inspection cycle is $91,444,000.

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

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

Boeing: Applies to all Model 727 series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To control corrosion, accomplish the following:

A. Within one year after the effective date of this AD, revise the FAA-approved maintenance program to include the corrosion control program specified in sections 4.1, 4.2, and 4.3 of Boeing Document Number D6-54929, "Aging Airplane Corrosion Prevention and Control Program, Model 727," dated July 28, 1989 (hereinafter referred to as "the Document"). All structure found corroded or cracked must be repaired prior to further flight, in accordance with the Document or in a manner approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: Where non-destructive inspection (NDI) methods are employed, in accordance with section 4.1 of the Document, acceptable standards and procedures must be developed, then approved by the FAA certificate holding office, and properly recorded for the area inspected.

Note: Procedures identified in the Document as "optional" are not required to be accomplished by this AD.

B. If, as a result of an initial inspection conducted in accordance with the program required by paragraph A., above, Level 3 corrosion is found in any area, that area must be inspected on all Model 727 aircraft in the operator's fleet within 15 days after such finding, and any structure found corroded or cracked must be repaired prior to further flight, in accordance with paragraph A., above.

Note: The reports required by paragraph D., below, must still be submitted.

C. To accommodate unanticipated scheduling requirements, it is acceptable for a repeat inspection interval to be increased by up to 10% but not to exceed 6 months.

D. Report forms for Level 2 corrosion must be submitted within 30 days after detection, and for level 3 corrosion must be submitted within 10 days after detection, in accordance with Section 5.0 of the Document.

Note: This reporting requirement does not relieve operators from reporting corrosion as required by FAR § 121.703.

E. If the inspection intervals of an operator's corrosion inspection program are more frequent than specified in section 4.3 of the Document, the repetitive intervals may not be increased without specific approval of the Manager of the Seattle Aircraft Certification Office.

Note: Any request for an increase in the intervals should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Seattle Aircraft Certification Office.

F. Before any newly acquired airplane can be added to a carrier's operation certificate, the status of the corrosion control program for the airplane must be established. Areas which have not been previously inspected for corrosion within the new carrier's FAA-approved repetitive inspection time intervals must be inspected and appropriately repaired in accordance with paragraph A., above, prior to operations under the carrier's certificate.

G. If corrosion is found to exceed level 1 on inspections after the initial inspection, the corrosion control program for the affected area must be reviewed and means implemented to reduce corrosion to Level 1 or better. The corrective action must be approved by the Manager, Seattle Aircraft Certification Office.

Note: The plan for corrective action should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Seattle Aircraft Certification Office.

H. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment, and then send it to the Manager, Seattle Aircraft Certification Office.

I. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

The FAA will request Federal Register approval to incorporate by reference the manufacturer's service document identified and described in this proposed directive.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on January 16, 1990.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-5129 Filed 3-6-90; 11:59 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-NM-269-AD]

Airworthiness Directives: Boeing Model 707/720 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to Boeing Model 707/720 series airplanes, which would require the implementation of a corrosion control program. This proposal is prompted by reports of recent incidents involving fatigue cracking and corrosion in transport category airplanes that are approaching or have exceeded their economic design goal. These incidents have jeopardized the airworthiness of the affected airplanes. These conditions, if not corrected, could result in a degradation in the structural capabilities of the affected airplanes.

DATES: Comments must be received no later than June 1, 1990.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-269-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Shardul R. Panchal, Airframe Branch, ANM-120S; telephone (206) 431-1954. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to

the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interest persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-269-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

In April 1988, a high-cycle Boeing Model 737 suffered major structural damage in flight. The airplane had numerous fatigue cracks and a great deal of corrosion. Subsequent inspections conducted by the operator on the high-cycle airplanes in its fleet revealed that two other airplanes had extensive fatigue cracking and corrosion. These airplanes were taken out of service.

In June 1988, the FAA sponsored a conference on aging airplanes. It became obvious, because of the huge increase in air travel, the relatively slow pace of new airplane production, and the apparent economic feasibility of operating older technology airplanes, that older airplanes will continue to be operated rather than be retired. Because of the problems revealed by the accident described above, it was generally agreed that increased attention needed to be focused on this aging fleet and maintaining its continued operational safety.

The Air Transport Association (ATA) of America and the Aerospace Industries Association (AIA) of America committed to identifying and implementing procedures to ensure continuing structural airworthiness of aging transport category airplanes. An Aging Aircraft Task Force, with representatives from the aircraft operators, manufacturers, regulatory authorities, and other aviation representatives, was established in August 1988. The objectives of the Task Force was to sponsor "Working Groups" to (1) select service bulletins, applicable to each airplane model in the transport fleet, to be recommended for mandatory modification of aging airplanes, (2) develop corrosion-directed inspections and prevention programs, (3) review the adequacy of each operator's structural maintenance program, (4) review and update the Supplemental Structural Inspection Documents (SSID), and (5) assess repair quality.

The Working Group assigned to review Boeing Model 707/720 series airplanes completed its work on Item (1), above, in June 1989. The Working Group's proposal is contained in Boeing Document Number D6-54996, "Aging Airplane Service Bulletin Structural Modification Program—Model 707-100, -200/-300/-300B/-300C/-400 and 720/720B." The FAA is currently considering the issuance of an proposed AD that would mandate the installation of the modifications identified in that Document.

The Working Group has now completed its work on Item (2) and has developed a baseline program for controlling corrosion problems that may jeopardize the continued airworthiness of the Boeing Model 707/720 fleet. This program is contained in Boeing Document Number D6-54928, "Aging Airplane Corrosion Prevention and Control Program—Model 707-720," dated July 28, 1989, which the FAA has reviewed and approved.

Section 1.1 of the Document defines three levels of corrosion: Level 1 is corrosion which does not exceed certain limits. Level 2 corrosion is that which exceeds those limits. Level 3 corrosion is significant corrosion which is potentially an urgent airworthiness concern.

Section 4.1 of the Document describes the "Basic Task" to be accomplished in each defined airplane area as part of the Baseline Program. This task includes visual inspections of all primary and secondary structure, and may also include detailed visual and non-destructive inspections (NDI). Where NDI is employed, adequate standards and procedures must be developed and properly recorded for the area inspected. Any corrosion or other damage found as a result of these inspections must be repaired.

Section 4.2 of the Document sets forth the general implementation requirements for the corrosion inspection/control program. As described in that section, each airplane area is assigned an "Implementation Age" and a "Repeat Interval." The program is applicable in each area to all Model 707/720 airplanes whose age has reached or exceeded the Implementation Age for that area. For each airplane area, the program must be implemented on all affected airplanes within the period identified as the Repeat Interval for that area. For airplanes that have already exceeded the applicable Implementation Ages, this period is to be measured starting from the date the operator adopts the program. For airplanes whose age exceeds 20 years, the maximum period for implementing the program in any area is 6 years or the Repeat Interval for that area, whichever is less. Finally, Section 4.2 establishes a minimum implementation rate of one airplane per year for each area.

Section 4.3 of the Document identifies the specific airplane areas that are subject to the program, the Implementation Age and Repeat Interval for each area, and other information necessary to carry out the program for each area.

In addition to the specific sections discussed above, the Document contains extensive discussion of the program, which is useful for background and guidance.

Since corrosion is likely to exist or develop on airplanes of this type design, an AD is proposed which would require adoption of a corrosion prevention control program that is equivalent to or better than the program specified in the Boeing Document previously described.

Paragraph A. of the proposed rule would require a revision to the FAA-approved maintenance program to incorporate a corrosion control program equivalent to that described in sections 4.1, 4.2, and 4.3 of the Document. This paragraph would also require repair of all corroded or cracked structure prior to further flight. This paragraph would, therefore, require implementation of the basic corrosion control program described in the Document.

Paragraph B. would require that, if Level 3 corrosion is found, the operator take action to ensure that any such corrosion in other airplanes of its fleet be detected in a timely manner. This paragraph is intended to expedite the detection and correction of the most severe types of corrosion where there are indications it may exist on other airplanes of an operator's fleet.

Paragraph C. would allow minor adjustment to repetitive inspection intervals to accommodate unanticipated scheduling requirements. This paragraph recognizes that an adequate corrosion inspection program can permit some flexibility in scheduling. However, this adjustment is only to be utilized for unanticipated events and will not be

allowed in the planning of inspection schedules.

Paragraph D. would require that all Level 2 corrosion be reported to Boeing within 30 days, and all Level 3 corrosion be reported within 10 days, in accordance with section 5 of the Document. Boeing, in turn, will immediately advise the FAA of all Level 3 corrosion reports received, so that appropriate corrective action can follow. The FAA will review all Level 2 corrosion reports on a quarterly basis. It should be noted that this reporting requirement would be in addition to the existing reporting requirements of FAR § 121.703, which requires reporting of "corrosion of aircraft structures, if more than the maximum acceptable to the manufacturer or the FAA."

Paragraph E. would preclude operators, whose corrosion inspection programs currently provide for more frequent inspections than those specified in the Document, from extending the intervals for those inspections without approval by the FAA. This is to ensure that existing inspection programs are not degraded as a result of this AD.

Paragraph F. would require that operators ensure that newly acquired aircraft comply with their corrosion inspection programs before being operated. This paragraph is intended to ensure that frequently transferred aircraft are not permitted to operate without proper corrosion control. Areas of a newly acquired airplane that have not been inspected for corrosion would be required to be inspected in accordance with the new carrier's program, and repaired if necessary, prior to further operations under the carrier's certificate.

Paragraph G. would require that operators, upon finding corrosion exceeding Level 1 during a repetitive inspection, adjust their program to ensure that future corrosion findings are limited to Level 1 or better. This paragraph establishes the mechanism for "fine tuning" an operator's program to ensure that future significant corrosion is detected in a timely manner.

Paragraph H. would permit operators to request that inspection intervals and thresholds be increased if data is provided to substantiate that, during previous inspections of the area, no signficant corrosion was found, and that the requested increase will continue to provide an acceptable level of safety. Without such data, or without the FAA's first-hand experience, there would be no basis to justify such an increase. The FAA intends to initiate a program wherein FAA engineers will gain experience as to the affected operators' corrosion problems. This program will be beneficial to the FAA when assessing requests for increases in inspection intervals.

There are approximately 400 Model 707/720 series airplanes of the affected design in the worldwide fleet. It is estimated that 74 airplanes of U.S. registry would be affected by this AD, that it would take approximately 16 manhours per area to accomplish the required actions. There are 126 areas called out in the Boeing document, and for an average labor cost of $40 per manhour, the total cost to inspect each airplane would be $80,460. Based on these figures, the total cost impact of the AD on U.S. operators for the estimated 6 year average inspection cycle is $5,967,360.

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

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

Boeing: Applies to all Model 707/720 series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To control corrosion, accomplish the following:

A. Within one year after the effective date of this AD, revise the FAA-approved maintenance program to include the corrosion control program specified in sections 4.1, 4.2, and 4.3 of Boeing Document Number D6–54928, "Aging Airplane Corrosion Prevention and Control Program, Model 707/720," dated July 28, 1989 (hereinafter referred to as "the Document"). All structure found corroded or cracked must be repaired prior to further flight, in accordance with the Document or in a manner approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: Where non-destructive inspection (NDI) methods are employed, in accordance with section 4.1 of the Document, acceptable standards and procedures must be developed, then approved by the FAA certificate holding office, and properly recorded for the area inspected.

Note: Procedures identified in the Document as "optional" are not required to be accomplished by this AD.

B. If, as a result of an initial inspection conducted in accordance with the program required by paragraph A., above, Level 3 corrosion is found in any area, that area must be inspected on all Model 707/720 aircraft in the operator's fleet within 15 days after such finding, and any structure found corroded or cracked must be repaired prior to further flight, in accordance with paragraph A., above.

Note: The reports required by paragraph D., below, must still be submitted.

C. To accommodate unanticipated scheduling requirements, it is acceptable for a repeat inspection interval to be increased by up to 10% but not to exceed 6 months.

D. Report forms for Level 2 corrosion must be submitted within 30 days after detection, and for Level 3 corrosion must be submitted within 10 days after detection, in accordance with section 5.0 of the Document.

Note: This reporting requirement does not relieve operators from reporting corrosion as required by FAR § 121.703.

E. If the inspection intervals of an operator's corrosion inspection program are more frequent than specified in section 4.3 of the Document, the repetitive intervals may not be increased without specific approval of the Manager of the Seattle Aircraft Certification Office.

Note: Any request for an increase in the intervals should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Seattle Aircraft Certification Office.

F. Before any newly acquired airplane can be added to a carrier's operation certificate, the status of the corrosion control program for the airplane must be established. Areas which have not been previously inspected for corrosion within the new carrier's FAA-approved repetitive inspection time intervals must be inspected and appropriately repaired in accordance with paragraph A., above, prior to operations under the carrier's certificate.

G. If corrosion is found to exceed Level 1 on inspections after the initial inspection, the corrosion control program for the affected area must be reviewed and means implemented to reduce corrosion to Level 1 or better. The corrective action must be approved by the Manager, Seattle Aircraft Certification Office.

Note: The plan for corrective action should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Seattle Aircraft Certification Office.

H. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment, and then send it to the Manager, Seattle Aircraft Certification Office.

I. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

The FAA will request **Federal Register** approval to incorporate by reference the manufacturer's service document identified and described in this proposed directive.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on January 16, 1990.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-5128 Filed 3-6-90; 11:59 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-NM-270-AD]

Airworthiness Directives: Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to Boeing Model 737 series airplanes, which would require the implementation of a corrosion control program. This proposal is prompted by reports of recent incidents involving fatigue cracking and corrosion in transport category airplanes that are approaching or have exceeded their economic design goal. These incidents have jeopardized the airworthiness of the affected airplanes. These conditions, if not corrected, could result in a degradation in the structural capabilities of the affected airplanes.

DATES: Comments must be received no later than June 1, 1990.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rule Docket No. 89-NM-270-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Dan R. Bui, Airframe Branch, ANM-120S; telephone (206) 431-1919. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be avilable, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-270-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

In April 1988, a high-cycle Boeing Model 737 suffered major structural damage in flight. The airplane had numerous fatigue cracks and a great deal of corrosion. Subsequent inspections conducted by the operator on the high-cycle airplanes in its fleet revealed that two other airplanes had extensive fatigue cracking and corrosion. These airplanes were taken out of service.

In June 1988, the FAA sponsored a conference on aging airplanes. It became obvious, because of the huge increase in air travel, the relatively slow pace of new airplane production, and the apparent economic feasibility of operating older technology airplanes, that these airplanes will continue to be operated rather than be retired. Because of the problems revealed by the accident described above, it was generally agreed that increased attention needed to be focused on this aging fleet and maintaining its continued operational safety.

The Air Transport Association (ATA) of America and the Aerospace Industries Association (AIA) of America committed to identifying and implementing procedures to ensure continuing structural airworthiness of aging transport category airplanes. An Aging Aircraft Task Force, with representatives from the aircraft operators, manufacturers, regulatory authorities, and other aviation representatives, was established in August 1988. The objective of the Task Force was to sponsor "Working Groups" to (1) select service bulletins, applicable to each airplane model in the transport fleet, to be recommended for mandatory

modification of aging airplanes, (2) develop corrosion-directed inspections and prevention programs, (3) review the adequacy of each operator's structural maintenance program, (4) review and update the Supplemental Structural Inspection Documents (SSID), and (5) assess repair quality.

The Working Group assigned to review Boeing Model 737 series airplanes completed its work on Item (1), above, in March 1989. The Working Group's, proposal is contained in Boeing Document Number D6-35999, "Aging Airplane Service Bulletin Structural Modification Program—Model 737." The FAA recently issued an NPRM, Docket Number 89-NM-67-AD, published in the **Federal Register** on May 23, 1989 (54 FR 22304), which proposes to mandate the installation of the modifications identified in that Document.

The Working Group has now completed its work on Item (2) and has developed a baseline program for controlling corrosion problems that may jeopardize the continued airworthiness of the Boeing Model 737 fleet. This program is contained in Boeing Document Number D6-38528, "Aging Airplane Corrosion Prevention and Control Program—Model 737," dated July 28, 1989, which the FAA has reviewed and approved.

Section 1.1 of the Document defines three levels of corrosion: Level 1 is corrosion which does not exceed certain limits. Level 2 corrosion is that which exceeds those limits. Level 3 corrosion is significant corrosion which is potentially an urgent airworthiness concern.

Section 4.1 of the Document describes the "Basic Task" to be accomplished in each defined airplanes area as part of the Baseline Program. This task includes visual inspections of all primary and secondary structure, and may also include detailed visual and non-destructive inspections (NDI). Where NDI is employed, adequate standards and procedures must be developed and properly recorded for the area inspected. Any corrosion or other damage found as a result of these inspections must be repaired.

Section 4.2 of the Document sets forth the general implementation requirements for the corrosion inspection/control program. As described in that section, each airplane area is assigned an "Implementation Age" and a "Repeat Interval." The program is applicable in each area to all Model 737 airplanes whose age has reached or exceeded the Implementation Age for that area. For each airplane area, the program must be implemented on all affected airplanes within the period identified as the Repeat Interval for that area. For airplanes that have already exceeded the applicable Implementation Ages, this period is to be measured starting from the date the operator adopts the program. For airplanes whose age exceeds 20 years, the maximum period for implementing the program in any area is 6 years or the Repeat Interval for that area, whichever is less. Finally, section 4.2 establishes a minimum implementation rate of one airplane per year for each area.

Section 4.3 of the Document identifies the specific airplane areas that are subject to the program, the Implementation Age and Repeat Interval for each area, and other information necessary to carry out the program for each area.

In addition to the specific sections discussed above, the Document contains extensive discussion of the program, which is useful for background and guidance.

Since corrosion is likely to exist or develop on airplanes of this type design, an AD is proposed which would require adoption of a corrosion prevention control program that is equivalent to or better than the program specified in the Boeing Document previously described.

Paragraph A. of the proposed rule would require a revision to the FAA-approved maintenance program to incorporate a corrosion control program equivalent to that described in sections 4.1, 4.2, and 4.3 of the Document. This paragraph would also require repair of all corroded or cracked structure prior to further flight. This paragraph would, therefore, require implementation of the basic corrosion control program described in the Document.

Paragraph B. would require that, if Level 3 corrosion is found, the operator take action to ensure that any such corrosion in other airplanes of its fleet be detected in a timely manner. This paragraph is intended to expedite the detection and correction of the most severe types of corrosion where there are indications it may exist on other airplanes of an operator's fleet.

