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Federal Register

Thursday
August 25, 1983

Selected Subjects

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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 225, 227, 235, 246, 247, 250, and 253

Rescission of Regulations Involving Consultation with State and Local Governments

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule: Correction.

SUMMARY: This document corrects the final rule which deleted the provisions of regulations involving consultation with State and local agencies or officials that appeared at page 29122 in the **Federal Register** of Friday, June 24, 1983, (48 FR 29122). This action is necessary to correct a typographical error in the authority citation.

EFFECTIVE DATE: September 30, 1983.

FOR FURTHER INFORMATION CONTACT: Vicky Urcuyo, Assistant to the Deputy Administrator for Special Nutrition Programs (telephone 703–756–3054).

The following correction is made in FR Doc. 83–16734 appearing on 29124 in the issue of June 24, 1983:

On page 29124 in the authority citation "(42 U.S.C. 5231(b))" is corrected to read "(31 U.S.C. 6506(c))".

John H. Stokes III,

Acting Administrator, Food and Nutrition Service.

[FR Doc. 83–23275 Filed 8–24–83; 8:45 am]

BILLING CODE 3410–30–M

Agricultural Marketing Service

7 CFR Part 908

[Valencia Orange Reg. 314]

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of fresh California-Arizona Valencia oranges that may be shipped to market during the period August 26–September 1, 1983. Such action is needed to provide for orderly marketing of fresh Valencia oranges for this period due to the marketing situation confronting the orange industry.

EFFECTIVE DATE: August 26, 1983.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, 202–447–5975.

SUPPLEMENTARY INFORMATION: *Findings.* This rule has been reviewed under USDA procedures and Executive Order 12291 and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. This action is designed to promote orderly marketing of the California-Arizona Valencia orange crop for the benefit of producers and will not substantially affect costs for the directly regulated handlers.

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

This action is consistent with the marketing policy for 1982–83. The marketing policy was recommended by the committee following discussion at a public meeting on February 22, 1983. The committee met again publicly on August 23, 1983 at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of Valencia oranges deemed advisable to be handled during the specified week. The committee reports the demand for Valencia oranges is easy.

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

List of Subjects in 7 CFR Part 908

Marketing agreements and orders, California, Arizona, Oranges (Valencia).

1. Section 908.614 is added as follows:

§ 908.614 Valencia orange regulation 314.

(a) The quantities of Valencia oranges grown in California and Arizona which may be handled during the period August 26, 1983 through September 1, 1983, are established as follows:

(1) District 1: 423,000 cartons;

(2) District 2: 477,000 cartons;

(3) District 3: Unlimited cartons.

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

Dated: August 24, 1983.

Charles R. Brader,

Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 83–23563 Filed 8–24–83; 11:33 am]

BILLING CODE 3410–02–M

7 CFR Part 930

Cherries Grown in Michigan, New York, Wisconsin, Pennsylvania, Ohio, Virginia, West Virginia, and Maryland; Amendment of Certain Rules and Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action provides alternate means by which growers of tart cherries may obtain diversion credit in lieu of placing such cherries in a reserve pool; increases the authorized reserve pool financial reserve fund from $15,000 to $30,000; changes the time frame of the Fall release period for reserve pool cherries; exempts cherries processed into juice from regulation; and generally provides more flexible terms for the sale of reserve pool cherries. These changes are necessary to facilitate procedures governing the handling and sale of reserve pool cherries.

DATES: Effective on and after September 26, 1983.

FOR FURTHER INFORMATION CONTACT: R. C. Martin 447-5127.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under USDA procedures and Executive Order 12291 and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. This action is designed to promote orderly marketing of the tart cherry crop for the benefit of producers and consumers and will not substantially affect costs for the directly regulated persons.

An interim rule was published in the **Federal Register** on June 23, 1983 (48 FR 28613) which specified changes in rules and regulations of the tart cherry marketing order. That rule provided an opportunity to submit comments through July 25, 1983. No comments were received. This final rule contains the same requirements as specified in the interim rule. The terms of these rules and regulations would be effective on and after September 26, 1983.