Paragraph C. would allow minor adjustment to repetitive inspection intervals to accommodate unanticipated scheduling requirements. This paragraph recognizes that an adequate corrosion inspection program can permit some flexibility in scheduling. However, this adjustment is only to be utilized for unanticipated events and will not be allowed in the planning of inspection schedules.

Paragraph D. would require that all Level 2 corrosion be reported to Boeing within 30 days, and all Level 3 corrosion be reported within 10 days, in accordance with section 5 of the Document. Boeing, in turn, will immediately advise the FAA of all Level 3 corrosion reports received, so that appropriate corrective action can follow. The FAA will review all Level 2 corrosion reports on a quarterly basis. It should be noted that this reporting requirement would be in addition to the existing reporting requirements of FAR § 121.703, which requires reporting of "corrosion of aircraft structures, if more than the maximum acceptable to the manufacturer or the FAA."

Paragraph E. would preclude operators, whose corrosion inspection programs currently provide for more frequent inspections than those specified in the Document, from extending the intervals for those inspections without approval by the FAA. This is to ensure that existing inspection programs are not degraded as a result of this AD.

Paragraph F. would require that operators ensure that newly acquired aircraft comply with their corrosion inspection programs before being operated. This paragraph is intended to ensure that frequently transferred aircraft are not permitted to operate without proper corrosion control. Areas of a newly acquired airplane that have not been inspected for corrosion would be required to be inspected in accordance with the new carrier's program, and repaired if necessary, prior to further operations under the carrier's certificate.

Paragraph G. would require that operators, upon finding corrosion exceeding Level 1 during a repetitive inspection, adjust their program to ensure that future corrosion findings are limited to Level 1 or better. This paragraph establishes the mechanism for "fine tuning" an operator's program to ensure that future significant corrosion is detected in a timely manner.

Paragraph H. would permit operators to request that inspection intervals and thresholds be increased if data is provided to substantiate that, during previous inspections of the area, no significant corrosion was found, and that the requested increase will continue to provide an acceptable level of safety. Without such data, or without the FAA's first-hand experience, there would be no basis to justify such an increase. The FAA intends to initiate a program wherein FAA engineers will gain experience as to the affected operators' corrosion problems. This program will be beneficial to the FAA when assessing requests for increases in inspection intervals.

There are approximately 595 Model 737 series airplanes of the affected

design in the worldwide fleet. It is estimated that 232 airplanes of U.S. registry would be affected by this AD, that it would take approximately 8 manhours per area to accomplish the required actions. There are 121 areas called out in the Boeing document, and for an average labor cost of $40 per manhour, the total cost to inspect each airplane would be $38,720. Based on these figures, the total cost impact of the AD on U.S. operators for the estimated 6 year average inspection cycle is $8,983,040.

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

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

Boeing: Applies to all Model 737 series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To control corrosion, accomplish the following:

A. Within one year after the effective date of this AD, revise the FAA-approved maintenance program to include the corrosion control program specified inspection 4.1, 4.2, and 4.3 of Boeing Document Number D6–38528, "Aging Airplane Corrision Prevention and Control Program, Model 737," dated July 28, 1989 (hereinafter referred to as "the Document"). All structure found corroded or cracked must be repaired prior to further flight, in accordance with the Document; or in a manner approved by the Manager, Seattle Aircraft Certification Office FAA, Northwest Mountain Region.

Note: Where non-destructive inspection (NDI) methods are employed, in accordance with section 4.1 of the Document, acceptable standards and procedures must be developed, then approved by the FAA certificate holding office, and properly recorded for the area inspected.

Note: Procedures identified in the Document as "optional" are not required to be accomplished by this AD.

B. If, as a result of an initial inspection conducted in accordance with the program required by paragraph A., above, Level 3 corrosion is found in any area, that area must be inspected on all Model 737 aircraft in the operator's fleet within 15 days after such finding, and any structure found corroded or cracked must be repaired prior to further flight, in accordance with paragraph A., above.

Note: The reports required by paragraph D., below, must still be submitted.

C. To accommodate unanticipated scheduling requirements, it is acceptable for a repeat inspection interval to be increased by up to 10% but not to exceed 6 months.

D. Report forms for Level 2 corrosion must be submitted within 30 days after detection, and for Level 3 corrosion must be submitted within 10 days after detection, in accordance with section 5.0 of the Document.

Note: This reporting requirement does not relieve operators from reporting corrosion as required by FAR section 121.703.

E. If the inspection intervals of an operator's corrosion inspection program are more frequent than specified in section 4.3 of the Document, the repetitive intervals may not be increased without specific approval of the Manager of the Seattle Aircraft Certification Office.

Note: Any request for an increase in the intervals should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Seattle Aircraft Certification Office.

F. Before any newly acquired airplane can be added to a carrier's operation certificate, the status of the corrosion control program for the airplane must be established. Areas which have not been previously inspected for corrosion within the new carrier's FAA-approved repetitive inspection time intervals must be inspected and appropriately repaired in accordance with paragraph A., above, prior to operations under the carrier's certificate.

G. If corrosion is found to exceed Level 1 on inspections after the initial inspection, the corrosion control program for the affected area must be reviewed and means implemented to reduce corrosion to Level 1 or better.

Note: The plan for corrective action should be fowarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Seattle Aircraft Certification Office.

H. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Moutain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment, and then send it to the Manager, Seattle Aircraft Certification Office.

I. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

The FAA will request Federal Register approval to incorporate by reference the manufactuerer's service documents identified and described in this proposed directive.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on January 16, 1990.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90–5126 Filed 3–6–90; 11:59 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 89–NM–271–AD]

Airworthiness Directives: Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to Boeing Model 747 series airplanes, which would require the implementation of a corrosion control program. This proposal is prompted by reports of recent incidents involving fatigue cracking and corrosion in transport category airplanes that are approaching or have exceeded their economic design goal. These incidents have jeopardized the airworthiness of the affected airplanes. These conditions, if not corrected, could result in a degradation in the structural capabilities of the affected airplanes.

DATES: Comments must be received no later than June 1, 1990.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-271-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Richard H. Yarges, Airframe Branch, ANM-120S; telephone (206) 431-1925. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-271-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

In April 1988, a high-cycle Boeing Model 737 suffered major structural damage in flight. The airplane had numerous fatigue cracks and a great deal of corrosion. Subsequent inspections conducted by the operator on the high-cycle airplanes in its fleet revealed that two other airplanes had extensive fatigue cracking and corrosion. These airplanes were taken out of service.

In June 1988, the FAA sponsored a conference on aging airplanes. It became obvious, because of the huge increase in air travel, the relatively slow pace of new airplane production, and the apparent economic feasibility of operating older technology airplanes, that older airplanes will continue to be operated rather than be retired. Because of the problems revealed by the accident described above, it was generally agreed that increased attention needed to be focused on this aging fleet and maintaining its continued operational safety.

The Air Transport Association (ATA) of America and the Aerospace Industries Association (AIA) of America committed to identifying and implementing procedures to ensure continuing structural airworthiness of aging transport category airplanes. An Aging Aircraft Task Force, with representatives from the aircraft operators, manufacturers, regulatory authorities, and other aviation representatives, was established in August 1988. The objective of the Task Force was to sponsor "Working Groups" to (1) select service bulletins, applicable to each airplane model in the transport fleet, to be recommended for mandatory modification of aging airplanes, (2) develop corrosion-directed inspections and prevention programs, (3) review the adequacy of each operator's structural maintenance program, (4) review and update the Supplemental Structural Inspection Documents (SSID), and (5) assess repair quality.

The Working Group assigned to review Boeing Model 747 series airplanes completed its work on Item (1), above, in March 1989. The Working Group's, proposal is contained in Boeing Document Number D6-35999, "Aging Airplane Service Bulletin Structural Modification Program—Model 747." The FAA recently issued an NPRM, Docket Number 89-NM-68-AD, published in the **Federal Register** on May 23, 1989 (54 FR 22300), which proposes to mandate the installation of the modifications identified in that Document.

The Working Group has now completed its work on Item (2) and has developed a baseline program for controlling corrosion problems that may jeopardize the continued airworthiness of the Boeing Model 747 fleet. This program is contained in Boeing Document Number D6-36022, "Aging Airplane Corrosion Prevention and Control Program—Model 747," dated July 1989, which the FAA has reviewed and approved.

Section 1.1 of the Document defines three levels of corrosion: Level 1 is corrosion which does not exceed certain limits. Level 2 corrosion is that which exceeds those limits. Level 3 corrosion is significant corrosion which is potentially an urgent airworthiness concern.

Section 4.1 of the Document describes the "Basic Task" to be accomplished in each defined airplane area as part of the Baseline Program. This task includes visual inspections of all primary and secondary structure, and may also include detailed visual and non-destructive inspections (NDI). Where NDI is employed, adequate standards and procedures must be developed and properly recorded for the area inspected. Any corrosion or other damage found as a result of these inspections must be repaired.

Section 4.2 of the Document sets forth the general implementation requirements for the corrosion inspection/control program. As described in that section, each airplane area is assigned an "Implementation Age" and a "Repeat Interval." The program is applicable in each area to all Model 747 airplanes whose age has reached or exceeded the Implementation Age for that area. For each airplane area, the program must be implemented on all affected airplanes within the period identified as the Repeat Interval for that area. For airplanes that have already exceeded the applicable Implementation Ages, this period is to be measured starting from the date the operator adopts the program. For airplanes whose age exceeds 20 years, the maximum period for implementing the program in any area is 6 years or the Repeat Interval for that area, whichever is less. Finally, section 4.2 establishes a

minimum implementation rate of one airplane per year for each area.

Section 4.3 of the Document identifies the specific airplane areas that are subject to the program, the Implementation Age and Repeat Interval for each area, and other information necessary to carry out the program for each area.

In addition to the specific sections discussed above, the Document contains extensive discussion of the program, which is useful for background and guidance.

Since corrosion is likely to exist or develop on airplanes of this type design, an AD is proposed which would require adoption of a corrosion prevention control program that is equivalent to or better than the program specified in the Boeing Document previously described.

Paragraph A. of the proposed rule would require a revision to the FAA-approved maintenance program to incorporate a corrosion control program equivalent to that described in sections 4.1, 4.2, and 4.3 of the Document. This paragraph would also require repair of all corroded or cracked structure prior to further flight. This paragraph would, therefore, require implementation of the basic corrosion control program described in the Document.

Paragraph B. would require that, if level 3 corrosion is found, the operator take action to ensure that any such corrosion in other airplanes of its fleet be detected in a timely manner. This paragraph is intended to expedite the detection and correction of the most severe types of corrosion where there are indications it may exist on other airplanes of an operator's fleet.

Paragraph C. would allow minor adjustment to repetitive inspection intervals to accommodate unanticipated scheduling requirements. This paragraph recognizes that an adequate corrosion inspection program can permit some flexibility in scheduling. However, this adjustment is only to be utilized for unanticipated events and will not be allowed in the planning of inspection schedules.

Paragraph D. would require that all Level 2 corrosion be reported to Boeing within 30 days, and all level 3 corrosion be reported within 10 days, in accordance with section 5 of the Document. Boeing, in turn, will immediately advise the FAA of all Level 3 corrosion reports received, so that appropriate corrective action can follow. The FAA will review all Level 2 corrosion reports on a quarterly basis. It should be noted that this reporting requirement would be in addition to the existing reporting requirements of FAR § 121.703, which requires reporting of "corrosion of aircraft structures, if more than the maximum acceptable to the manufacturer or the FAA."

Paragraph E. would preclude operators, whose corrosion inspection programs currently provide for more frequent inspections than those specified in the Document, from extending the intervals for those inspections without approval by the FAA. This is to ensure that existing inspection programs are not degraded as a result of this AD.

Paragraph F. would require that operators ensure that newly acquired aircraft comply with their corrosion inspection programs before being operated. This paragraph is intended to ensure that frequently transferred aircraft are not permitted to operate without proper corrosion control. Areas of a newly acquired airplane that have not been inspected for corrosion would be required to be inspected in accordance with the new carrier's program, and repaired if necessary, prior to further operations under the carrier's certificate.

Paragraph G. would require that operators, upon finding corrosion exceeding Level 1 during a repetitive inspection, adjust their program to ensure that future corrosion findings are limited to Level 1 or better. This paragraph establishes the mechanism for "fine tuning" an operator's program to ensure that future significant corrosion is detected in a timely manner.

Paragraph H. would permit operators to request that inspection intervals and thresholds be increased if data is provided to substantiate that, during previous inspections of the area, no significant corrosion was found, and that the requested increase will continue to provide an acceptable level of safety. Without such data, or without the FAA's first-hand experience, there would be no basis to justify such an increase. The FAA intends to initiate a program wherein FAA engineers will gain experience as to the affected operators' corrosion problems. This program will be beneficial to the FAA when assessing requests for increases in inspection intervals.

There are approximately 284 Model 747 series airplanes of the affected design in the worldwide fleet. It is estimated that 65 airplanes of U.S. registry would be affected by this AD, that it would take approximately 40 manhours per area to accomplish the required actions. There are 118 areas called out in the Boeing document, and for an average labor cost of $40 per manhour, the total cost to inspect each airplane would be $188,800. Based on these figures, the total cost impact of the AD on U.S. operators for the estimated 6 year average inspection cycle is $12,2[illegible] 000.

Tl[illegible] gulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federal Assessment.

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

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

Boeing: Applies to all Model 747 series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To control corrosion, accomplish the following:

A. Within one year after the effective date of this AD, revise the FAA-approved maintenance program to include the corrosion control program specified in sections 4.1, 4.2, and 4.3 of Boeing Document Number D6-36022, "Aging Airplane Corrosion Prevention and Control Program, Model 747," dated July 1989 (hereinafter referred to as

"the Document"). All structure found corroded or cracked must be repaired prior to further flight, in accordance with the Document or in a manner approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: Where non-destructive inspection (NDI) methods are employed, in accordance with section 4.1 of the Document, acceptable standards and procedures must be developed, then approved by the FAA certificate holding office, and properly recorded for the area inspected.

Note: Procedures identified in the Document as "optional" are not required to be accomplished by this AD.

B. If, as a result of an initial inspection conducted in accordance with the program required by paragraph A., above, Level 3 corrosion is found in any area, that area must be inspected on all Model 747 aircraft in the operator's fleet within 15 days after such finding, and any structure found corroded or cracked must be repaired prior to further flight, in accordance with paragraph A., above.

Note: The reports required by paragraph D., below, must still be submitted.

C. To accommodate unanticipated scheduling requirements, it is acceptable for a repeat inspection interval to be increased by up to 10% but not to exceed 6 months.

D. Report forms for Level 2 corrosion must be submitted within 30 days after detection, and for Level 3 corrosion must be submitted within 10 days after detection, in accordance with Section 5.0 of the Document.

Note: This reporting requirement does not relieve operators from reporting corrosion as required by FAR Section 121.703.

E. If the inspection intervals of an operator's corrosion inspection program are more frequent than specified in section 4.3 of the Document, the repetitive intervals may not be increased without specific approval of the Manager of the Seattle Aircraft Certification Office.

Note: Any request for an increase in the intervals should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Seattle Aircraft Certification Office.

F. Before any newly acquired airplane can be added to a carrier's operation certificate, the status of the corrosion control program for the airplane must be established. Areas which have not been previously inspected for corrosion within the new carrier's FAA-approved repetitive inspection time intervals must be inspected and appropriately repaired in accordance with paragraph A., above, prior to operations under the carrier's certificate.

G. If corrosion is found to exceed Level 1 on inspections after the initial inspection, the corrosion control program for the affected area must be reviewed and means implemented to reduce corrosion to Level 1 or better. The corrective action must be approved by the Manager, Seattle Aircraft Certification Office.

Note: The plan for corrective action should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Seattle Aircraft Certification Office.

H. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment, and then send it to the Manager, Seattle Aircraft Certification Office.

I. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

The FAA will request **Federal Register** approval to incorporate by reference the manufacturer's service document identified and described in this proposed directive.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on January 16, 1990.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-5127 Filed 3-6-90; 11:59 am]

BILLING CODE 4910-13-M

federal register

Wednesday
March 7, 1990

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Part 99

Transponder Requirements In an Air Defense Identification Zone (ADIZ); Final Rule

DEPARTMENT OF TRANSPORTATION

14 CFR Part 99

[Docket No. 24903; Amdt. No. 99-16]

Transponder Requirements in an Air Defense Identification Zone (ADIZ)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes requirements for all civil aircraft to be equipped with a transponder (basic transponder or Mode S transponder) with automatic altitude reporting equipment (referred to in this document as "a transponder with Mode C") when conducting operations into or out of the United States into, within, or across the contiguous U.S. ADIZ. The FAA is taking this action to reduce the risk of a midair collision and to reduce the use of aircraft engaged in the illegal transportation of drugs.

EFFECTIVE DATES: April 6, 1990.

ADDRESSES: Copies of this document may be obtained by submitting a request to the Federal Aviation Administration, Office of Public Affairs, APA-200, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3479. Communications must identify the amendment number of the document.

FOR FURTHER INFORMATION CONTACT: Mr. William C. Davis, Air Traffic Rules Branch, ATO-230, Airspace—Rules and Aeronautical Information Division, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-8783.

SUPPLEMENTARY INFORMATION:

Background and Related Rulemaking Actions

On March 18, 1982, the FAA issued Amendment No. 99-12, Security Control of Air Traffic; Modification of Flight Plan Filing Requirements for Operations in Coastal ADIZ (47 FR 12324). This rule amended part 99 of the Federal Aviation Regulations (FAR) to require aircraft operating at a true airspeed of less than 180 knots in certain areas to meet the flight plan filing and other requirements of that part. Additionally, the rule established a requirement that an aircraft's transponder capability be included in the flight plan. The effort was in response to a threat to safety in air commerce by aircraft operating illegally with respect to transportation of drugs through airspace adjacent to the State of Florida.

By way of letter dated July 11, 1985, the Deputy to the Assistant Secretary of the Treasury, on behalf of the U.S. Customs Service (USCS), requested the FAA take additional regulatory actions as deemed necessary by the FAA to enhance the identification of all aircraft entering the United States. Subsequent discussions with the USCS revealed that since the issuance of Amendment No. 99-12, and as a result of concentrated law enforcement efforts in the targeted area (Florida Peninsula), a significant amount of illegal drug smuggling activity involving small aircraft has been forced into other areas of the United States. Consequently, the FAA was prompted to seek further regulatory changes to the flight plan filing and position reporting requirements of part 99 of the FAR.

On October 29, 1985, the FAA issued Amendment No. 91-190, Transponder-On Operations (50 FR 45599). This rule requires any person operating an aircraft equipped with an operable transponder to have that transponder turned on while operating in controlled airspace. Additionally, if the aircraft is equipped with automatic altitude reporting equipment, that equipment must also be turned on. The transponder-on rule was mandated to provide an increased level of safety without placing an undue burden on the public.

On May 13, 1988, the FAA issued Amendment No. 99-13, Security Control of Air Traffic; Modification of U.S. ADIZ (53 FR 18216). This rule amended part 99 of the FAR by changing the lateral boundaries of ADIZ's around the contiguous United States, Alaska, and Guam. In addition, this effort made editorial changes and deleted references to Distant Early Warning Identification Zones, Domestic ADIZ's, and Coastal ADIZ's.

On June 17, 1988, the FAA issued Amendment No. 91-203, Transponder with Automatic Altitude Reporting Capability Requirement (53 FR 23356). The rule requires most aircraft operating in busy terminal areas and all aircraft operating at or above 10,000 feet mean sea level (MSL) to be equipped with a transponder and automatic altitude reporting equipment. The rule will be implemented in two phases. Phase I, effective July 1, 1989, required all aircraft: (1) Operating within 30 miles of any terminal control area (TCA) primary airport, and (2) operating at and above 10,000 feet MSL to be equipped with a Mode C transponder. Phase II is effective December 30, 1990, and will require pilots that plan operations: (1) Within and above an airport radar service area (ARSA) up to 10,000 feet MSL, and (2) within a 10-mile radius of two specially designated airports from the surface up to 10,000 feet MSL, excluding the airspace below 1,200 feet above ground level (AGL) outside of the airport traffic area for that airport, to be equipped with a Mode C transponder.

On October 5, 1988, the FAA issued Amendment No. 99-14, Flight Plan and Transponder Requirements in an ADIZ (53 FR 39842). This rule amended part 99 of the FAR by establishing a flight plan and position report requirements for all civil aircraft conducting operations into or out of the United States into, within, or across the contiguous U.S. ADIZ. Further, this rule requires all civil aircraft, equipped with an operable radar beacon transponder, to have the transponder turned on and replying on the appropriate code or on a code assigned by air traffic control (ATC) when conducting operations into or out of the United States into, within, or across an ADIZ.

On October 5, 1988, the FAA issued Notice No. 88-17, Transponder Requirements in an ADIZ (53 FR 39846). This notice proposed a requirement for all civil aircraft to be equipped with a transponder and automatic altitude reporting equipment when conducting operations into or out of the United States into, within, or across an ADIZ.

On November 18, 1988, the Anti-Drug Abuse Act of 1988 (Public Law 100-690) was enacted. This law, in part, requires the Secretary of Transportation to study the feasibility, costs, and benefits associated with drug interdiction of requiring each pilot operating an aircraft which enters the continental United States to have—(1) an operating transponder installed in the aircraft; (2) a flight plan filed with the FAA; (3) transmission of a transponder code which can be used to identify the aircraft in the most efficient manner; and (4) a transponder signal which provides information that will ensure that the aircraft is following its filed flight plan.

Analysis of Comments

In response to the proposals detailed in Notice No. 88-17, the FAA received a total of five comments. The following is a categorization and discussion of those comments received.

Comment Period Too Short

An aviation organization suggested that the comment period was too short and did not allow for secondary publication to its membership. This organization believes that a 120-day comment period is the minimum necessary to provide for its standard publication lead times. Other

commenters also objected to the 32-day comment period assigned to Notice No. 88–17.

On December 5, 1985, the FAA issued an advance notice of proposed rulemaking (ANPRM), Notice No. 86–1, Transponder Requirements; Operations In or Out of U.S. Through a Coastal ADIZ (51 FR 4756). This ANPRM proposed to require a transponder for operations associated with an ADIZ. A 90-day comment period was assigned to this ANPRM. Because only five comments were received during the comment period of the ANPRM, which essentially proposed similar requirements, the FAA believed that under these circumstances, a shorter comment period for Notice No. 88–17 was sufficient.

Advantages of a Transponder with Mode C Equipment

One commenter suggested that the proposal was an unworkable solution to the problem of illegal drugs being smuggled into the United States.

According to the USCS, a large portion of the illegal drugs entering the United States is being smuggled by persons using aircraft that enter the United States through an ADIZ. The means for detection of these aircraft include radar, pursuit aircraft, and advanced police techniques. While the FAA does not have jurisdiction for enforcement of anti-smuggling and related statutes, it is concerned with the growth of hazards to U.S. air commerce arising in connection with the increasing use of aircraft involved in such illegal activities. The FAA believes that the flight practices of persons conducting illegal drug activities in aircraft create safety hazards for other aircraft used in legitimate operations in the same airspace as well as to persons and property on the surface. For instance, in order to escape detection, pilots of aircraft transporting illegal drugs into the United States may be expected to engage in extremely dangerous flight techniques. Such techniques include flying very low to avoid radar detection, landing and taking off from unprepared landing areas, and operating in weather conditions beyond the capability of the aircraft or pilot. Thus, while other agencies are responsible for controlling the activities involved in the transportation and importation of illegal drugs and while the mere carriage of those items under normal conditions is not dangerous, the conduct of pilots engaged in smuggling activity poses a direct threat to air commerce.

For national defense purposes, aircraft operating from outside the United States to destinations in the United States are subject to an identification process which involves, in part, the detection of these aircraft on radar. Once detected on radar, an aircraft's position is correlated with known flight plan information and any position reports that have been made. An aircraft with an operating transponder can be identified more quickly and more positively than an aircraft without a transponder. Having aircraft equipped with transponders when operating in an ADIZ would expedite the identification process, thereby allowing the appropriate governmental entities to concentrate on those aircraft suspected of being involved in illegal drug transportation and conducting hazardous flight maneuvers while attempting to avoid detection and identification.

Additionally, aircraft altitude information can be displayed directly on a radar screen. Using this data, personnel conducting detection operations would be better able to conduct intercepts of suspect aircraft. Further, pilots of pursuit aircraft could use this information independently to narrow the field of a visual search. Even though the FAA believes that the use of transponders alone may enhance safety in the airspace of the ADIZ, the ability to determine the aircraft altitude through the use of Mode C will further increase the safety and effectiveness of the drug interdiction program, as well as reduce the number of false intercept missions now being flown by Customs. For these reasons, the FAA has modified the proposal as contained in Notice No. 86–1 to require automatic altitude reporting equipment in conjunction with the proposed transponder requirement.

Altitude Detecting Radar Systems

Two commenters suggested that the recently awarded contract to Westinghouse to replace 40 en route radars with new radar systems would effectively eliminate the need for aircraft under such radar surveillance to be equipped with a Mode C transponder. This commenter assumed that the altitude detecting function of such radar systems would accomplish the intentions of the proposals in Notice No. 88–17.

The new radar system addressed by the commenter is the ARSR–4 radar. This radar is designed for use by both the FAA and the Department of Defense (DoD). It is capable of determining and reporting target height to an accuracy of plus or minus 5,000 feet of true altitude, 90 percent of the time, as measured in any 5-nautical-mile range interval to a range of 175 nautical miles. However, air traffic controllers must provide aircraft vertical separation by 1,000 feet (or 2,000 feet above 29,000 feet above mean sea level). Therefore, data derived from the height detection function of the ARSR–4 cannot be used to effect such separation. Notwithstanding its height accuracy limitation, the FAA will use the other functions of the ARSR–4 for en route ATC. More importantly, the ARSR-type systems are not suitable for use at terminal radar approach control facilities. Until advancements in technology produce systems that accurately detect true altitude of aircraft with the necessary reliability for ATC separation, the FAA will depend on the altitude information derived from Mode C transponders which report altitude in 100-foot increments accurate to within 125 feet of the altitude displayed on the altimeter. The DoD is expected to use all the ARSR–4 functions, including height detection, to maintain air sovereignty and for air defense purposes.

Costs

Several commenters suggested the cost of a Mode C transponder was too much for most general aviation aircraft operators.

A complete discussion of the costs and benefits is contained in the Final Regulatory Evaluation in the docket. However, a summary of that discussion is contained herein under the caption "Regulatory Evaluation Summary."

ATC Authorizations

The FAA specifically requested comments from operators of hot air balloons, fish spotter aircraft, petroleum industry helicopters, etc., and other persons interested in obtaining authorizations to deviate from the proposed transponder requirement and how information on such operations could be obtained by the FAA. No comments were received on this issue. However, in regard to hot air balloons and other aircraft such as sailplanes that are not equipped with an electrical system, the operators of such aircraft are excluded in this final rule from the Mode C transponder equipage requirement. Therefore, these operators will not have a need to seek approval to deviate from the requirement. However, in the case of petroleum-industry helicopter and other operators, the FAA has retained the general ATC authorization provisions contained in the proposal. Such an operator need only contact the ATC facility that exercises jurisdiction over the airspace and request an authorization. The FAA will grant such an authorization to the extent that aviation safety and drug

interdiction activities are not adversely affected.

Adoption of the Rule

For the reasons stated above, the final rule is substantially adopted as proposed in Notice No. 88-17. The following is a discussion of the regulatory changes contained in this final rule.

ATC Transponder Requirement. Effective September 7, 1990, all aircraft except as otherwise authorized by ATC are required to have a transponder when operating into or out of the United States into, within, or across an ADIZ. Aircraft which were not originally certificated with an engine-driven electrical system or which have not subsequently been certified with such a system installed, balloons, and gliders are excluded from this requirement.

Transponder with Mode C Requirement. Effective December 30, 1990, all aircraft except as otherwise authorized by ATC are required to have a transponder with automatic pressure altitude reporting equipment when operating into or out of the United States into, within, or across an ADIZ.

Aircraft which were not originally certificated with an engine-driven electrical system or which have not subsequently been certified with such a system installed, balloons, and gliders are excluded from this requirement.

Regulatory Evaluation Summary

This regulatory evaluation assesses the rule with respect to the potential benefits expected to accrue from implementaton and the expected incremental costs of compliance. The FAA's estimation of the incremental cost of compliance with this rule assumes that only those aircraft which presently operate into the United States through an ADIZ which are not equipped with Mode C (or a basic transponder) will be affected.

The Aircraft Owners and Pilots Association (AOPA), on April 30, 1986, informed the FAA (Docket #24903), that the USCS, in 1984, estimated that 39,000 separate civil aircraft were processed about 160,000 times upon arrival in the United States. Of those, 28,678 were U.S.-registered aircraft. Informal contact with Customs Service personnel has verified that the number of processings has held steady at 161,000 in 1987.

The FAA estimated the proportion of the 28,678 U.S.-registered aircraft that might be affected by the amendment based on data contained in the FAA's December 1987 publication, "General Aviation Activity and Avionics Survey, Annual Summary Report 1986 Data." The FAA applied the percentages of transponder and Mode C-equipped aircraft in the active general aviation fleet to the number of U.S.-registered aircraft processed in 1984. See Appendix A of the full Regulatory Evaluation in the Docket for the detailed steps used to calculate these percentages.

Based on these data, and estimated 74.9 percent of active U.S. general aviation aircraft are transponder equipped. This percentage, applied to the 28,678 U.S.-registered aircraft, indicates that 7,198 of those U.S.-registered aircraft may not be so equipped. These figures indicate that 21,480 of arriving U.S.-registered aircraft in 1984 were equipped with a transponder. Approximately 43.9 percent or 9,430 of the transponder-equipped aircraft did not have Mode C. Therefore, 9,430 aircraft must upgrade to Mode C and 7,198 aircraft must install a transponder with Mode C to conform with the rule. As discussed below, however, most of these aircraft will have to be equipped with Mode C as a result of another recent FAA rulemaking action.

Cost

The FAA estimates the total cost of compliance with the final rule at $689,000 (discounted) in 1988 dollars. This cost estimate takes into account the expectation that nearly all U.S. general aviation aircraft will become Mode C-equipped by the end of 1990 in conformity with the requirements of the recent FAA rule ("Transponder With Automatic Altitude Reporting Capability Requirement and Controlled Airspace Common Floor" (Mode C rule), 53 FR 23356, June 21, 1988).

Phase I of the above rule, commonly referred to as the Mode C rule, required by July 1, 1989, a transponder with Mode C for airplanes operating in the airspace at and above 10,000 feet MSL, and in the vicinity of TCA-primary airports. Phase II of the Mode C rule requires, by December 30, 1990, a transponder with Mode C for most operations in the vicinity of ARSA-primary airports and other designated airports.

Mode C for operators affected by this ADIZ rule is required by December 30, 1990. However, a basic transponder is required for these operators beginning 6 months from the date of publication of this rule. This rule imposes no cost impact on operators of those airplanes that presently are equipped with basic transponders (9,430) because they will conform fully with the Mode C requirements of this rule at the same time that they meet the requirements of Phase II of the Mode C rule on December 30, 1990. These operators' cost for Mode C was attributed previously to the Mode C rule.

Since the Mode C rule required Mode C by July 1, 1989, for operations in the vicinity of a TCA, and by December 30, 1990, for operations in the vicinity of an ARSA, some of these operators of airplanes that presently are without transponders (7,198) conform fully with the requirements of this ADIZ rule at the same time that they met the requirements of the Mode C rule pertaining to TCA's, effective July 1, 1989. The remaining operators of these 7,198 airplanes, who must meet only the December 30, 1990, date under the Mode C rule, but whom this ADIZ rule also effects, will have to acquire a basic transponder prior to December 30, 1990. At that juncture, when they conform with Phase II of the Mode C rule, they also will satisfy fully the Mode C requirement of this ADIZ rule.

To assure calculating the maximum cost attributable to this ADIZ rule, the FAA is making two assumptions. First, rather than speculate about how many of the 7,198 airplanes either have or will conform with the Mode C rule's effective dates for operating in TCA's (July 1, 1989) or ARSA's (December 30, 1990), the FAA assumes that at the time of this writing, this rule requires the operators of all 7,198 aircraft to install a basic transponder 6 months before they otherwise would under the Mode C rule's December 30, 1990, effective date for operating in ARSA's. Second, although this ADIZ rule requires only the basic transponder before December 30, 1990, operators might make a personal choice to equip with Mode C at the same time they install transponders. The FAA assumes that all of the operators of these 7,198 airplanes would install Mode C concurrently.

The maximum incremental cost of this rule to these 7,198 operators will be opportunity cost of interest on capital expended to purchase, install, and maintain Mode C transponders 6 months sooner than the Mode C rule requires. The principal expenditure for the purchase, installation, and first-year maintenance normally would be allocated to this rule, but it already has been attributed to meeting the requirements of the recently issued Mode C rule.

An average cost for a basic transponder and an average cost for Mode C or altitude encoding equipment was ascertained on the basis of information supplied by avionics manufacturers. The most popular basic transponder model (low end of the market) costs approximately $1,050 installed. Comparably priced Mode C

avionics that are compatible with nearly all basic transponders used in general aviation aircraft range in cost from approximately $800 to $900 installed. While avionics costs vary widely, the FAA is using the low cost equipment to make cost estimates because this equipment, without additional features, meets the FAA's regulatory requirements.

The FAA estimates the cost of new Mode C equipment at $1,900. This estimate is made using $1,050 as the cost for the transponder plus $850 to upgrade a transponder to Mode C. Additionally, maintenance is necessary to assure that the avionics are properly calibrated and in good functioning order. The cost to maintain and inspect the avionics biennially is estimated at 5 percent of $1,900 or $95.

A cost of $1,900 per unit to equip 7,198 aircraft not having transponders equals a cost of $13,676,200. Maintenance costs an additional $683,810 per year. The sum cost of the purchase and first-year maintenace requires a principal in the amount of $14,360,010. This principal is the cost that already has been attributed to meeting the requirements of the recent Mode C rule.

The opportunity cost is the difference between the present value (on June 30, 1990, the anticipated effective date of this rule at the time of writing this evaluation) and the future value (on December 30, 1990, the effective date of Phase II of the previous rule). The present value of $14,360,010 discounted over 6 months at 10 percent is $13,670,730. Therefore, the opportunity cost is $689,000 for the operators of 7,198 affected airplanes presently without transponders. The opportunity cost per airplane is $96.

This ADIZ rule imposes no cost to the operators of the 9,430 airplanes that already are transponder-equipped because they are allowed to operate into, within, or out of the ADIZ without Mode C until Phase II of the Mode C rule becomes effective on December 30, 1990. The total cost for a Mode C upgrade and maintenance is attributable to the requirements of the Mode C rule.

Although not attributable to this ADIZ rule, these costs are set out as follows in the interest of completeness. A cost of $850 per unit for Mode C to upgrade these 9,430 aircraft equates to $8,015,500. Additionally, biennial maintenance is necessary to assure that the avionics are properly calibrated and in good functioning order. The cost to maintain and inspect the avionics is estimated at 5 percent or $400,755.

Benefits

The FAA expects that this rule will yield potential benefits of three types. Primarily, it will improve the operating efficiency of law enforcement efforts to sort legal flights from illegal smuggling operations. Second, it will improve the effectiveness of drug interdiction efforts. Third, it will enhance aviation safety by reducing the direct threat to air commerce caused by smugglers engaged in extremely dangerous flight techniques to avoid detection and apprehension.

Efficient Sorting Operations

Aircraft entering the United States through an ADIZ can be detected by means of various types of radar, pursuit aircraft, and advanced police techniques. When an aircraft operating to destinations inside the United States from outside is detected on radar, its position is correlated with known flight plan information and any previous position reports. An aircraft with an operating transponder and Mode C is identifiable more quickly and more positively than an aircraft without a transponder.

This final rule will enable drug enforcement personnel to improve significantly their ability to sort legal flights from illegal drug smuggling operations. Consequently, the USCS, as well as the United States Coast Guard (USCG), North American Air Defense Command (NORAD) and the Air National Guard (ANG), will reduce the number of unnecessary launches conducted in pursuit of suspect airplanes.

A reduction in unnecessary launches will generate a savings to the USCS, the USCG, NORAD, and the ANG in flight and personnel costs. The FAA has made estimates of these savings based on information obtained from the respective services. Because at the present time they cannot sort quickly enough certain legal flights which do not have transponders from illegal drug smuggling operations, the USCS launches approximately 225 flights per year to make such identifications of airplanes which turn out to be legal targets. In each instance, if the airplane had a transponder, the launch could have been avoided.