These rules and regulations are issued under Marketing Order No. 930 (7 CFR Part 930), regulating the handling of tart cherries grown in eight States. The order is effective under the Agricultural Marketing Agreement Act of 1937, as Amended (7 U.S.C. 601-674). These actions are based upon the recommendation and information submitted by the Cherry Administration Board (hereinafter referred to as the "Board") and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the Act.

One change would allow growers more latitude in the disposition of diverted cherries. Currently, in order to qualify for diversion credit, growers must leave diverted cherries unharvested. The regulation would allow growers, after the fruit has been inspected to determine the actual diversion process having taken place, to harvest such cherries to be used for juice, jam, jellies, preserves, dried fruit, or other products which used less than five percent of the preceding five-year average production of cherries.

The currently authorized limit to the reserve pool financial reserve fund is $15,000. The regulation would increase this amount to approximately $30,000 in order to have available sufficient funds to defray costs of storage and maintenance of records and supporting materials of prior pools.

The 10-day Fall release period for reserve cherries is the period November 1-11. The regulation would authorize the Fall release date to be one 10-day period between September 1 and December 1 of each fiscal period. This would allow the Board to be more responsive to the needs of the market.

The regulation exempts cherries which are processed into juice from the volume regulation provisions of the order. Cherries processed into juice make up a small percentage of the market and this action is designed to allow market expansion.

The regulation also authorizes the Board to set additional terms and conditions of sale of reserve pool cherries. The Board may authorize delayed payment schedules, brokerage discounts, percentage or volume discounts, or other types of incentives and increase the required per can deposit for cherries purchased. More flexible purchase incentives are necessary to encourage volume sales of reserve pool cherries; effect maximum returns to equity holders and achieve complete disposition of such cherries. The increase in the per can deposit from $1.00 to $3.00 reflects the higher costs associated with handling reserve pool purchase offers. All discounts or incentives would be paid back to handlers as a refund after funds have been distributed in accordance with § 930.109 of the order.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice and engage in public rulemaking procedures (5 U.S.C. 553), and good cause exists for making these regulatory provisions effective as specified in that (1) an interim rule was published in the **Federal Register** (48 FR 28613) and no comments were received during the period provided; and (2) the requirements of this final rule are the same as those specified in the interim rule.

List of Subjects in 7 CFR Part 930

Marketing agreement and orders, Cherries.

PART 930—[AMENDED]

Therefore, 1. Revise § 930.103 *Diversion,* to read as follows:

§ 930.103 Diversion.

Diversion shall be accomplished by any of the uses described in § 930.56(a), including using such cherries for juice, jams, jellies, preserves, dried products, and other uses which used less than 5 percent of the preceding 5-year average production of cherries: *Provided,* That such cherries shall remain on the tree until final inspection and shall not be removed from the premises other than by record approval: *Provided further,* That unless an alternate method of tree selection for diversion is requested by an applicant and is approved by the Board, the trees involved with non-harvest shall be designated on a random basis by the Board through its authorized representatives.

2. Amend § 930.109 *Distribution of reserve pool proceeds,* by revising paragraph (c) to read:

§ 930.109 Distribution of reserve pool proceeds.

* * * * *

(c) In accordance with § 930.60 all reserve pool funds, after deductions, shall be distributed to equity holders in direct proportion to each person's equity in the total reserve pool. In the event of complete disposition of all reserve pool cherries, the Board may, prior to making distribution of the resulting funds, set aside a portion of such funds, not to exceed approximately $30,000, as a reserve to defray costs of storage and maintenance of records and supporting material of the pool.

* * * * *

3. Revise § 930.110 *After harvest adjustment and release period,* to read:

§ 930.110 After harvest adjustment and release period.

The 10-day period provided in § 930.53, paragraphs (a) and (b)(1) for the revision of percentages and release of reserve pool cherries, shall be one 10-

day period between September 1 and December 1 of such fiscal period.

4. Amend § 930.161 *Exemptions granted,* by revising paragraph (a) to read:

§ 930.161 Exemptions granted.

(a) Cherries which are processed into products for use as coloring agents, such as that which is used in the manufacture of cosmetics, or into juice, are exempt from the provisions of §§ 930.52 through 930.60 as is authorized by § 930.61.