Each launch utilizes an interceptor aircraft and an apprehension aircraft. A Citation with three personnel aboard is used to intercept. A Blackhawk with five personnel aboard is used for apprehension. The flight duration is 1 to 2 hours, with an estimated 50 percent of 2 hours duration and an average duration of 1.5 hours for all flights. The 225 launches, each with 8 personnel for an average 1.5 hours per flight, amounts to 2,700 personnel hours spent. Based on the 1988 pay scale for GS–11, 12, and 13 personnel, the combined wages paid for these launches is $42,686 per year. The cost per hour to operate and maintain a Citation or a Blackhawk is $750. The cost to operate both aircraft on 225 flights for an average 1.5 hours per flight is $506,250. The annual personnel costs ($42,686) added to the incremental cost of operating and maintaining the aircraft ($506,250), amounts to a combined annual cost of $548,936 or, for a 15-year period for a present value of $4,175,207 (the useful life of a transponder with Mode C).

A reduction in unnecessary launches similarly will generate a savings to the USCG. These savings are estimated based on information obtained from the USCG, which has launched a USCG HU–25 interceptor aircraft to identify a non-squawking (no IFF transponder) radar target at least once per day on average. The HU–25C costs approximately $2,096 per hour to operate (including personnel costs), and the launches or diverts to identify these targets have taken an average of 2 hours each. The cost for 365 launches per year, for an average 2 hours per flight, at a cost of $2,096 per hour is $1,530,080, or for a 15-year period, a present value of $11,637,788.

During the previous 3 years, NORAD active duty and ANG interceptors launched an average of 35 times per year to pursue unknown targets later identified as privately owned U.S. and foreign aircraft. These launches took place for a variety of reasons, including failure to file a flight plan, navigation errors, and inoperative or missing transponders. Headquarters NORAD does not maintain records which show the cause for each intercept. Judging by the type of aircraft intercepted, the number of intercepts caused by private aircraft without transponders installed would be small.

The average cost per intercept is estimated at $7,000, based on 1.2 hour sorties for two F–16 interceptors. Assuming a reduction of one launch per month in pursuit of suspect airplanes without operating transponders (one-third the average yearly number of launches in pursuit of unknown targets later identified as privately owned aircraft), the cost savings for 12 intercepts at $7,000 per sortie is $84,000, or for a 15-year period, a present value of $638,904.

These estimates of savings the FAA expects will derive from this final rule and do not include wear and tear to the airframe, lost opportunity, or the cost of

maintaining more assets than are actually necessary under conditions of optimum sorting capability.

The transponder requirement will assist significantly in the sorting process and initially may result in an increased number of interdictions. In the long run, however, successful implementation of the air strategy will deter air narcotics traffickers and force them to attempt other modes and methods. While this will make them more susceptible to surface-based law enforcement efforts, there will be a lower rate of air seizure.

The FAA is unable to define in numerical terms the value to society of the achievements expected from the improved effectiveness of drug interdiction efforts that would result from implementing the final rule. Drug interdiction is only one aspect of a comprehensive system of law enforcement activity that is conducted in a synergistic fashion in the battle against illegal drug commerce and drug abuse in the United States. However, while quantifying these benefits on a monetary basis would be too speculative, the FAA is confident that the resulting benefit to society from enhanced drug interdiction will be significant and will exceed the costs of this rule.

Enhanced Aviation Safety

Improved identification of legitimate aircraft operations, and consequently the expeditious identification and apprehension of those conducting drug smuggling operations, will decrease the frequency of such illegal airborne activity. Fewer operators engaged in hazardous flight techniques to avoid detection and apprehension will enhance the margin of safety in that airspace for those operators conducting legitimate operations. Similarly, it will diminish the risk of injury to persons and property on the surface.

A review of the National Transportation Safety Board's data base for drug-related aviation accidents revealed that 127 fatalities and 33 serious injuries occurred between 1975 and 1984. In this timeframe, the statistics equate to an annual average of 13 fatalities and 3 serious injuries related to drug trafficking activity. The FAA expects that the final rule will have a positive impact on these rates, though the FAA is unable to estimate to what extent.

Moreover, collateral benefits to the National Airspace System will result from these requirements. Transponder and Mode C capability will become available for use elsewhere in the system once it is in place for use in an ADIZ. Additional aircraft equipped with Mode C transponders in specified airspace will provide controllers with a continuous, more complete ATC picture. In areas in which aircraft are provided with Mode C transponders and ATC clearances, this will allow altitude, distance and azimuth information to be correlated and issuance of the proper control instructions developed to assure that safe separation is maintained between participating and nonparticipating aircraft. In addition, the need to communicate via two-way radio is reduced. For example, controllers will not repeatedly have to ask pilots to report aircraft altitude; aircraft climb/descent paths can be observed independently for possible conflicts with other traffic; and unnecessary traffic advisories concerning noncontrolled aircraft are eliminated.

Further, existing automated radar tracking systems currently are programmed to predict continually and update the path of Mode C-equipped aircraft being tracked by the system. These predictions are constantly compared with those of controlled aircraft that are also tracked by the system. In addition, these systems compare the data with pre-programmed terrain information. Controllers are given visual and aural alerts when comparisons render a potentially hazardous situation for controlled aircraft.

Mode C also has the ability to provide critical information to collision avoidance system (TCAS)-equipped aircraft. The TCAS equipment transmits periodic interrogation signals. If a nearby aircraft is equipped with a basic transponder, that aircraft's range and azimuth from the TCAS-equipped aircraft is generated to the TCAS-equipped aircraft. However, if a nearby aircraft is equipped with a Mode C transponder, altitude information is provided in addition to range and azimuth. TCAS processes the data into a collision risk prediction and issues traffic advisories to the flightcrew. The type of advisory differs according to the version of TCAS that is used.

Sufficiently precise data are not available to describe the benefits of the incremental usage of transponders with Mode C in the system attributable solely to this rule. Consequently, the FAA cannot calculate a numerical value for this substantial general benefit.

Comparison of Benefits and Costs

Using (1) the AOPA estimate that 28,000 U.S.-registered aircraft were processed by the Customs Service upon arrival in the United States in 1984, and (2) the FAA's estimate that of those aircraft 9,430 will have to upgrade to Mode C and 7,198 will have to install a Mode C transponder to conform with the final rule; the FAA estimates that the only incremental cost of this rule is an opportunity cost of $689,000 to the operators of the latter 7,198 affected airplanes. All other costs to these operators regarding requirements that conform with this rule are attributed to the recently adopted Mode C rule.

The USCS and the USCG will save, over the 15-year period, an estimated $4.2 million and $11.6 million respectively, through a reduction in unnecessary operations. NORAD and the ANG also will save $639,000.

The potential benefits from increased aviation safety are not quantifiable in monetary terms nor are the benefits of enhanced drug interdiction efforts. These benefits would be obtained from:

- An unmeasurable diminution in the number of operators who use hazardous flight techniques to avoid detection and apprehension, thereby enhancing the margin of safety in that airspace for those operators conducting legitimate operations;
- An indeterminable positive impact on the rate of drug-related aviation accidents, which between 1975 and 1984, occurred with an average annual frequency of 13 fatalities and 3 serious injuries related to drug trafficking; and
- The unquantifiable incremental safety benefits to the National Airspace System from increased usage of Mode C transponders as a spillover phenomenon attributable solely to this final rule regarding entry into the United States through an ADIZ.

The total potential benefits expected from all categories of improvement attributable to the final rule are expressed in monetary terms as:

- Operating Efficiency for Customs Service, $4.2 million.
- Operating Efficiency for Coast Guard, $11.6 million.
- Operating Efficiency for NORAD and Air National Guard, $0.6 million.

Total Operating Efficiency (All Services), $16.4 million.

- Effective Drug Interdiction Value to Society, unquantifiable.
- Aviation Safety, unquantifiable.

Total Benefits, $16.4 million plus a substantial unquantifiable amount.

The potential benefit ($16.4 million, discounted) exceeds the maximum potential cost ($689,000) by a factor greater than 24 times over the 15-year life of the equipment for this rule, even without inclusion of the unquantifiable safety benefits that would be expected to result. Further, it is obvious that the

prevention of only one accident in which lives would be lost would, alone, more than pay for the cost of this rule. The FAA's opinion is that the data clearly indicate that the rule is justified on a benefit to cost basis.

Conclusion

For the reasons set forth above, the FAA has determined that this is not a major regulation as defined in Executive Order 12291. The FAA has further determined that this action is significant as defined in Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). In addition, it is certified that under the criteria of the Regulatory Flexibility Act this regulation, at promulgation, will not have a significant economic impact on a substantial number of small entities. A full regulatory evaluation has been placed in the public docket.

International Trade Impact Analysis

The final rule will have no impact on trade for both U.S. firms doing business in foreign countries and foreign firms doing business in the United States.

Regulatory Flexibility Determination

The Regulatory Flexibility Act (RFA) of 1980 was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. The RFA requires government agencies to review rules which may have "a significant economic impact on a substantial number of small entities."

The FAA has adopted threshold values that define significant economic impact, and these values are stated in FAA Order 2100.14A. The threshold values for economic impact are adjusted for inflation and are expressed here in 1988 dollars. The size threshold value for small entity operators is a maximum number of nine aircraft owned or operated. The threshold value for a significant economic impact on an unscheduled operator is an annualized cost of $4,000.

The opportunity cost to install the equipment and to maintain it is $96 per airplane. The opportunity cost is based on equipping a small low performance small airplane 6 months sooner than is otherwise required by a previous rule (Transponder with Automatic Altitude Reporting Capability Requirement and Controlled Airspace Common Floor, 53 FR 23356, June 21, 1988). No small entity reaches the annualized cost impact threshold of $4,000. The threshold value ($4,000) exceeds the maximum annualized cost for an owner or operator of nine airplanes ($9 \times \$96 = \$864$). Therefore, this rule is not expected to have a significant economic impact on a substantial number of small entities who operate into, within, or out of an ADIZ.

Federalism Determination

The amendment set forth herein would not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

List of Subjects in 14 CFR Part 99

Air traffic control, Airspace, National defense, Navigation (air), Security measures, Transponder.

The Amendment

Accordingly, the FAA amends FAR part 99 (14 CFR part 99) as follows:

PART 99—SECURITY CONTROL OF AIR TRAFFIC

1. The authority citation for part 99 continues to read:

Authority: 49 U.S.C. 1348, 1354(a), 1502, 1510, and 1522; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

2. By revising § 99.12 to read as follows:

§ 99.12 Transponder-on requirements.

(a) *Aircraft transponder-on operation.* Each person operating an aircraft into or out of the United States into, within, or across an ADIZ designated in subpart B of this part, if that aircraft is equipped with an operable radar beacon transponder, shall operate the transponder, including altitude encoding equipment if installed, and shall reply on the appropriate code or as assigned by ATC.

(b) *ATC transponder equipment and use.* Effective September 7, 1990, unless otherwise authorized by ATC, no person may operate a civil aircraft into or out of the United States into, within, or across the contiguous U.S. ADIZ designated in subpart B of this part unless that aircraft is equipped with a coded radar beacon transponder.

(c) *ATC transponder and altitude reporting equipment and use.* Effective December 30, 1990, unless otherwise authorized by ATC, no person may operate a civil aircraft into or out of the United States into, within, or across the contiguous U.S. ADIZ unless that aircraft is equipped with a coded radar beacon transponder and automatic pressure altitude reporting equipment having altitude reporting capability that automatically replies to interrogations by transmitting pressure altitude information in 100-foot increments.

(d) Paragraphs (b) and (c) of this section do not apply to the operation of an aircraft which was not originally certificated with an engine-driven electrical system and which has not subsequently been certified with such a system installed, a balloon, or a glider.

Issued in Washington, DC, on February 26, 1990.

James B. Busey,

Administrator.

[FR Doc. 90–5134 Filed 3–6–90; 8:45 am]

BILLING CODE 4910–13–M

federal register

Wednesday
March 7, 1990

Part VI

Department of Health and Human Services

Public Health Service

Agency Forms Submitted to Office of Management and Budget for Clearance; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Agency Forms Submitted to Office of Management and Budget for Clearance

The following request has been submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). Expedited review by OMB has been requested as described below.

Drug Services Research—NEW—This study will gather currently unavailable and urgently needed information on the services provided to and characteristics of clients in drug treatment programs. The study is planned as a one-time information collection to supplement information available from the 1989 National Drug and Alcoholism Treatment Unit Survey. The first phase of the survey involves a mail/telephone questionnaire to obtain information on treatment unit characteristics (such as treatment slots available, staffing, client admission policies, and aggregate information on client characteristics) from approximately 1000 drug treatment units. The second phase involves follow-on site visits to a subsample of approximately 120 treatment units to obtain additional information about a sample of clients treated. A pretest of approximately 40 treatment units for the initial questionnaire and 20 units for the site visits will be conducted upon receipt of OMB approval. Respondents: State or local governments, businesses or other for-profit, Federal agencies or employees, non-profit institutions, small businesses or organizations; Number of Respondents: 2,100; Number of Responses per Respondent: 1; Average Burden per Response: 1.99 hours; Estimated Annual Burden: 4,179 hours.

Additional Information: This study is sponsored by the National Institute on Drug Abuse, under legislative authorization and data collection requirements of section 509D of the Anti-Drug Abuse Act of 1988 (Pub. L. 100-690). The study design and questionnaire have been developed and designed to meet critical data needs of the Office of National Drug Control Policy for development of the next National Drug Control Strategy (as required by section 1005 of the Act). In order for the information to be collected, processed, and analyzed in time for use in development of the next National Drug Control Strategy, OMB has been requested to review and approve the study on an expedited basis. OMB approval has been requested by not later than Friday, March 9. In keeping with the requirements for expedited review, we are publishing the complete set of data collection instruments and any accompanying instructions.

OMB Desk Officer: Allison Herron.

Because of the timeframe in which OMB has been asked to act on this submission, any comments and recommendations for the proposed information collection should be provided directly to the OMB Desk Officer designated above by telephone at (202) 395-7316 or by express mail at the following address:

Human Resources and Housing Branch, New Executive Office Building, Room 3002, Washington, DC. 20503.

Dated: March 5, 1990.

James M. Friedman,

Acting Deputy Assistant Secretary for Health (Planning and Evaluation).

BILLING CODE 4260-20-M

3/1/90

OMB #: _____

Exp. Date: _____

DRUG SERVICES RESEARCH SURVEY

(Pilot Version)

TELEPHONE SCREENER

NOTIFICATION TO RESPONDENT OF ESTIMATED BURDEN

Public response burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, and completing 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: Public Health Service Reports Clearance Officer, Attn: PRA, Hubert H. Humphrey Building, Room 721H, 200 Independence Avenue, S.W., Washington, D.C. 20201; and to the Office of Management and Budget, Paperwork Reduction Project (OMB No. 0930-xxxx), Washington, D.C. 20503.

STUDY UNIT #: |_|_|_|_|_| - |0|0| - |_|

DRUG SERVICES RESEARCH SURVEY

(PILOT VERSION)

TELEPHONE SCREENER INFORMATION SHEET

	TELEPHONE NUMBER	(XXX) XXX-XXXX	_____
Q1.	SERVICE UNIT	XXXXXXXXXXXX	_____
	PROGRAM NAME	XXXXXXXXXX	_____
Q3.	UNIT ADDRESS	XXXXXXXXXX	_____
		XXXXXXXXXX	_____
		XXXXXXXXXX	_____
Q8.	DIRECTOR'S NAME	XXXXXXXXXXX	_____
Q11.	NDATUS ID #	XXXXXXXX	_____

COMMENTS: _____

STUDY UNIT #: |_|_|_|_| - |0|0| - |_|

DRUG SERVICES RESEARCH SURVEY

(PILOT VERSION)

TELEPHONE SCREENER

Q1 Hello, my name is (INTERVIEWER NAME), and I'm calling from Westat, Inc., a survey research company, on behalf of NIDA in Washington, D.C. Have I reached (SERVICE UNIT) of (PROGRAM NAME)?

- YES, WITH NO CHANGES (VERIFY SPELLING) 1 (Q3)
- YES, WITH MINOR CHANGES (MAKE CORRECTIONS) 2 (Q3)
- NO, DIFFERENT NAME 3
- PHONE DISCONNECTED, OPERATOR GIVES NEW NUMBER (ENTER ON INFO SHEET) ..... 4 (CALL RECORD)
- PHONE DISCONNECTED, NO NEW NUMBER ..... 5 (FILL OUT NIRF)
- ANSWERING MACHINE WITH NEW INFORMATION ..... 6 (FILL OUT NIRF)
- NO ANSWER/BUSY ..... 7 (CALL RECORD)
- PROBLEM ..... 8 (FILL OUT NIRF)

Q2. What is the name of this clinic or service unit?

_____

Q3. Are you located at (ADDRESS)?

- YES, WITH NO CHANGES 1 (Q8)
- YES, WITH MINOR CHANGES (MAKE CORRECTIONS) 2 (Q8)
- NO, DIFFERENT ADDRESS 3

Q4. Does your facility have a clinic or service unit at (ADDRESS)?

- YES 1 (Q7)
- NO 2

Q5. Did your facility ever have a clinic or service unit at (ADDRESS)?

- YES, FACILITY MOVED TO NEW ADDRESS 1 (Q8)
- YES, BUT NO LONGER CONNECTED TO IT ..... 2 (END STATEMENT)
- NO 3

Q6 Let me verify that I have dialed the right number. Is this (TELEPHONE NUMBER)?

- YES ..... 1 (END STATEMENT)
- NO (REDIAL AND START FROM Q.1) ..... 2 (CALL RECORD)

Q7 What is the telephone number at (ADDRESS)?

- NUMBER GIVEN (MAKE CORRECTIONS) ..... 1 (END STATEMENT)
- NUMBER NOT KNOWN OR REFUSED ..... 2 (END STATEMENT)

659 07 3 1042

Q8. My records indicate that the unit director's name is (DIRECTOR'S NAME). Is that correct?

- YES, WITH NO CHANGES (VERIFY SPELLING 1 (Q10)
- YES, WITH MINOR CHANGES (MAKE CORRECTIONS) 2 (Q10)
- NO, DIFFERENT NAME 3

Q9. What is the unit director's name?

_____

Q10. Did this unit report in the most recent NDATUS survey? That would have been in the fall of 1989.

- YES 1
- NO 2
- DON'T KNOW 8

Q11. What is this unit's NDATUS identification number?

- NDATUS ID # ..... |_|_|_|_|_|_|_|_|
- DON'T KNOW 99999998

Q12. Which of the following would best describe this unit's location? Would you say this unit is in . . .

- A Community Mental Health Center, ... 1
- A general hospital (INCLUDE VA HOSPITAL), ... 2
- An alcoholism hospital, ... 3
- A mental or psychiatric hospital, ... 4
- Another type of specialized hospital, ... 5
- A correctional facility, ... 6
- A halfway house or recovery home, ... 7
- Another type of residential facility, ... 8
- An outpatient facility, or 9
- Some other location? (SPECIFY) 10

_____

Q13. Would you say the ownership of this unit is

- Private, for profit, ... 1
- Private, non-profit, ... 2
- Public, state or local government, or 3
- Federal government? 4

Q14. What is the number of separate units that this facility is composed of?