* * * * *

5. Amend § 930.591 *Conditions governing the sale of reserve pool cherries,* by revising paragraphs (a), (b), (c) and (d), and adding a new paragraph (e) to read:

§ 930.591 Conditions governing the sale of reserve pool cherries.

* * * * *

(a) The Cherry Administrative Board, prior to any 10 day reserve pool release period, shall notify each handler of record by telephone, which notification shall be confirmed by registered letter, of the: time and date of the release period; quantity of said handler's share of the reserve pool release which may be purchased by such handler; specific prices of such cherries, and the terms of the sale. Such terms of sale may include, but are not limited to: A delayed payment schedule; a discount based on the percentage of a handler's total share purchased; or a percentage allowance for brokerage fees. This shall be designated as the first offering.

(b) Each handler wishing to purchase first offering reserve pool cherries shall notify the Board, in person or by telephone, of the number of 30-pound containers or the percentage of this portion of reserve pool cherries, such handler desires to purchase. Such handler shall confirm this offer in writing at the Board's office or at such other location as may be designated by the Board. The confirmation shall be accompanied by a deposit of an amount to be determined by the Board, but not to exceed $3.00, for each 30 pounds of cherries such handler offers to purchase. Both the confirmation and the deposit must be received at the office of the Board or at other locations within the production area as designated by the Board, within the first 72 hours of the release period. The total amount of the purchase price of such cherries shall be due within the payment schedule established by the Board. No cherries shall be released by the Board until after it has received payment of the full amount due for such cherries. If the full amount is not paid within the payment schedule established by the Board, the entire deposit for each 30 pounds of cherries shall be forfeited to the Board for the reserve pool account and the cherries shall remain in the reserve pool.

(c) In the event there remains for sale a portion of first offering cherries, the Board shall, during a second 72-hour period within the 10 day release period, notify all handlers who purchased their portion of first offering reserve pool cherries, by telephone or telegram, of the quantity, the price, the grade composition of cherries remaining for purchase, and the terms of sale. Such terms of sale may include, but are not limited to: a delayed payment schedule; a discount based on the volume of cherries purchased, or a percentage allowance for brokerage fees. This shall be designated as the second offering.

(d) Each such handler who desires to purchase second offering cherries may do so within the remaining 96 hours of the 10 day release period. Such offer shall be made in the same manner as such handler's offer to purchase first offering cherries and the deposit amount established by the Board shall also apply to the offer to purchase second offering cherries. If the full amount is not paid within the aforesaid payment schedule, the entire deposit for each 30 pounds of cherries shall be forfeited to the Board for the reserve pool account and the cherries shall remain in the reserve pool. In the event offers to purchase exceed the quantity of cherries offered, the quantity each handler may purchase shall be prorated in accordance with the handler's participation in the reserve pool as compared with the total participation in the reserve pool by all handlers who have made an offer to purchase second offering cherries: *Provided,* That if the proportion of any handler exceeds the quantity such handler desires to purchase, such excess shall be apportioned on the foregoing basis among the remaining handlers who have expressed a desire to purchase second offering cherries.

(e) All monies due to handlers from any allowance or discount shall be refunded to such handlers after distribution of reserve pool proceeds in accordance with § 930.109.

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

Dated: August 19, 1983.

Charles R. Brader,

Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 83-23294 Filed 8-24-83; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 1207

Potato Research and Promotion Plan, Expenses and Rate of Assessment

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation authorizes expenses for the functioning of the National Potato Promotion Board. It enables the Board to collect assessments from designated handlers on assessable potatoes and to use the resulting funds for its expenses.

EFFECTIVE DATE: July 1, 1983.

FOR FURTHER INFORMATION CONTACT: Charles W. Porter, Chief, Vegetable Branch, F&V, AMS, USDA, Washington, D.C. 20250, (202) 447–2615.

SUPPLEMENTARY INFORMATION: Information collection requirements contained in this regulation (7 CFR Part 1207) have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB No. 0581–0093.

This final rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been designated a "nonmajor" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities because it would not significantly affect costs for the directly regulated handlers.

The Potato Board is the administrative agency established under the Potato Research and Promotion Plan (7 CFR Part 1207). This program is effective under the Potato Research and Promotion Act (7 U.S.C. 2611–2627).

Notice was published in the June 2 **Federal Register** (48 FR 24724) regarding the proposals. It afforded persons an opportunity to submit written comments not later than June 16, 1983. None was received.

After consideration of all relevant matters, including the proposal in the notice, it is found that the following expenses and rate of assessment should be approved.

It is further found that good cause exists for not postponing the effective date of this section until 30 days after publication in the **Federal Register** (7 U.S.C. 553) because this part requires that the rate of assessment for a particular period apply to all assessable potatoes from the beginning of such period.

List of Subjects in 7 CFR Part 1207

Administrative practice and procedure, Advertising, Agricultural research, Potatoes.

PART 1207—POTATO RESEARCH AND PROMOTION PLAN

§ 1207.11 [Removed]

Section 1207.411 (47 FR 32914, July 30, 1982) is hereby removed and § 1207.412 is added as follows:

§ 1207.412 Expenses and rate of assessment.

(a) The reasonable expenses that are likely to be incurred during the fiscal period beginning July 1, 1983, and ending June 30, 1984, by the National Potato Promotion Board for its maintenance and functioning and for such purposes as the Secretary determines to be appropriate will amount to $2,565,000.

(b) The rate of assessment to be paid by each designated handler in accordance with the provisions of the Plan shall be one cent ($0.01) per hundredweight of assessable potatoes handled by such person during said fiscal period.

(c) Unexpended income in excess of expenses for the fiscal period may be carried over as an operating monetary reserve.

(d) Terms used in this section have the same meaning as when used in the Potato Research and Promotion Plan.

(Approved by the Office of Management and Budget under Control No. 0581-0093)

(Title III of Pub. L. 91-670; 84 Stat. 2041; 7 U.S.C. 2611-2627)

Dated: August 22, 1983.

William T. Manley,

Deputy Administrator, Market Program Operations.

[FR Doc. 83-23361 Filed 8-24-83; 8:45 am]

BILLING CODE 3410-02-M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 20, 21, and 73

Minor Clarifying Amendments

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to indicate a change in the commercial telephone number for the NRC's Region III Office. The amendments are necessary to inform the public of these administrative changes to NRC regulations.

EFFECTIVE DATE: August 22, 1983.

FOR FURTHER INFORMATION CONTACT: Pearl Smith, Telephone: (312) 384-2726.

SUPPLEMENTARY INFORMATION: Effective August 22, 1983, the commercial telephone number for NRC's Region III office located at 799 Roosevelt Road, Glen Ellyn, Illinois will be changed to (312) 790-5500.

Because this is a nonsubstantive amendment dealing with a purely administrative matter of agency management, the notice and comment procedures of the Administrative Procedure Act (5 U.S.C. 553) do not apply and the amendment is effective August 22, 1983.

List of Subjects

10 CFR Part 20

Byproduct material, Licensed material, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Packaging and containers, Penalty, Radiation protection, Reporting and recordkeeping requirements, Special nuclear material, Source material, Waste treatment and disposal.

10 CFR Part 21

Nuclear power plants and reactors, Penalty, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 73

Hazardous materials—transportation, Incorporation by Reference, Nuclear material, Nuclear power plants and reactors, Penalty, Reporting and requirements, Security measures.

Under the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552, the following amendments to 10 CFR Parts 20, 21, and 73 are published as a document subject to codification.

The authority citation for this document is: (Sec. 161, Pub. L. 83-703, 68 Stat. 948, as amended (42 U.S.C. 2201)).

PART 20—STANDARDS FOR PROTECTION AGAINST RADIATION

1. In Appendix D to Part 20, the telephone number for Region III is revised to read as follows:

Appendix D—United States Nuclear Regulatory Commission Regional Offices

* * * * *

Region III: Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin.	USNRC, 799 Roosevelt Road, Glen Ellyn, Il 60137	(312) 790-5500, (FTS) 384-2500.