- # OF SEPARATE UNITS ..... |_|_|_|

Q15. Is this a treatment unit or a prevention unit?

TREATMENT UNIT 1
PREVENTION UNIT ..... 2 (END STATEMENT)
BOTH 3
NEITHER ..... 4 (END STATEMENT)

Q16. Does this unit currently treat drug problems other than alcohol?

YES 1
NO ..... 2 (END STATEMENT)

Q17. In which of the following types of treatment do you currently have the largest number of drug abuse clients? Would you say . . .

All hospital inpatient modalities 1
All residential modalities 2
Outpatient drug detoxification or maintenance 3
Outpatient drug-free, or 4
Some other group? (SPECIFY) 5

_____

Q18. NIDA is conducting a survey of a national sample of treatment programs covering a variety of issues regarding drug treatment services. If your unit is selected for this survey, we will mail a questionnaire to you. A few days after receiving the questionnaire, one of our interviewers will call to collect the information. So that we could send the questionnaire to the most appropriate person, please tell me the name of the person who is most knowledgeable about your unit's services and programs.

_____
FIRST NAME M.I. LAST NAME

Q19. And what is that person's title?

DIRECTOR 1
OTHER (SPECIFY) 2

_____

Q20. Is (PERSON'S) mailing address the same as (ADDRESS)?

YES 1 (Q22)
NO 2

Q21 What is (PERSON'S) mailing address?

_____
_____
_____

Q22. And what telephone number should be used to reach (PERSON) directly?

(|_|_|_|) |_|_|_| - |_|_|_|_|

Q23. Which days of the week would be best for our interviewer to call (PERSON)? (CIRCLE ALL THAT APPLY.)

MONDAY 1
TUESDAY 2
WEDNESDAY 3
THURSDAY 4
FRIDAY 5
SATURDAY 6
SUNDAY 7

Q24. And what would be the best time to call?

_____

END STATEMENT: That is all the information that I need at this time. Thank you very much for your time and cooperation. Good-bye.

RESULT CODES*:

REFUSAL/BREAKOFF 2
LANGUAGE PROBLEM ..... 6 FILL OUT NIRF
PROBLEM 8
TRACING NEEDED 9
SCREENER COMPLETE 10

INTERVIEWER INITIALS: ..... |_|_|_|

DATE OF RESULT CODE: ..... |_|_| / |_|_| / |_|_|
MO DA YR

* The following codes are only used on the Call Record: 1 = Ring, No Answer, 3 = Busy Signal, 4 = Call Back, No Appt., 5 = Call Back, Appt., and 7 = New Telephone Number.

3/1/90

OMB #: _____

Exp. Date: _____

DRUG SERVICES RESEARCH SURVEY

(Pilot Version)

The National Institute on Drug Abuse (NIDA) is working with the Office of National Drug Control Policy (ONDCP) and the National Association of State Alcohol and Drug Abuse Directors (NASADAD) to better describe and understand the national drug abuse treatment system. To improve our information base, NIDA is conducting a survey of a national sample of treatment programs covering a variety of issues regarding drug abuse treatment.

Thank you for agreeing to cooperate with this survey.

We will telephone you within a week to ask the questions that are shown in this questionnaire. We are mailing them to you in advance to give you the opportunity to review them and ascertain the answers before our interviewer calls you. If our call comes at an inconvenient time, we will arrange to call back at another time.

PLEASE DO NOT MAIL THIS TO NIDA.

Wait for the phone call, which will be made by a professional telephone interviewer who will go through the questions with you and record your answers.

If you have any questions about the survey, call the Survey Assistance Center at Brandeis University (800-xxx-xxxx).

This questionnaire applies to units providing services to drug treatment clients.

NOTIFICATION TO RESPONDENT OF ESTIMATED BURDEN

Public response burden for this collection of information is estimated to range from 30 minutes to 4 hours per response, including time for reviewing instructions, searching existing data sources, and gathering and completing 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: Public Health Service Reports Clearance Officer, Attn: PRA, Hubert H. Humphrey Building, Room 721H, 200 Independence Avenue, S.W., Washington, D.C. 20201; and to the Office of Management and Budget, Paperwork Reduction Project (OMB No. 0930-xxxx), Washington, D.C. 20503.

DEFINITIONS:

CAPACITY: The maximum number of individuals who could be enrolled as active clients as of (DATE) given the unit's staffing, funding, and physical facility at that time. For residential and other 24-hour care units, treatment capacity is equal to the number of beds available at the unit. For outpatient units, treatment capacity reflects the maximum active client caseload a unit could carry. This maximum caseload would depend upon such factors as the percentage of total staff hours devoted to direct client care, the average length of counseling sessions, and the frequency of client visits to the unit. The data must be present in the calculation of utilization rates.

CLIENT: An individual who: (1) has been admitted to the treatment unit and for whom a treatment plan has been developed; (2) has been seen on a scheduled appointment basis at least once during the current month; and (3) has not been discharged from treatment, i.e., continued care is expected to be given this client. This is a general definition which may be adjusted to more appropriately reflect what constitutes an active client at the State level.

ELIGIBILITY: A policy in effect at the treatment unit which sets forth criteria for clients being allowed to enter treatment.

METHADONE TREATMENT: Refers to methadone maintenance or detoxification. Methadone maintenance is the continued administering of methadone, in conjunction with provision of appropriate social and medical services, at relatively stable dosage levels for 180 days or more. Methadone is used as an oral substitute for opiates during the rehabilitative phase of treatment. This category also includes those clients who are being withdrawn from maintenance treatment.

OCCUPANCY: The actual number of active clients being treated in each type of care/modality and facility location/environment as of the point prevalence date of (DATE).

PRIORITY: A policy or condition which would allow an individual seeking treatment to be admitted prior to others seeking treatment at the same time.

TREATMENT: Formal organized services for persons who have abused alcohol and/or other drugs. These services are designed to alter specific physical, mental, or social functions of persons receiving care by reducing client disability or discomfort, and ameliorate the signs or symptoms caused by alcohol and/or drug abuse. For purposes of this survey, detoxification services are considered to be a treatment. This is also referred to as recovery services in some states.

UNIT: A facility having: (1) a formal structured arrangement for alcohol or drug abuse treatment or recovery using alcohol or drug-specified personnel; and (2) a designated portion of the facility (or resources) for treatment services; and (3) an allocated budget for such treament services. A treatment unit must directly provide services to clients at the facility's location. The unit usually offers some form of initial evaluation or diagnosis of its clients and, thereafter, may include a wide range of different services, such as counseling, job placement, or other rehabilitation services. This is also referred to as a recovery unit in some states.

DRUG SERVICES RESEARCH SURVEY

(Pilot Version)

MAILOUT QUESTIONNAIRE

Please complete this questionnaire before our telephone interviewer calls you in the next few days. If there are any questions where the information cannot be obtained, just write "Don't Know" near the question.

This questionnaire contains four sections. Section A asks for facility organization and staffing. Section B asks for facility client data as of (DATE). Section C concerns client services information for the most recent 12-month reporting period available. And Section D requests information on facility costs for the most recent 12-month cost period available. Please fill in below the dates that define those reporting periods for your facility.

CLIENT REPORTING PERIOD FOR SECTION C RESPONSES

What are the dates of your most recent 12-month reporting period on clients?

FROM: _____ / _____ / _____
MO DA YR

TO: _____ / _____ / _____
MO DA YR

FINANCIAL/COST REPORTING PERIOD FOR SECTION D RESPONSES

What are the dates of your most recent 12-month reporting period on finances/costs?

FROM: _____ / _____ / _____
MO DA YR

TO: _____ / _____ / _____
MO DA YR

A. FACILITY ORGANIZATIONAL DATA

Please answer the following questions as of (DATE).

A1. As of (DATE), for how many months or years had this facility offered a drug treatment program?

NUMBER OF MONTHS ..... ☐
YEARS ..... ☐

A2. As of (DATE), was this facility owned by:

		YES	NO
a.	A private for-profit organization	☐	☐
b.	A private not-for-profit organization	☐	☐
c.	A public city or county organization	☐	☐
d.	A public state organization	☐	☐
e.	A public federal organization	☐	☐

A3. As of (DATE), was this facility managed by:

		YES	NO
a.	A private for-profit organization	☐	☐
b.	A private not-for-profit organization	☐	☐
c.	A public city or county organization	☐	☐
d.	A public state organization	☐	☐
e.	A public federal organization	☐	☐

A4. On (DATE) did this facility have licensing from:

		YES	NO
a.	State agency or office	☐	☐
b.	County agency or office	☐	☐
c.	City agency or office	☐	☐
d.	Any other organization (SPECIFY) _____	☐	☐

A5. On (DATE) did this facility have accreditation from:

		YES	NO
a.	Joint Commission on the Accreditation of Health Care Organizations	☐	☐
b.	Federal Food and Drug Administration	☐	☐
c.	Drug Enforcement Agency	☐	☐
d.	Any other organization (SPECIFY) _____	☐	☐

A6. Please indicate whether your facility offers each of the following modalities of service:

		YES	NO
a.	HOSPITAL INPATIENT		
	1. Drug Detoxification	☐	☐
	2. Drug Maintenance	☐	☐
	3. Drug Free	☐	☐
b.	RESIDENTIAL		
	1. Drug Detoxification	☐	☐
	2. Drug Maintenance	☐	☐
	3. Drug Free	☐	☐
c.	OUTPATIENT		
	1. Drug Detoxification	☐	☐
	2. Drug Maintenance	☐	☐
	3. Drug Free	☐	☐
d.	ALCOHOL ONLY		
	1. All modalities and environments	☐	☐

A7. On (DATE), how many full-time equivalents (FTE's) did this facility have in each of the following positions: (FTE is defined as any combination of full-time and part-time employees totaling 35 or more hours per week.)

CATEGORY	ON PAYROLL	ON CONTRACT	VOLUNTEER	TOTAL NUMBER OF PAID FTE'S (NOT VOLUNTEERS) THAT ARE CERTIFIED IN SUBSTANCE ABUSE TREATMENT
Physicians Psychiatrists				
Addictionologists				
Other Specialists (SPECIFY) _____				
Other MD's				
Psychologists (MS and above)				
Registered Nurses				
Other Licensed Nurses				
Other Medical Personnel Physician Assistants				
Other Medical (SPECIFY) _____				
Social Workers (MSW and above)				
Other Credentialed Counselors				
Non-Credentialed Counselors				
Vocational Rehabilitation Specialists				
Recreation Specialists				
Other Treatment Staff				
Administrative or Support Staff				
Other (SPECIFY) _____				

A8. As of (DATE), what do you estimate are the 4 most common Zip Codes you draw your clients from and what percentage do you draw from each?

a. FIRST ZIP CODE _____ ESTIMATED CLIENT % ..... _____

b. SECOND ZIP CODE _____ ESTIMATED CLIENT % ..... _____

c. THIRD ZIP CODE _____ ESTIMATED CLIENT % ..... _____

d. FOURTH ZIP CODE _____ ESTIMATED CLIENT % ..... _____

A9. Of your remaining clients, what percentage do you estimate come from your city or town? ESTIMATED CLIENT % ..... _____

A10. Of your remaining clients, what percentage do you estimate come from your state? ESTIMATED CLIENT % ..... _____

A11. Of your remaining clients, what percentage do you estimate come from outside your state? ESTIMATED CLIENT % ..... _____

(TOTAL EST. CLIENT %) 100%

B. RECENT FACILITY CLIENT DATA

B1. For each of the modalities of service offered by this facility (as you indicated in question A6), please complete this table using data on (DATE):

MODALITY	FACILITY CAPACITY* ON (DATE)			ACTUAL # OF CLIENTS IN TREATMENT ON (DATE)		
	Male	Female	Total	Male	Female	Total
HOSPITAL INPATIENT						
Drug Detoxification						
Drug Maintenance						
Drug Free						
RESIDENTIAL						
Drug Detoxification						
Drug Maintenance						
Drug Free						
OUTPATIENT						
Drug Detoxification						
Drug Maintenance						
Drug Free						
ALCOHOL ONLY (All environments and modalities)						
TOTALS						

* If FACILITY CAPACITY data is not differentiated by gender, check here ☐ and enter data only in the "Total" column for CAPACITY figures.

B2. Table was completed using *(Select only one response for method used for majority of figures)* ..... _____

1. Actual numbers from records
2. Estimated numbers from records
3. Best guess (no records available)
4. Actual numbers from automated system
5. Estimated numbers from automated system
6. Other (SPECIFY) _____

B3. On (DATE), did this facility maintain a waiting list?

YES ☐ NO ☐ (SKIP TO B7)

B4. Please indicate whether or not each of these statements describe waiting lists at your facility on (DATE):

	YES	NO
a. Any clients applied for admission on (DATE)	☐	☐
b. All clients on the waiting list on (DATE) are known to be eligible for admission	☐	☐
c. Clients are known to still be actively waiting for admission to this facility	☐	☐
d. The waiting list contains the name of the client and a means of contacting the client (phone number or address where the client can be reached)	☐	☐

B5. Please complete this table using data for drug treatment clients on (DATE). **Do not include data for Alcohol Only clients.**

MODALITY	# OF APPLICANTS REFERRED ELSEWHERE (NOT ADDED TO WAITING LIST) IN PAST 30 DAYS	HIGHEST # OF INDIVIDUALS ON WAITING LIST IN PAST 30 DAYS	# OF NEW APPLICANTS ADDED TO WAITING LIST IN PAST 30 DAYS	# DROPPED FROM WAITING LIST IN PAST 30 DAYS	# ADMITTED TO TREATMENT FROM WAITING LIST IN PAST 30 DAYS
HOSPITAL INPATIENT					
Drug Detoxification					
Drug Maintenance					
Drug Free					
RESIDENTIAL					
Drug Detoxification					
Drug Maintenance					
Drug Free					
OUTPATIENT					
Drug Detoxification					
Drug Maintenance					
Drug Free					
TOTALS					

B6. Table was completed using *(Select only one response for method used for majority of figures)* ..... _____

1. Actual numbers from records
2. Estimated numbers from records
3. Best guess (no records available)
4. Actual numbers from automated system
5. Estimated numbers from automated system
6. Other (SPECIFY) _____

B7. On (DATE), how much priority for admission was given to each of the following?

		A LOT	SOME	NONE	DO NOT ACCEPT
a.	IV drug users	☐	☐	☐	☐
b.	HIV positive	☐	☐	☐	☐
c.	Pregnant women	☐	☐	☐	☐
d.	Polydrug users	☐	☐	☐	☐
e.	Adolescents	☐	☐	☐	☐
f.	Dual diagnosis clients	☐	☐	☐	☐
g.	Self pay	☐	☐	☐	☐
h.	Private insurance pay	☐	☐	☐	☐
i.	Medicaid pay	☐	☐	☐	☐
j.	Other public pay	☐	☐	☐	☐

B8. On (DATE), how many of your clients at that time had been referred by each of the following sources?

		# CLIENTS
a.	Self-referred	_____
b.	Family	_____
c.	Employer	_____
d.	Employee Assistance Program (EAP)	_____
e.	Criminal justice/legal system	_____
f.	Private physician	_____
g.	Community mental health center	_____
h.	Other health professional or provider	_____
i.	Schools	_____
j.	Clergy	_____
k.	Other (SPECIFY) _____ _____	_____

B9. On (DATE), how many individual clients at that time were receiving services for each of the following?

		# CLIENTS
a.	Single-drug abuse only	_____
b.	Polydrug abuse only (exclude alcohol)	_____
c.	Alcohol abuse only	_____
d.	Alcohol abuse and other drugs combined	_____

B10. On (DATE), how many of the clients in B9 had a dual diagnosis of substance abuse and mental illness?

_____

B11. On (DATE), how many drug treatment clients were receiving methadone?

_____ (IF NONE, SKIP TO B21)

B12. At that time, what was the maximum daily dosage of methadone given to a single client?

_____ mgs.

B13. At that time, what was the minumum daily dosage of methadone given to a single client?

_____ mgs.

B14. At that time, what was the average daily dosage of methadone given to a single client?

_____ mgs.

B15. At that time, how many clients received the following daily dosages of methadone?

1-19 mgs.	_____
20-39 mgs.	_____
40-54 mgs.	_____
55-69 mgs.	_____
70 mgs. or more	_____

B16 At that time, how many clients received their take home supply of methadone in each of the following categories?

1 day supply	_____
2 day supply	_____
3 day supply	_____
4 day supply	_____
5 day supply	_____
6 day supply	_____
7 day or more supply	_____
Other (SPECIFY)	_____

_____

B17. At that time, what was this facility's average length of time for a client to be maintained on methadone?

_____ NUMBER OF
WEEKS ..... ☐
MONTHS ..... ☐
YEARS ..... ☐

B18. At that time, was there a maximum length of time a client could be maintained on methadone at this facility?

YES ☐ NO ☐ (SKIP TO B21)

B19. At that time, what was the maximum length of time a client could be maintained on methadone at this facility?

_____ NUMBER OF
WEEKS ..... ☐
MONTHS ..... ☐
YEARS ..... ☐

B20. Which of the following determined the maximum length of time?

		YES	NO
a.	State regulations	☐	☐
b.	Facility policy	☐	☐
c.	Clinical need	☐	☐
d.	Other (SPECIFY)	☐	☐

_____

B21 If your facility offers **HOSPITAL INPATIENT, Drug Detoxification** service (as reported in A6a1), please complete this table using data on (DATE) only for that modality.

	MALE	FEMALE	TOTAL
a. # of clients that were:			
White, not Hispanic	___	___	___
Black, not Hispanic	___	___	___
Hispanic	___	___	___
Asian or Pacific Islander	___	___	___
American Indian or Alaskan Native	___	___	___
Other	___	___	___
b. # of clients that at admission were:			
Not married	___	___	___
Married	___	___	___
c. # of clients that at admission had:			
Any children under 18 living at home	___	___	___
No children under 18 living at home	___	___	___
d. # of clients that at admission were:			
Under 15 years old	___	___	___
15-17 years old	___	___	___
18-24 years old	___	___	___
25-34 years old	___	___	___
35-44 years old	___	___	___
45-64 years old	___	___	___
65 and older	___	___	___
e. # of clients that at admission had:			
A high school diploma/GED	___	___	___
No high school diploma/GED	___	___	___

	MALE	FEMALE	TOTAL
f. # of clients that at admission were:			
Employed	___	___	___
Not employed	___	___	___
g. Primary diagnosis at admission:			
Heroin/other opiates	___	___	___
Crack	___	___	___
Cocaine	___	___	___
Barbiturates	___	___	___
Amphetamines	___	___	___
Marijuana/hashish	___	___	___
PCP	___	___	___
Other drugs (not alcohol)	___	___	___
Alcohol only	___	___	___
Alcohol and other drugs	___	___	___
Other reasons	___	___	___
h. # of clients whose primary source of payment at admission was:			
Self payment	___	___	___
Private health insurance	___	___	___
Medicaid	___	___	___
Medicare	___	___	___
Other public payment	___	___	___
No payment/philanthropy	___	___	___

B22. Table was completed using *(Select only one response for method used for majority of figures)* ..... ___

1. Actual numbers from records
2. Estimated numbers from records
3. Best guess (no records available)
4. Actual numbers from automated system
5. Estimated numbers from automated system
6. Other (SPECIFY) _____

B23. If your facility offers **HOSPITAL INPATIENT, Drug Maintenance** service (as reported in A6a2), please complete this table using data on (DATE) only for that modality.

	MALE	FEMALE	TOTAL
a. # of clients that were:			
White, not Hispanic	___	___	___
Black, not Hispanic	___	___	___
Hispanic	___	___	___
Asian or Pacific Islander	___	___	___
American Indian or Alaskan Native	___	___	___
Other	___	___	___
b. # of clients that at admission were:			
Not married	___	___	___
Married	___	___	___
c. # of clients that at admission had:			
Any children under 18 living at home	___	___	___
No children under 18 living at home	___	___	___
d. # of clients that at admission were:			
Under 15 years old	___	___	___
15-17 years old	___	___	___
18-24 years old	___	___	___
25-34 years old	___	___	___
35-44 years old	___	___	___
45-64 years old	___	___	___
65 and older	___	___	___
e. # of clients that at admission had:			
A high school diploma/GED	___	___	___
No high school diploma/GED	___	___	___

	MALE	FEMALE	TOTAL
f. # of clients that at admission were:			
Employed	___	___	___
Not employed	___	___	___
g. Primary diagnosis at admission:			
Heroin/other opiates	___	___	___
Crack	___	___	___
Cocaine	___	___	___
Barbiturates	___	___	___
Amphetamines	___	___	___
Marijuana/hashish	___	___	___
PCP	___	___	___
Other drugs (not alcohol)	___	___	___
Alcohol only	___	___	___
Alcohol and other drugs	___	___	___
Other reasons	___	___	___
h. # of clients whose primary source of payment at admission was:			
Self payment	___	___	___
Private health insurance	___	___	___
Medicaid	___	___	___
Medicare	___	___	___
Other public payment	___	___	___
No payment/philanthropy	___	___	___

B24. Table was completed using *(Select only one response for method used for majority of figures)* ..... ___

1. Actual numbers from records
2. Estimated numbers from records
3. Best guess (no records available)
4. Actual numbers from automated system
5. Estimated numbers from automated system
6. Other (SPECIFY) _____

B25. If your facility offers **HOSPITAL INPATIENT, Drug Free** service (as reported in A6a3), please complete this table using data on (DATE) only for that modality.

	MALE	FEMALE	TOTAL
a. # of clients that were:			
White, not Hispanic	___	___	___
Black, not Hispanic	___	___	___
Hispanic	___	___	___
Asian or Pacific Islander	___	___	___
American Indian or Alaskan Native	___	___	___
Other	___	___	___
b. # of clients that at admission were:			
Not married	___	___	___
Married	___	___	___
c. # of clients that at admission had:			
Any children under 18 living at home	___	___	___
No children under 18 living at home	___	___	___
d. # of clients that at admission were:			
Under 15 years old	___	___	___
15-17 years old	___	___	___
18-24 years old	___	___	___
25-34 years old	___	___	___
35-44 years old	___	___	___
45-64 years old	___	___	___
65 and older	___	___	___
e. # of clients that at admission had:			
A high school diploma/GED	___	___	___
No high school diploma/GED	___	___	___

	MALE	FEMALE	TOTAL
f. # of clients that at admission were:			
Employed	___	___	___
Not employed	___	___	___
g. Primary diagnosis at admission:			
Heroin/other opiates	___	___	___
Crack	___	___	___
Cocaine	___	___	___
Barbiturates	___	___	___
Amphetamines	___	___	___
Marijuana/hashish	___	___	___
PCP	___	___	___
Other drugs (not alcohol)	___	___	___
Alcohol only	___	___	___
Alcohol and other drugs	___	___	___
Other reasons	___	___	___
h. # of clients whose primary source of payment at admission was:			
Self payment	___	___	___
Private health insurance	___	___	___
Medicaid	___	___	___
Medicare	___	___	___
Other public payment	___	___	___
No payment/philanthropy	___	___	___

B26. Table was completed using *(Select only one response for method used for majority of figures)* ___

1. Actual numbers from records
2. Estimated numbers from records
3. Best guess (no records available)
4. Actual numbers from automated system
5. Estimated numbers from automated system
6. Other (SPECIFY) _____

B27. If your facility offers **RESIDENTIAL, Drug Detoxification** service (as reported in A6b1), please complete this table using data on (DATE) only for that modality.

	MALE	FEMALE	TOTAL
a. # of clients that were:			
White, not Hispanic	___	___	___
Black, not Hispanic	___	___	___
Hispanic	___	___	___
Asian or Pacific Islander	___	___	___
American Indian or Alaskan Native	___	___	___
Other	___	___	___
b. # of clients that at admission were:			
Not married	___	___	___
Married	___	___	___
c. # of clients that at admission had:			
Any children under 18 living at home	___	___	___
No children under 18 living at home	___	___	___
d. # of clients that at admission were:			
Under 15 years old	___	___	___
15-17 years old	___	___	___
18-24 years old	___	___	___
25-34 years old	___	___	___
35-44 years old	___	___	___
45-64 years old	___	___	___
65 and older	___	___	___
e. # of clients that at admission had:			
A high school diploma/GED	___	___	___
No high school diploma/GED	___	___	___

	MALE	FEMALE	TOTAL
f. # of clients that at admission were:			
Employed	___	___	___
Not employed	___	___	___
g. Primary diagnosis at admission:			
Heroin/other opiates	___	___	___
Crack	___	___	___
Cocaine	___	___	___
Barbiturates	___	___	___
Amphetamines	___	___	___
Marijuana/hashish	___	___	___
PCP	___	___	___
Other drugs (not alcohol)	___	___	___
Alcohol only	___	___	___
Alcohol and other drugs	___	___	___
Other reasons	___	___	___
h. # of clients whose primary source of payment at admission was:			
Self payment	___	___	___
Private health insurance	___	___	___
Medicaid	___	___	___
Medicare	___	___	___
Other public payment	___	___	___
No payment/philanthropy	___	___	___

B28. Table was completed using *(Select only one response for method used for majority of figures)* ..... ___

1. Actual numbers from records
2. Estimated numbers from records
3. Best guess (no records available)
4. Actual numbers from automated system
5. Estimated numbers from automated system
6. Other (SPECIFY) _____

B29. If your facility offers **RESIDENTIAL, Drug Maintenance** service (as reported in A6b2), please complete this table using **data on (DATE)** only for that modality.

	MALE	FEMALE	TOTAL
a. # of clients that were:			
White, not Hispanic	___	___	___
Black, not Hispanic	___	___	___
Hispanic	___	___	___
Asian or Pacific Islander	___	___	___
American Indian or Alaskan Native	___	___	___
Other	___	___	___
b. # of clients that at admission were:			
Not married	___	___	___
Married	___	___	___
c. # of clients that at admission had:			
Any children under 18 living at home	___	___	___
No children under 18 living at home	___	___	___
d. # of clients that at admission were:			
Under 15 years old	___	___	___
15-17 years old	___	___	___
18-24 years old	___	___	___
25-34 years old	___	___	___
35-44 years old	___	___	___
45-64 years old	___	___	___
65 and older	___	___	___
e. # of clients that at admission had:			
A high school diploma/GED	___	___	___
No high school diploma/GED	___	___	___

	MALE	FEMALE	TOTAL
f. # of clients that at admission were:			
Employed	___	___	___
Not employed	___	___	___
g. Primary diagnosis at admission:			
Heroin/other opiates	___	___	___
Crack	___	___	___
Cocaine	___	___	___
Barbiturates	___	___	___
Amphetamines	___	___	___
Marijuana/hashish	___	___	___
PCP	___	___	___
Other drugs (not alcohol)	___	___	___
Alcohol only	___	___	___
Alcohol and other drugs	___	___	___
Other reasons	___	___	___
h. # of clients whose primary source of payment at admission was:			
Self payment	___	___	___
Private health insurance	___	___	___
Medicaid	___	___	___
Medicare	___	___	___
Other public payment	___	___	___
No payment/philanthropy	___	___	___

B30. Table was completed using *(Select only one response for method used for majority of figures)* ___

1. Actual numbers from records
2. Estimated numbers from records
3. Best guess (no records available)
4. Actual numbers from automated system
5. Estimated numbers from automated system
6. Other (SPECIFY) ___

B31. If your facility offers **RESIDENTIAL, Drug Free** service (as reported in A6b3), please complete this table using data on (DATE) only for that modality.

	MALE	FEMALE	TOTAL
a. # of clients that were:			
White, not Hispanic			
Black, not Hispanic			
Hispanic			
Asian or Pacific Islander			
American Indian or Alaskan Native			
Other			
b. # of clients that at admission were:			
Not married			
Married			
c. # of clients that at admission had:			
Any children under 18 living at home			
No children under 18 living at home			
d. # of clients that at admission were:			
Under 15 years old			
15-17 years old			
18-24 years old			
25-34 years old			
35-44 years old			
45-64 years old			
65 and older			
e. # of clients that at admission had:			
A high school diploma/GED			
No high school diploma/GED			

	MALE	FEMALE	TOTAL
f. # of clients that at admission were:			
Employed			
Not employed			
g. Primary diagnosis at admission:			
Heroin/other opiates			
Crack			
Cocaine			
Barbiturates			
Amphetamines			
Marijuana/hashish			
PCP			
Other drugs (not alcohol)			
Alcohol only			
Alcohol and other drugs			
Other reasons			
h. # of clients whose primary source of payment at admission was:			
Self payment			
Private health insurance			
Medicaid			
Medicare			
Other public payment			
No payment/philanthropy			

B32. Table was completed using *(Select only one response for method used for majority of figures)* ____

1. Actual numbers from records
2. Estimated numbers from records
3. Best guess (no records available)
4. Actual numbers from automated system
5. Estimated numbers from automated system
6. Other (SPECIFY) ____

B33. If your facility offers **OUTPATIENT, Drug Detoxification** service (as reported in A6c1), please complete this table using data on (DATE) only for that modality.

	MALE	FEMALE	TOTAL
a. # of clients that were:			
White, not Hispanic	___	___	___
Black, not Hispanic	___	___	___
Hispanic	___	___	___
Asian or Pacific Islander	___	___	___
American Indian or Alaskan Native	___	___	___
Other	___	___	___
b. # of clients that at admission were:			
Not married	___	___	___
Married	___	___	___
c. # of clients that at admission had:			
Any children under 18 living at home	___	___	___
No children under 18 living at home	___	___	___
d. # of clients that at admission were:			
Under 15 years old	___	___	___
15-17 years old	___	___	___
18-24 years old	___	___	___
25-34 years old	___	___	___
35-44 years old	___	___	___
45-64 years old	___	___	___
65 and older	___	___	___
e. # of clients that at admission had:			
A high school diploma/GED	___	___	___
No high school diploma/GED	___	___	___

	MALE	FEMALE	TOTAL
f. # of clients that at admission were:			
Employed	___	___	___
Not employed	___	___	___
g. Primary diagnosis at admission:			
Heroin/other opiates	___	___	___
Crack	___	___	___
Cocaine	___	___	___
Barbiturates	___	___	___
Amphetamines	___	___	___
Marijuana/hashish	___	___	___
PCP	___	___	___
Other drugs (not alcohol)	___	___	___
Alcohol only	___	___	___
Alcohol and other drugs	___	___	___
Other reasons	___	___	___
h. # of clients whose primary source of payment at admission was:			
Self payment	___	___	___
Private health insurance	___	___	___
Medicaid	___	___	___
Medicare	___	___	___
Other public payment	___	___	___
No payment/philanthropy	___	___	___

B34. Table was completed using *(Select only one response for method used for majority of figures)* ___

1. Actual numbers from records
2. Estimated numbers from records
3. Best guess (no records available)
4. Actual numbers from automated system
5. Estimated numbers from automated system
6. Other (SPECIFY) _____

B35. If your facility offers **OUTPATIENT, Drug Maintenance** service (as reported in A6c2), please complete this table using data on (DATE) only for that modality.

	MALE	FEMALE	TOTAL
a. # of clients that were:			
White, not Hispanic	___	___	___
Black, not Hispanic	___	___	___
Hispanic	___	___	___
Asian or Pacific Islander	___	___	___
American Indian or Alaskan Native	___	___	___
Other	___	___	___
b. # of clients that at admission were:			
Not married	___	___	___
Married	___	___	___
c. # of clients that at admission had:			
Any children under 18 living at home	___	___	___
No children under 18 living at home	___	___	___
d. # of clients that at admission were:			
Under 15 years old	___	___	___
15-17 years old	___	___	___
18-24 years old	___	___	___
25-34 years old	___	___	___
35-44 years old	___	___	___
45-64 years old	___	___	___
65 and older	___	___	___
e. # of clients that at admission had:			
A high school diploma/GED	___	___	___
No high school diploma/GED	___	___	___

	MALE	FEMALE	TOTAL
f. # of clients that at admission were:			
Employed	___	___	___
Not employed	___	___	___
g. Primary diagnosis at admission:			
Heroin/other opiates	___	___	___
Crack	___	___	___
Cocaine	___	___	___
Barbiturates	___	___	___
Amphetamines	___	___	___
Marijuana/hashish	___	___	___
PCP	___	___	___
Other drugs (not alcohol)	___	___	___
Alcohol only	___	___	___
Alcohol and other drugs	___	___	___
Other reasons	___	___	___
h. # of clients whose primary source of payment at admission was:			
Self payment	___	___	___
Private health insurance	___	___	___
Medicaid	___	___	___
Medicare	___	___	___
Other public payment	___	___	___
No payment/philanthropy	___	___	___

B36. Table was completed using *(Select only one response for method used for majority of figures)* ..... ___

1. Actual numbers from records
2. Estimated numbers from records
3. Best guess (no records available)
4. Actual numbers from automated system
5. Estimated numbers from automated system
6. Other (SPECIFY) _____

B37. If your facility offers **OUTPATIENT, Drug Free** service (as reported in A6c3), please complete this table using data on (DATE) only for that modality.

	MALE	FEMALE	TOTAL
a. # of clients that were:			
White, not Hispanic	___	___	___
Black, not Hispanic	___	___	___
Hispanic	___	___	___
Asian or Pacific Islander	___	___	___
American Indian or Alaskan Native	___	___	___
Other	___	___	___
b. # of clients that at admission were:			
Not married	___	___	___
Married	___	___	___
c. # of clients that at admission had:			
Any children under 18 living at home	___	___	___
No children under 18 living at home	___	___	___
d. # of clients that at admission were:			
Under 15 years old	___	___	___
15-17 years old	___	___	___
18-24 years old	___	___	___
25-34 years old	___	___	___
35-44 years old	___	___	___
45-64 years old	___	___	___
65 and older	___	___	___
e. # of clients that at admission had:			
A high school diploma/GED	___	___	___
No high school diploma/GED	___	___	___

	MALE	FEMALE	TOTAL
f. # of clients that at admission were:			
Employed	___	___	___
Not employed	___	___	___
g. Primary diagnosis at admission:			
Heroin/other opiates	___	___	___
Crack	___	___	___
Cocaine	___	___	___
Barbiturates	___	___	___
Amphetamines	___	___	___
Marijuana/hashish	___	___	___
PCP	___	___	___
Other drugs (not alcohol)	___	___	___
Alcohol only	___	___	___
Alcohol and other drugs	___	___	___
Other reasons	___	___	___
h. # of clients whose primary source of payment at admission was:			
Self payment	___	___	___
Private health insurance	___	___	___
Medicaid	___	___	___
Medicare	___	___	___
Other public payment	___	___	___
No payment/philanthropy	___	___	___

B38. Table was completed using *(Select only one response for method used for majority of figures)* ..... ___

1. Actual numbers from records
2. Estimated numbers from records
3. Best guess (no records available)
4. Actual numbers from automated system
5. Estimated numbers from automated system
6. Other (SPECIFY) _____

C. 12-MONTH FACILITY CLIENT DATA

CLIENT REPORTING PERIOD FROM PAGE 1: From: _____/_____/_____ To: _____/_____/_____

C1. Please complete this table using records from the "CLIENT REPORTING PERIOD." **Do not include clients categorized as Alcohol Only.**

MODALITY	# CLIENTS ADMITTED WHO WERE PREVIOUSLY ON WAITING LIST			TOTAL # CLIENTS ADMITTED DURING REPORTING PERIOD*			# CLIENTS IN PROGRAM AS OF END OF CLIENT REPORTING PERIOD			CLIENTS ENDING TREATMENT DURING REPORTING PERIOD: # CLIENTS COMPLETED. PLANNED TREATMENT			# CLIENTS DID NOT COMPLETE PLANNED TREATMENT BY CLIENT CHOICE (OR DECEASED)			# CLIENTS DID NOT COMPLETE PLANNED TREATMENT BY FACILITY CHOICE		
	M	F	TOT	M	F	TOT	M	F	TOT	M	F	TOT	M	F	TOT	M	F	TOT
HOSPITAL INPATIENT																		
Drug Detoxification																		
Drug Maintenance																		
Drug Free																		
RESIDENTIAL																		
Drug Detoxification																		
Drug Maintenance																		
Drug Free																		
OUTPATIENT																		
Drug Detoxification																		
Drug Maintenance																		
Drug Free																		
TOTALS																		

* Figures may include multiple counts for a single client served in more than one modality.

C2. Table was completed using *(Select only one response for method used for majority of figures)* ..... _____

1. Actual numbers from records
2. Estimated numbers from records
3. Best guess (no records available)
4. Actual numbers from automated system
5. Estimated numbers from automated system
6. Other (SPECIFY) _____

C3. During the 12-month time period indicated in "CLIENT REPORTING PERIOD" on page 1, what was the usual number of days of planned treatment for each modality?