* * * * *

PART 21—[AMENDED]

§ 21.2 [Amended]

2. In footnote 1, of § 21.2 the commercial telephone number for NRC Region III is revised to read (312) 790-5500.

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

3. In Appendix A of Part 73, the telephone number for Region III is revised to read as follows:

Appendix A—United States Nuclear Regulatory Commission Regional Offices

* * * * *

Region III: Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin..	USNRC, 799 Roosevelt Road, Glen Ellyn, IL 60137.	(312) 790-5500, (FTS) 384-2500.

Dated at Bethesda, Maryland, this 9th day of August 1983.

For the Nuclear Regulatory Commission.

Jack W. Roe,

Acting Executive Director for Operations.

[FR Doc. 83-23382 Filed 8-24-83; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 177

[Docket No. 80F-0312]

Indirect Food Additives; Polymers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of vinylidene chloride/methyl acrylate copolymers as articles or components of articles in contact with food. This action responds to a petition filed by Dow Chemical Co.

DATES: Effective August 25, 1983; objections by September 26, 1983. The Director of the Federal Register approves the incorporation by reference of certain publications at 21 CFR 177.1990, effective on August 25, 1983.

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

FOR FURTHER INFORMATION CONTACT: Mary W. Lipien, Bureau of Foods (HFF-

334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5740.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of September 5, 1980 (45 FR 58968), FDA announced that a petition (FAP 9B3452) had been filed by Dow Chemical Co., 2040 Dow Center, Midland, MI 48640, proposing that the food additive regulations be amended to provide for the safe use of vinylidene chloride/methyl acrylate copolymers as articles or components of articles intended for use in contact with food.

FDA has evaluated data in the petition and other relevant material and concludes that the proposed food additive use is safe and that the regulations should be amended 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 Bureau of Foods (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h)(2) 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 and 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 may be seen in the Dockets Management Branch (address above), between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 177

Food additives, Incorporation by reference, Polymeric food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Bureau of Foods (21 CFR 5.61), Part 177 is amended in Subpart B by adding new § 177.1990 to read as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

§ 177.1990 Vinylidene chloride/methyl acrylate copolymers.

The vinylidene chloride/methyl acrylate copolymers (CAS Reg. No. 25038-72-6) identified in paragraph (a) of this section may be safely used as an article or as a component of an article intended for use in contact with food subject to the provisions of this section.

(a) *Identity.* For the purposes of this section vinylidene chloride/methyl acrylate copolymers consist of basic copolymers produced by the copolymerization of vinylidene chloride and methyl acrylate such that the copolymers contain not more than 15 weight-percent of polymer units derived from methyl acrylate.

(b) *Optional adjuvant substances.* The basic vinylidene chloride/methyl acrylate copolymers identified in paragraph (a) of this section may contain optional adjuvant substances required in the production of such basic copolymers. These optional adjuvant substances may include substances permitted for such use by regulations in Parts 170 through 179 of this chapter, substances generally recognized as safe in food, and substances used in accordance with a prior sanction or approval.

(c) *Specifications.* (1) The methyl acrylate content is determined by an infrared spectrophotometric method titled "Determination of Copolymer Ratio in Vinylidene Chloride/Methyl Acrylate Copolymers," which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF-330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(2) The average molecular weight of the copolymer is not less than 50,000 when determined by gel permeation chromatography using tetrahydrofuran as the solvent. The gel permeation chromatograph is calibrated with polystyrene standards. The basic gel permeation chromatographic method is described in ANSI/ASTM D3536-76, "Standard Test Method for Molecular Weight Averages and Molecular Weight Distribution of Polystyrene by Liquid Exclusion Chromatography (Gel Permeation Chromatography-GPC)," which is incorporated by reference. Copies are available from University Microfilms International, 300 North Zeeb Rd., Ann Arbor, MI 48106, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(3) Residual vinylidene chloride and residual methyl acrylate in the copolymer in the form in which it will contact food (unsupported film, barrier layer, or as a copolymer for blending) will not exceed 10 parts per million and 5 parts per million, respectively, as determined by a gas chromatographic method titled "Determination of Residual Vinylidene Chloride and Methyl Acrylate in Vinylidene Chloride/Methyl Acrylate Copolymer Resins and Films," which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF-330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(d) *Extractives limitations.* The basic copolymer resin in the form of granules that will pass through a U.S. Standard Sieve No. 45 (350 microns) shall meet the following extractives limitations:

(1) 10-gram samples of the resin, when extracted separately with 100 milliliters of distilled water at 157° C (250° F) for 2 hours, and 100 milliliters of *n*-heptane at 101° C (150° F) for 2 hours, shall yield total nonvolatile extractives not to exceed 0.5 percent by weight of the resin.