	USUAL # DAYS PLANNED	USUAL # DAYS ACTUAL
a. HOSPITAL INPATIENT		
Drug Detoxification	____	____
Drug Maintenance	____	____
Drug Free	____	____
b. RESIDENTIAL		
Drug Detoxification	____	____
Drug Maintenance	____	____
Drug Free	____	____
c. OUTPATIENT		
Drug Detoxification	____	____
Drug Maintenance	____	____
Drug Free	____	____

C4. During the 12-month time period indicated in "CLIENT REPORTING PERIOD" on page 1, did this facility treat pregnant females?

YES ☐ NO ☐ (SKIP TO C7)

C5. How many pregnant females were treated during that 12-month time period?

____

C6. During that 12-month time period, did this facility offer the following services/programs to pregnant females?

		YES	NO
a.	Family Planning Education	☐	☐
b.	Prenatal Care	☐	☐
c.	Prenatal Education	☐	☐
d.	After Care	☐	☐
e.	Birthing	☐	☐
f.	Followup	☐	☐
g.	Child Care for Client's Children	☐	☐
h.	Parenting Skills Education	☐	☐
i.	Housing Services	☐	☐
j.	Vocational Education	☐	☐
k.	Transportation	☐	☐

C7. If this facility did not treat pregnant females during that 12-month time period, please indicate for each of the following reasons whether or not it applied:

		YES	NO
a.	No pregnant females requested treatment at this facility	☐	☐
b.	The staff at this facility are not trained to treat drug-addicted pregnant females	☐	☐
c.	This facility is not physically equipped to provide for the special needs of pregnant females	☐	☐
d.	This facility does not carry any liability insurance (fear of legal liability)	☐	☐
e.	This facility has liability insurance but the policy will not cover liability for the treatment of pregnant females (fear of legal liability)	☐	☐

C8. During that 12-month time period, did this facility refer pregnant females to any programs at other drug treatment facilities?

YES ☐ NO ☐ (SKIP TO C10)

C9. How many pregnant females were referred to other drug treatment facilities during that 12-month time period?

_____

C10. During that 12-month time period, did this facility refer pregnant females to prenatal care services outside the facility?

YES ☐ NO ☐

C11. During that 12-month time period, did this facility conduct any pregnancy tests?

YES ☐ NO ☐ (SKIP TO C13)

C12. During that 12-month time period, how many female drug treatment clients tested positive in the pregnancy tests?

_____

C13. During that 12-month time period, did this facility conduct HIV/AIDS tests on clients?

YES ☐ NO ☐

C14. During that 12-month time period, even if tested elsewhere, how many clients were . . .

a. HIV seropositive (not confirmed AIDS) ..... _____

b. AIDS diagnosed ..... _____

c. Known or suspected to be HIV positive ..... _____

C15. During that 12-month time, did this facility conduct blood alcohol concentration tests on clients?

YES ☐ NO ☐

C16. During that 12-month time, did this facility conduct any drug tests on clients? (Include services contracted.)

YES ☐ NO ☐ (SKIP TO C20)

C17. During that 12-month time period, which type(s) of tests were used for drug testing?

	YES	NO
a. Urine tests	☐	☐
b. Blood tests	☐	☐
c. Other tests (SPECIFY)	☐	☐

_____

_____

C18. During that 12-month time period, was the drug test analysis done:

	YES	NO
a. On the premises	☐	☐
b. Contracted out to a NIDA certified laboratory	☐	☐
c. Contracted out to another laboratory	☐	☐

C19. During that 12-month time period, how many tests were conducted for each of the following drugs, and how many of those tests were positive at each testing time?

DRUG TYPE	# OF TESTS CONDUCTED			# FOUND POSITIVE		
	AT ADMISSION	AT DISCHARGE	ANY OTHER TIME	AT ADMISSION	AT DISCHARGE	ANY OTHER TIME
a. Marijuana/Hashish						
b. Crack/Cocaine						
c. Heroin and Other Opiates						
d. Barbiturates						
e. Amphetamines						
f. PCP						
g. Other (SPECIFY) _____						

C20. During that 12-month time, other than for pregnant females, did this facility offer any specific programs for special populations? (E.g., programs for teens, IV drug users, polydrug users, crack users, etc.)

YES ☐ NO ☐ (SKIP TO D1)

C21. What special programs were offered by this facility during that 12-month time period?

_____

_____

_____

_____

C22. Does this facility offer any of the following services to treatment clients?

	YES	NO
a. Medical care (other than for substance abuse conditions)	☐	☐
b. Legal counseling	☐	☐
c. Outreach	☐	☐
d. Housing services	☐	☐
e. Transportation	☐	☐
f. Crisis intervention	☐	☐
g. Family/friends counseling	☐	☐
h. Other (SPECIFY) _____	☐	☐

C23. Does this facility offer any of these services following treatment?

	YES	NO
a. After care	☐	☐
b. Followup appointments	☐	☐
c. Relapse prevention	☐	☐
d. Other (SPECIFY) _____	☐	☐

D. 12-MONTH FACILITY FINANCIAL DATA

FINANCIAL/COST REPORTING PERIOD FROM PAGE 1: From: _____/_____/_____ To: _____/_____/_____

Please answer the following questions using records from the "FINANCIAL/COST REPORTING PERIOD" on Page 1. **Do not include clients categorized as Alcohol Only.** If you cannot exclude Alcohol Only clients, check here ☐.

D1. What were your total costs for:

	TOTAL COSTS INCLUDING OVERHEAD AND OPERATING COSTS
a. HOSPITAL INPATIENT	
Drug Detoxification	_____
Drug Maintenance	_____
Drug Free	_____
b. RESIDENTIAL	
Drug Detoxification	_____
Drug Maintenance	_____
Drug Free	_____
c. OUTPATIENT	
Drug Detoxification	_____
Drug Maintenance	_____
Drug Free	_____
d. TOTAL COSTS	_____

D2. Question D1 was completed using *(Select only one response for method used for majority of figures)* ..... _____

1. Actual numbers from records
2. Estimated numbers from records
3. Best guess (no records available)
4. Actual numbers from automated system
5. Estimated numbers from automated system
6. Other (SPECIFY) _____

D3. During the 12-month time period indicated in "FINANCIAL/COST REPORTING PERIOD" on page 1, was this facility accredited for Medicaid?

YES ☐ NO ☐ (SKIP TO D6)

D4. During that 12-month time period, what was the total dollar amount this facility received from Medicaid for drug treatment?

$ _____

NONE ☐ (SKIP TO D6)

D5. During that 12-month time period, for how many of the clients who were in any drug treatment programs did the facility receive money from Medicaid?

NUMBER OF CLIENTS: _____

D6. During that 12-month time period, what percent of this facility's drug treatment revenues came from the following sources?

	ESTIMATED %
a. State Alcohol - Drug Agency funds	_____
b. Other state funds (not Medicaid)	_____
c. Local funds	_____
d. Client fees (self payment)	_____
e. Private health insurance	_____
f. HMO payments	_____
g. Medicaid	_____
h. Medicare	_____
i. Philanthropy	_____
j. Other sources	_____

D7. Do you have any public revenue source from fee-for-service reimbursements?

YES ☐ NO ☐

D8. Do you have any public revenue source from term contracts for services?

YES ☐ NO ☐ (END)

D9. Do you have term contracts with county agencies?

YES ☐ NO ☐ (SKIP TO D11)

D10. Under term contracts with county agencies, how many beds/slots do you have and what is the usual rate?

	# BEDS/SLOTS	$ RATE
a. HOSPITAL INPATIENT		
Drug Detoxification		
Drug Maintenance		
Drug Free		
b. RESIDENTIAL		
Drug Detoxification		
Drug Maintenance		
Drug Free		
c. OUTPATIENT		
Drug Detoxification		
Drug Maintenance		
Drug Free		

D11. Do you have term contracts with state agencies?

YES ☐ NO ☐ (SKIP TO D13)

D12. Under term contracts with state agencies, how many beds/slots do you have and what is the usual rate?

	# BEDS/SLOTS	$ RATE
a. HOSPITAL INPATIENT		
Drug Detoxification		
Drug Maintenance		
Drug Free		
b. RESIDENTIAL		
Drug Detoxification		
Drug Maintenance		
Drug Free		
c. OUTPATIENT		
Drug Detoxification		
Drug Maintenance		
Drug Free		

D13. Do you have term contracts with federal agencies?

YES ☐ NO ☐ (END)

D14. Under term contracts with federal agencies, how many beds/slots do you have and what is the usual rate?

	# BEDS/SLOTS	$ RATE
a. HOSPITAL INPATIENT		
Drug Detoxification		
Drug Maintenance		
Drug Free		
b. RESIDENTIAL		
Drug Detoxification		
Drug Maintenance		
Drug Free		
c. OUTPATIENT		
Drug Detoxification		
Drug Maintenance		
Drug Free		

THANK YOU VERY MUCH FOR YOUR TIME AND COOPERATION.

PLEASE KEEP THIS QUESTIONNAIRE UNTIL OUR TELEPHONE INTERVIEWER CALLS YOU. HE OR SHE WILL COLLECT THE INFORMATION OVER THE TELEPHONE AT THAT TIME.

3/1/90

OMB #: _____

Exp. Date: _____

DRUG SERVICES RESEARCH SURVEY

(Pilot Version)

INTERVIEW WITH FACILITY ADMINISTRATOR

NOTIFICATION TO RESPONDENT OF ESTIMATED BURDEN

Public response burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions and completing 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: Public Health Service Reports Clearance Officer, Attn: PRA, Hubert H. Humphrey Building, Room 721H, 200 Independence Avenue, S.W., Washington, D.C. 20201; and to the Office of Management and Budget, Paperwork Reduction Project (OMB No. 0930-xxxx), Washington, D.C. 20503.

DRUG SERVICES RESEARCH SURVEY

INTERVIEW WITH FACILITY ADMINISTRATOR

In this interview, we have three goals. We are interested in verifying that our telephone interviewers correctly understood the information that was given them when you spoke with them. We would like to ask about any significant changes in some benchmark numbers. Finally, we would also like to take the opportunity of a face-to-face interview to gain a clearer understanding of your facility's policies.

Q1. The facility survey you completed for us by telephone indicates that your NDATUS number is (NUMBER). Is this correct?

Yes 1
No ..... 2 (INSERT CORRECT #)
NDATUS ID # ..... |_|_|_|_|_|_|_|_|

Q2. Your 12-month client reporting period was

From: ____/____/____ (MO DA YR)

To: ____/____/____ (MO DA YR)

Q3. Your 12-month financial/cost reporting period was

From: ____/____/____ (MO DA YR)

To: ____/____/____ (MO DA YR)

Q4. On the telephone you indicated your total capacity on (DATE) was

Clients _____

Q5. And the actual number of clients in treatment was

Clients _____

Q6. How many would you estimate are in treatment as of today?

Clients _____ ..... (GO TO Q8)
DK 8

Q7. How does the actual number of clients in treatment on (DATE), that is (# IN Q5), compare to today? Would you say the actual number of clients in treatment today is

More 1
Less 2
About the same 3

Q8. Do you treat both drug and alcohol dependent clients?

a. Drug only ..... 1 (GO TO Q12)
b. Alcohol only ..... 2 (GO TO Q12)
c. Both 3

Q9. Do you separate drug clients from alcohol clients in treatment?

Yes 1
No 2

Q10. Do you have different treatment protocols for drug and alcohol clients?

Yes 1
No ..... 2 (GO TO Q12)

Q11. Please briefly describe these different treatment protocols.

_____
_____
_____

Now, I would like to ask you some questions about your facility's policies.

Q12. Do you have a written waiting list policy?

Yes 1
No 2

Q13. Please briefly describe the policy.

_____
_____
_____
_____
_____

Q14. According to available information, how many people are on the waiting list today?

People _____ ..... (GO TO Q17)
DK 8

Q15. In the phone interview, our interviewer was told that (# CLIENTS) were on the waiting list on (DATE). Would you say that today the number of people on the waiting list is

More 1
Less 2
About the same ..... 3 (GO TO Q17)

Q16. If there are changes, why do you think the waiting list has (grown/decreased)?

_____
_____
_____
_____
_____

Q17. Does your facility offer special programs for any of the following groups?

	YES	NO
a. Teens	1	2
b. Pregnant women	1	2
Members of different ethnic groups or cultures such as		
c. Blacks	1	2
d. Hispanics	1	2
e. Native Americans	1	2
f. Others (SPECIFY) _____	1	2
g. IV Drug Users	1	2
h. Cocaine Users	1	2
i. Crack Users	1	2
j. Polydrug	1	2
k. Dual Diagnosis	1	2

Q18. Does your facility generally refer out to other programs for any of the following groups?

	YES	NO
1. Teens	1	2
2. Dual Diagnosis Clients	1	2
3. Pregnant Women	1	2
4. IV Drug Users	1	2
5. People with AIDS	1	2

We're also interested in understanding the organization of your facility.

Q19. Are you primarily

1. Publicly owned or ..... 1 (GO TO Q21)
2. Privately owned, non-profit 2
3. Privately owned, for-profit 3

Q20. Who is the owner?

_____

Q21. Are you licensed by (CIRCLE ALL THAT APPLY)

The city 1
The county 2
The state 3
Another licensing group (SPECIFY)..... 4

_____

Q22. Are you accredited by (CIRCLE ALL THAT APPLY)

a. JCAH 1
b. CARF 2
c. FDA 3
d. DEA 4
e. Another accrediting group (SPECIFY) 5

_____

Q23. We would also like to know about your staffing. How many people on your staff are

	# STAFF
1. MDs	_____
2. RNs	_____
3. Drug treatment counselors with special training	_____
4. Other drug treatment counselors	_____
5. Volunteers	_____
6. Administrative and support people	_____

Q24. (If any drug treatment counselors with special training are listed in Q.23), briefly describe the kind of special training your drug treatment counselors have

_____
_____
_____

	# FTEs
Q25. How many paid staff do you have in full-time equivalents (FTEs)?	_____
Q26. How many contracted staff do you have in full-time equivalents (FTEs)?	_____
Q27. How many volunteer staff do you have in full-time equivalents (FTEs)?	_____

Q28. As we mentioned in our letter to you requesting permission for a site visit; we asked if you would be willing to share with us any of your written materials. If possible, we would like to have copies of

	GIVEN	REFUSED
• an organizational chart	1	2
• a staffing plan	1	2
• blank copies of forms you feed into your management information system	1	2
• typical reports generated by your system	1	2
• a copy of a typical patient/client bill (with identifying information covered)	1	2
• a written waiting list policy	1	2
• an example of the waiting list (with identifiers covered)	1	2
• licensing information, ...	1	2
• an example of a methadone treatment plan	1	2
• any other written treatment protocols	1	2

Thank you very much for your time and cooperation.

3/1/90

OMB #: _____

Exp. Date: _____

|_|_|_|_|-|_|_|-|_|
STUDY ID #

DRUG SERVICES RESEARCH SURVEY
CLIENT RECORD ABSTRACT
PILOT STUDY
MARCH 1990

NIDA/BRANDEIS

NOTIFICATION TO RESPONDENT OF ESTIMATED BURDEN

NOTE: This form is completed by contractor staff and imposes no direct public burden.

Stratum Code __ Client Type Code: |_| Match: |_| 0=No 1=Yes

Abstractor __ __ Date: |_|_|-|_|_|-|_|_| (MO DA YR) Time: |_|_|_| (MIN)

Abstract Status: |_|_| 00=Partial complete 01=Complete 03=Out of study 04=No record available

Verified: |_| 0=No 1=Yes

Transmittal No./Date: |_|_|-|_|_|-|_|_|-|_|_| (NO. MO DA YR)

DSRS: PILOT STUDY MARCH 1990
CLIENT RECORD ABSTRACT

DEMOGRAPHICS AT INTAKE

1. Client record number: ..... |_|_|_|_|_|_|_|_|_|_|_|_|
(Right justify client record number)
6-6=Not permitted to abstract
7-7=Not routinely recorded
9-9=Unknown

2. Date of intake: ..... |_|_|-|_|_|-|_|_| (MO DA YR)
7-7=Not routinely recorded
9-9=Unknown

3. Date of birth: ..... |_|_|-|_|_|-|_|_| (MO DA YR)
7-7=Not routinely recorded
9-9=Unknown

3a. Age at intake (in yrs): ..... |_|_| YRS.
77=Not routinely recorded
99=Unknown

4. Gender: ..... |_|
1=Male
2=Female
7=Not routinely recorded
9=Unknown

5. Race: ..... |_|_|
01=White
02=Black
03=American Indian
04=Alaskan Native
05=Asian or Pacific Islander
77=Not routinely recorded
88=Other (Specify) _____
99=Unknown

6. Ethnicity: ..... |_|_|
01=Puerto Rican
02=Mexican
03=Cuban
04=Other Hispanic
05=Not of Hispanic origin
77=Not routinely recorded
88=Other (Specify) _____
99=Unknown

7. Marital status at intake: ..... |__|

0 = Never married
1 = Married
2 = Widowed
3 = Separated
4 = Divorced
7 = Not routinely recorded
8 = Other (Specify) _____
9 = Unknown

8. Living arrangement at intake: ..... |__|__|

00 = No stable arrangement (Include homeless, shelters)
01 = With sexual partner and children
02 = With sexual partner alone
03 = With parents
04 = With family
05 = With friends
06 = Alone with children
07 = Alone
08 = Controlled environment
77 = Not routinely recorded
88 = Other (Specify) _____
99 = Unknown

9. Years of education at intake: ..... |__|__|

00 = Less than H.S., number of years unknown
12 = H.S. graduate/GED
16 = College graduate
20 = Postgraduate
77 = Not routinely recorded
99 = Unknown

10. Technical or mechanical education (including training) at intake: ..... |__|

0 = No
1 = Yes (Specify) _____
7 = Not routinely recorded
9 = Unknown

11. Employment at intake: ..... |__|__|

01 = Full time (30 hrs/wk or more)
02 = Part time (Less than 30 hrs/wk)
03 = Full time student (Employed)
04 = Full time student (Not employed)
05 = Full time homemaker
06 = Full time military service
07 = Retired/disabled
08 = Controlled environment
09 = Unemployed, in skills development
10 = Unemployed, seeking employment
11 = Unemployed, not seeking employment
77 = Not routinely recorded
88 = Other (Specify) _____
99 = Unknown

12. Usual (or last) occupation:

(Specify) _____

13. DWI/DUI arrests prior to intake/number of arrests: ..... |__|-|__|__| NO.

0-00 = None
1-(No.) = Yes (Code no. of arrests)
(99 = Unknown number)
7-77 = Not routinely recorded
8-99 = Unknown