(2) The basic copolymer in the form of film when extracted separately with distilled water at 157° C (250° F) for 2 hours shall yield total nonvolatile extractives not to exceed 0.047 milligram per square centimeter (0.3 milligram per square inch).

(e) *Conditions of use.* The copolymers may be safely used as articles or components of articles intended for use in producing, manufacturing, processing, preparing, treating, packaging, transporting, or holding food, including processing of packaged food at retorting temperature, 157° C (250° F).

(f) *Other specifications and limitations.* The vinylidene chloride-methyl acrylate copolymers identified in and complying with this section, when used as components of the food contact surface of any article that is subject to a regulation in Parts 174 through 178 and § 179.45 of this chapter, shall comply with any specifications and limitations prescribed by such regulation for the article in the finished form in which it is to contact food.

Any person who will be adversely affected by the foregoing regulation may at any time on or before September 26, 1983 submit to the Dockets Management Branch (address above) written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. 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 regulation. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation shall become effective August 25, 1983.

(Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348))

Dated: August 17, 1983.

Sanford A. Miller,

Director, Bureau of Foods.

[FR Doc. 83-23281 Filed 8-24-83; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 520

Oral Dosage Form New Animal Drugs Not Subject to Certification; Dextrose/Glycine/Electrolyte

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Beecham Laboratories, providing for safe and effective use of dextrose/glycine/electrolyte for oral use in calves for control of dehydrations associated with diarrhea.

EFFECTIVE DATE: August 25, 1983.

FOR FURTHER INFORMATION CONTACT: Adriano R. Gabuten, Bureau of Veterinary Medicine (HFV-135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4913.

SUPPLEMENTARY INFORMATION: Beecham Laboratories, Division of Beecham, Inc., Bristol, TN 37620, filed NADA 125-961 providing for the use of dextrose/glycine/electrolyte powder orally in calves in the control of dehydration associated with diarrhea (scours). The NADA is approved and the regulations are amended to reflect the approval.

The basis of this approval is discussed in the freedom of information (FOI) summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(E)(2)(ii) (21 CFR 514.11(E)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The Bureau of Veterinary Medicine has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement therefore will not be prepared. The Bureau's finding of no significant impact and the evidence supporting this finding, contained in a statement of exemption (pursuant to 25.1(f)(1)(iv) and (g)) may be seen in the Dockets Management Branch (address above).

List of Subjects in 21 CFR Part 520

Animal drugs, Oral.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), Part 520 is amended by adding new § 520.550 to read as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

§ 520.550 Dextrose/glycine/electrolyte.

(a) *Specifications.* The product is distributed in packets each of which contains the following ingredients: sodium chloride 8.82 grams, potassium phosphate 4.20 grams, citric acid anhydrous 0.5 gram, potassium citrate 0.12 gram, aminoacetic acid (glycine) 6.36 grams, and dextrose 44.0 grams.

(b) *Sponsor.* See No. 000029 in § 510.600(c) of this chapter.

(c) *Conditions of use.* (1) Dextrose/glycine/electrolyte is indicated for use in the control of dehydration associated with diarrhea (scours) in calves. It is used as an early treatment at the first signs of scouring. It may also be used as followup treatment following intravenous fluid therapy.

(2) Dissolve each packet in two quarts of warm water and administer to each calf as follows:

(i) *Scouring and/or dehydrated calves.* Feed 2 quarts of solution, twice daily for 2 days (four feedings). No milk or milk replacer should be fed during this period. For the next four feedings (days 3 and 4), use 1 quart of solution together with 1 quart of milk replacer. Thereafter, feed as normal.