14. Other arrests prior to intake/number of arrests: ..... |__|-|__|__| NO.

0-00 = None
1-(No.) = Yes (Code no. of arrests)
(99 = Unknown number)
7-77 = Not routinely recorded
8-99 = Unknown

15. Prison record prior to intake: ..... |__|

0 = No
1 = Yes
6 = Not permitted to abstract
7 = Not routinely recorded
9 = Unknown

16. Receiving drug treatment as a condition of parole: ..... |__|

0 = No
1 = Yes
6 = Not permitted to abstract
7 = Not routinely recorded
9 = Unknown

MEDICAL STATUS AT INTAKE

17. Number of acute medical hospitalizations (1 yr prior to intake): ..... |__|__|
(If any, specify below)

00 = None
77 = Not routinely recorded
99 = Unknown

17a. Specify reasons/treatment: _____

18. Chronic medical condition at intake: ..... |__|

0 = No
1 = Yes (Specify below)
7 = Not routinely recorded
9 = Unknown

18a. Specify condition/treatment: _____

19. Physical disability at intake: ..... |__|

0 = No
1 = Yes (Specify below)
7 = Not routinely recorded
9 = Unknown

19a. Specify disability: _____

20. History of psychological disorder at intake (Other than drug and alcohol related problems): |__|

0 = No
1 = Yes (Specify below)
7 = Not routinely recorded
9 = Unknown

20a. Specify disorder(s): _____

21. Pregnancy status/test confirmation at intake: |__|-|__|

Pregnancy status codes	Test confirmation codes
+ = Not applicable, client is male	+ = Not applicable, client is male
0 = Not pregnant	0 = Pregnancy test not given
1 = Pregnant	1 = Pregnancy status confirmed by test
7 = Not routinely recorded	7 = Not routinely recorded
9 = Unknown	9 = Unknown

INTAKE/DISCHARGE ADMINISTRATIVE INFORMATION

22. Waiting time for intake into program (in days): |__|__|__|
(Right justify number of days)

000 = No waiting time
777 = Not routinely recorded
999 = Unknown

23. Primary referral source: |__|__|

00 = Self
01 = Family
02 = Employee Assistance Program (EAP)
03 = Employer (Other than EAP)
04 = Criminal Justice/Legal System (judge, parole officer, legal advisor)
05 = Private physician
06 = Community Mental Health Center
07 = Other health professional or provider
08 = School
09 = Clergy
88 = Other
99 = Unknown

24. Current client status: |__|

0 = Discharged
1 = Receiving treatment (Skip to Q27)

25. Reason for discharge: |__|

0 = Client deceased (Record date of death in Q26)
1 = Completed planned treatment
2 = Did not complete treatment, transferred to another program
3 = Did not complete treatment by administration choice (Specify reason below)
4 = Did not complete treatment by client choice (Specify reason below)
5 = Did not complete treatment, not mentioned by whose choice (Specify reason below)
6 = Incarcerated
7 = Not routinely recorded
9 = Unknown

25a. Specify reason: _____

26. Date of discharge: |__|__|-|__|__|-|__|__|
MO DA YR

+–+ = Not applicable, client receiving treatment
7–7 = Not routinely recorded
9–9 = Unknown

27. Duration of treatment until discharge or now: |__|__|__|-|__|
(Right justify number then code 1 = days, 2 = weeks, 3 = months, 4 = years)

7–7 = Not routinely recorded
9–9 = Unknown

28. Primary source of payment for this treatment: |__|__|

00 = No payment - philanthropy
01 = Self-pay
02 = HMO or other prepaid plan
03 = Private health insurance
04 = Medicaid
05 = Medicare
06 = DOD
07 = Champus
08 = Champ-VA
66 = Not permitted to abstract
77 = Not routinely recorded
88 = Other (Specify) _____
99 = Unknown

29. Secondary source of payment for this treatment: |__|__|

00 = No payment - philanthropy
01 = Self-pay
02 = HMO or other prepaid plan
03 = Private health insurance
04 = Medicaid
05 = Medicare
06 = DOD
07 = Champus
08 = Champ-VA
66 = Not permitted to abstract
77 = Not routinely recorded
88 = Other (Specify) _____
99 = Unknown

30. Billed charges for this treatment: |__|__|__|__|__|
(Right justify and round to the nearest dollar.)

0–0 = No charges
6–6 = Not permitted to abstract
7–7 = Not routinely recorded
8–8 = Billing process not yet completed. (Total charges unavailable at this time)
9–9 = Unknown

DRUG HISTORY

31. Presenting problem at intake: ..... |__|

1 = Single drug abuse only
2 = Polydrug abuse only (Exclude alcohol)
3 = Alcohol abuse only
4 = Alcohol and other drugs combined
7 = Not routinely recorded
9 = Unknown

32. Principle treatment focus: ..... |__|

1 = Single drug abuse only
2 = Polydrug abuse only (Exclude alcohol)
3 = Alcohol abuse only
4 = Alcohol and other drugs combined
7 = Not routinely recorded
9 = Unknown

33. Substance abuse/mental illness (dual diagnosis) client ..... |__|

0 = No
1 = Yes
9 = Unknown

34. Primary diagnosis (DSMIII code) at intake: ..... |__|__|__|.|__|__|

7-7 = Not routinely recorded
9-9 = Unknown

34a. Specify primary diagnosis (copy verbatim): .....

_____

_____

34b. List other diagnoses and codes if available: .....

_____ |__|__|__|.|__|__|

_____ |__|__|__|.|__|__|

35. HIV test given during this treatment: ..... |__|__|

00 = No, test not given
01 = Yes, seropositive (Not confirmed AIDS)
02 = Yes, seropositive (Confirmed AIDS)
03 = Yes, negative
04 = Yes, results inconclusive/conflicting
05 = Yes, results not stated
06 = No, client known to be HIV positive
07 = No, client known to have AIDS
66 = Not permitted to abstract
77 = Not routinely recorded
88 = Other (Specify) _____
99 = Unknown

Drug Habit At Intake
(For each substance listed below, code EVER USED. If ever used, complete the rest of the line in the table.)

		EVER USED	LIFETIME USE IN YRS.	FREQUENCY OF USE IN LAST 30 DAYS	ROUTE OF OF USE IN LAST 30 DAYS	DRUG OF CHOICE AT INTAKE
36.	Cocaine (Exclude crack)	|__|	|__|__|	|__|__|	|__|__|	|__|
37.	Crack	|__|	|__|__|	|__|__|	|__|__|	|__|
38.	Heroin	|__|	|__|__|	|__|__|	|__|__|	|__|
39.	Non-treatment methadone	|__|	|__|__|	|__|__|	|__|__|	|__|
40.	Other opiates/synthetics	|__|	|__|__|	|__|__|	|__|__|	|__|
41.	Barbiturates	|__|	|__|__|	|__|__|	|__|__|	|__|
42.	Benzodiazepines	|__|	|__|__|	|__|__|	|__|__|	|__|
43.	Other sedatives/hypnotics	|__|	|__|__|	|__|__|	|__|__|	|__|
44.	Methamphetamines	|__|	|__|__|	|__|__|	|__|__|	|__|
45.	Other amphetamines	|__|	|__|__|	|__|__|	|__|__|	|__|
46.	Marijuana/hashish/THC	|__|	|__|__|	|__|__|	|__|__|	|__|
47.	PCP, LSD	|__|	|__|__|	|__|__|	|__|__|	|__|
48.	Other hallucinogens	|__|	|__|__|	|__|__|	|__|__|	|__|
49.	Inhalants	|__|	|__|__|	|__|__|	|__|__|	|__|
50.	Steroids	|__|	|__|__|	|__|__|	|__|__|	|__|
51.	Over-the-counter (Specify) _____	|__|	|__|__|	|__|__|	|__|__|	|__|
52.	Alcohol	|__|	|__|__|	|__|__|	|__|__|	|__|
53.	Other (Specify) _____	|__|	|__|__|	|__|__|	|__|__|	|__|

EVER USED

0 = Never (Skip rest of line)
1 = Yes (Complete line)
7 = Not routinely recorded (Skip rest of line)
9 = Unknown (Skip rest of line)

LIFETIME USE IN YRS.
(Round to nearest year)

++ = Not applicable
00 = Less than 6 months
77 = Not routinely recorded
99 = Unknown

FREQUENCY OF USE IN LAST 30 DAYS

+++ = Not applicable
01 = Less than once per week
02 = Once per week
03 = Several times per week
04 = Once daily
05 = Two-three times daily
06 = More than three times daily
77 = Not routinely recorded
88 = Other (Specify in Comments)
99 = Unknown

ROUTE OF USE IN LAST 30 DAYS
(In priority order)

+++ = Not applicable
01 = Injected and other routes
02 = Injected only
03 = Ingested/Oral
04 = Inhaled/Sniffed
05 = Smoked
06 = Rectal
77 = Not routinely recorded
88 = Other (Specify in Comments)
99 = Unknown

DRUG OF CHOICE AT INTAKE

+ = Not applicable
0 = No
1 = Yes
7 = Not routinely recorded
9 = Unknown

54 Any substance abuse testing while in treatment: ..... |__|- [redacted]

0 = No testing
1 = Yes, complete table below
7 = Not routinely recorded
9 = Unknown

Substance Abuse Testing
(Complete table in chronological order)

	DATE OF TEST RESULTS MO DA YR	TYPE OF TEST	TEST RESULTS BY DRUG 01/02	03	04	05	06	07	08	09	10	11	12	13	14	15	16	88
At Intake	|__|__|-|__|__|-|__|__|	|__|																
Mid-Treatment	|__|__|-|__|__|-|__|__|	|__|																
At Discharge	|__|__|-|__|__|-|__|__|	|__|																

TYPE OF TEST

1 = Urine
2 = Serum/Blood
7 = Not routinely recorded
8 = Other (Specify in Comments)
9 = Unknown

TEST RESULTS CODES

+ = Not applicable drug not tested
0 = Negative
1 = Positive
7 = Not routinely recorded
8 = Other (Specify in Comments)
9 = Unknown

DRUG CODES

01/02 = Cocaine (Including crack)
03 = Heroin
04 = Non-treatment methadone
05 = Other opiates/synthetics
06 = Barbiturates
07 = Benzodiazepines
08 = Other sedatives/hypnotics
09 = Methamphetamines
10 = Other amphetamines
11 = Marijuana/hashish/THC
12 = PCP/LSD
13 = Other hallucinogens
14 = Inhalants
15 = Steroids
16 = Alcohol
88 = Other (Specify in Comments)

55. Total number of tests ..... |__|__|__|

56. Total number of positive results ..... |__|__|__|

DRUG TREATMENT HISTORY

57. Total number of treatment episodes (For any substance abuse) prior to intake ..... |__|__| NO.

00 = No prior treatment episodes
77 = Not routinely recorded
99 = Unknown

57a. Period prior to intake over which treatment episodes were reported ..... |__|__| YRS.

55 = Lifetime
77 = Not routinely recorded
88 = Other (Specify) _____
99 = Unknown

58. Treatment episodes (For any substance abuse) in the twelve months prior to intake: ..... |__|- [redacted]

0 = None
1 = Yes (Complete table below)
2 = Yes, table overflow (Enter overflow in Comments)
7 = Not routinely recorded
9 = Unknown

Treatment Episodes Twelve Months Prior to Intake
(Complete table in chronological order)

	REASON FOR TREATMENT (DRUG TYPE) Primary	Secondary	FACILITY	ENVIRON-MENT	MODALITY	REASON FOR DISCHARGE
a.	|__|__|	|__|__|	|__|	|__|	|__|	|__|
b.	|__|__|	|__|__|	|__|	|__|	|__|	|__|
c.	|__|__|	|__|__|	|__|	|__|	|__|	|__|
d.	|__|__|	|__|__|	|__|	|__|	|__|	|__|
e.	|__|__|	|__|__|	|__|	|__|	|__|	|__|
f.	|__|__|	|__|__|	|__|	|__|	|__|	|__|

REASON FOR TREATMENT CODES

01 = Cocaine
02 = Crack
03 = Heroin
04 = Non-treatment methadone
05 = Other opiates/synthetics
06 = Barbiturates
07 = Benzodiazepines
08 = Other sedatives/hypnotics
09 = Methamphetamines
10 = Other amphetamines
11 = Marijuana/hashish/THC
12 = PCP/LSD
13 = Other hallucinogens
14 = Inhalants
15 = Steroids
16 = Alcohol
17 = Polydrug (Excluding alcohol)
18 = Combination alcohol and other drug
19 = Substance abuse/mental illness (Dual diagnosis)
77 = Not routinely recorded
88 = Other (Specify in Comments)
99 = Unknown

FACILITY CODES

1 = Here
2 = Elsewhere
7 = Not routinely recorded
9 = Unknown

ENVIRONMENT CODES

1 = Hospital inpatient
2 = Residential
3 = Outpatient detoxification/drug maintenance
4 = Outpatient drug free
5 = Partial hospitalization (Day program or intensive ambulatory services)
7 = Not routinely recorded
9 = Unknown

MODALITY CODES

1 = Drug detoxification
2 = Drug maintenance
3 = Drug free
4 = Alcohol – all modalities
5 = Continuum of care (Short term detox followed by other modality)
7 = Not routinely recorded
9 = Unknown

REASON FOR DISCHARGE CODES

1 = Completed planned treatment
2 = Did not complete treatment, transferred to another program
3 = Did not complete treatment by administration choice
4 = Did not complete treatment by client choice
5 = Did not complete treatment, not mentioned by whose choice
6 = Incarcerated
7 = Not routinely recorded
9 = Unknown

Services During This Treatment
(For each service listed below, code service given. If given, complete the rest of the line in the table.)

		SERVICE GIVEN	FACILITY	FREQUENCY	NO. OF ENCOUNTERS (Right justify no.) (999 = Unknown)
59.	Individual counseling	|__|	|__|	|__|__|	|__|__|__|
60.	Group counseling	|__|	|__|	|__|__|	|__|__|__|
61.	Family counseling	|__|	|__|	|__|__|	|__|__|__|
62.	Educational counseling (Didactic)	|__|	|__|	|__|__|	|__|__|__|
63.	Employment counseling (Vocational rehabilitation)	|__|	|__|	|__|__|	|__|__|__|
64.	Detoxification	|__|	|__|	|__|__|	|__|__|__|
65.	Pharmacological (Methadone)	|__|	|__|	|__|__|	|__|__|__|
66.	Pharmacological (Not methadone)	|__|	|__|	|__|__|	|__|__|__|
67.	Family groups (Include sobriety groups)	|__|	|__|	|__|__|	|__|__|__|
68.	Self-help groups	|__|	|__|	|__|__|	|__|__|__|
69.	Day care for children	|__|	|__|	|__|__|	|__|__|__|
70.	Relapse prevention	|__|	|__|	|__|__|	|__|__|__|
71.	Other (Specify) _____	|__|	|__|	|__|__|	|__|__|__|

SERVICE GIVEN CODES
1 = Actually given, completed
2 = Actually given, ongoing
3 = Actually given, not completed by administration choice
4 = Actually given, not completed by client choice
5 = Actually given, not completed, but not mentioned by whose choice
6 = Planned or recommended, can't confirm actually given
7 = Not routinely recorded
9 = Unknown

FACILITY CODES
1 = Here
2 = Elsewhere
7 = Not routinely recorded
9 = Unknown

FREQUENCY
01 = Less than once per week
02 = Once per week
03 = Several times per week
04 = Once daily
05 = Two-three times daily
06 = More than three times daily
07 = Not regularly scheduled, used as needed
99 = Unknown

72. Number of sessions with any physician during this treatment: ..... |__|__|__|
(Right justify number of sessions.)

000 = None
777 = Not routinely recorded
999 = Unknown

73. Number of sessions with any psychologist during this treatment: ..... |__|__|__|

000 = None
777 = Not routinely recorded
999 = Unknown

74. Methadone given during this treatment: ..... |__|-

0 = No (Leave table blank; skip to Q76)
1 = Yes (Complete table below and Q75)
7 = Not routinely recorded (Leave table blank; skip to Q76)
9 = Unknown (Leave table blank; skip to Q76)

Methadone Treatment

		DATE OF TREATMENT MO DA YR	TOTAL DAILY DOSE IN MGS. (99 = Unknown)	GIVEN DOSE IN MGS (99 = Unknown)	GIVEN DOSE NO. OF TIMES/DAY (99 = Unknown)	PLACE (1 = Here, 2 = At home, 3 = Here/At Home, 9 = Unknown)
74a.	First Dose	|__|__|-|__|__|-|__|__|	|__|__|__|	|__|__|	|__|__|	|__|
74b.	Stabilization	|__|__|-|__|__|-|__|__|	|__|__|__|	|__|__|	|__|__|	|__|
74c.	Discharge or last dose	|__|__|-|__|__|-|__|__|	|__|__|__|	|__|__|	|__|__|	|__|

75. Methadone supply taken home during this treatment/Supply amount: ..... |__|-|__|__| SUP.

Supply Taken Home
+-+ + = Not applicable
0-00 = No
1-(SUP.) = Yes (Code supply amount)
7-77 = Not routinely recorded
9-99 = Unknown

Supply Amount Codes
01 = 1 day supply
02 = 2 day supply
03 = 3 day supply
04 = 4 day supply
05 = 5 day supply
06 = 6 day supply
07 = 7 day or more supply
08 = Weekend supply
77 = Not routinely recorded
88 = Other (Specify) _____
99 = Unknown

76. Primary discharge diagnosis (Copy verbatim): .....
(For clients still in treatment, write "continuing care.")

_____
_____
_____
_____
_____

77. After care plan stated in record: .... |__|

++ = Not applicable, client continuing care
0 = No
1 = Yes (Copy verbatim below)

77a. Specify after care plan: ____________________

____

____

77b. Services included in after care plan: ....
(For each service, code: 0 = No, 1 = Yes, 9 = Unknown)

01. Individual counseling .... |__|
02. Group counseling .... |__|
03. Family counseling .... |__|
04. Educational counseling .... |__|
05. Employment counseling .... |__|
06. Methadone maintenance .... |__|
07. Pharmacological (not methadone) .... |__|
08. Activity groups .... |__|
09. Self-help groups .... |__|
10. Relapse prevention .... |__|
11. Alumni group/Reunion .... |__|
88. Other (Specify) ____________ .... |__|

78. Place to which client was discharged: .... |__|__|

++ = Not applicable, client continuing care
00 = Client deceased
01 = Client's home
02 = Half-way house
03 = 3/4 way house
04 = Sober house
05 = Prison
06 = Referred to another treatment program
77 = Not routinely recorded
88 = Other (Specify in Comments)
99 = Unknown

79. Comments: ....

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[FR Doc. 90-5365 Filed 3-6-90; 8:45am]

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