(ii) *Newly purchased calves.* Feed 2 quarts of solution instead of milk as the first feed upon arrival. For the next scheduled feeding, use 1 quart of solution mixed together with 1 quart of milk or milk replacer. Thereafter, feed as normal.

(3) The product should not be used in animals with severe dehydration (down, comatose, or in a state of shock). Such animals need intravenous therapy. Oral therapy in these cases is too slow. Animals which cannot drink after initial intravenous therapy may need to be dosed with a stomach tube or esophageal tube. Adequate colostrum intake during the first 12 hours is essential for healthy, virgorous calves. Antibacterial therapy is often indicated in bacterial scours due to *E. coli* and/or *Salmonella.* The product does not contain antibacterial agents. A veterinarian should be consulted in severely scouring calves or cases requiring antibacterial therapy. The product is not nutritionally complete if administered by itself for long periods of time. It should not be administered beyond the recommended treatment period without the addition of milk or milk replacer.

Effective date. August 25, 1983.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: August 18, 1983.

Gerald B. Guest,

Acting Director, Bureau of Veterinary Medicine.

[FR Doc. 83-23282 Filed 8-24-83; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF STATE

22 CFR Part 11

[Dept. Reg. 108.834]

Appointment of Members of the Foreign Service

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: The Department of State, with the concurrence of the Departments of Agriculture and Commerce, the Agency for International Development, and the United States Information Agency, is amending its regulations governing the appointment of members

of the Foreign Service to add a new § 11.30 relative to the appointment of Senior Foreign Service Officer Career Candidates.

This new program supplements the Junior, Mid-Level, and Specialist Foreign Service Career Candidate Programs (or similar department/agency programs) to meet identified Senior Foreign Service officer needs which cannot otherwise be met from within the ranks of the career Foreign Service.

EFFECTIVE DATE: August 18, 1983.

FOR FURTHER INFORMATION CONTACT: Frontis B. Wiggins, Board of Examiners, Department of State, Washington, D.C., 20520 (703) 235–9232.

SUPPLEMENTARY INFORMATION: Section 101(b)(7) of the Foreign Service Act of 1980 (Pub. L. 96–465) established a Senior Foreign Service, characterized by strong policy formulation capabilities, outstanding executive leadership qualities, and highly developed functional, foreign language, and area expertise.

This new subpart provides the procedures establishing the eligibility of candidates for the Senior Foreign Service Career Candidates Program, the competitive requirements for that program, and the terms and conditions of appointment for successful candidates. It also provides procedures for making limited non-career Senior Foreign Service Officer appointments.

Analysis of Comments. No substantive comments were received by the Department of State during the public comment period. Except for certain minor editorial changes and the addition of a clarifying statement by the U.S. Information Agency in § 11.30(b)(1)(ii) concerning age at time of appointment, the final rule as published herewith is the same as the proposed rule published in the **Federal Register** of June 10, 1983 (48 FR 26834).

E.O. 12291, Federal Regulation

The Department of State has determined that this is not a major rule for the purposes of E.O. 12291, Federal Regulation, because it will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign based enterprises in domestic or export markets.

In addition, this rule relates solely to agency personnel and falls under section 1(a)(3) of E.O. 12291.

List of Subjects in 22 CFR Part 11

Foreign Service.

Accordingly, under the authority of sections 206(a) and 301(b) of the Foreign Service Act of 1980 (secs. 206(a) and 301(b), Pub. L. 96–465, 94 Stat. 2079 and 2083 (22 U.S.C. 3926 and 3941)), 22 CFR 11 is amended by revising the section heading and adding test to § 11.30, to read as follows:

§ 11.30 Senior Foreign Service Officer career candidate and limited non-career appointments.

(a) *General considerations.* (1) Career officers at the Senior Level normally shall be appointed as the result of promotion of Mid-Level career officers. Where the needs of the Foreign Service at the Senior Level cannot otherwise be met by this approach, limited appointments may by granted to applicants as Senior Career Candidates or as limited non-career appointees in accordance with these regulations. However, as required by section 305(b) of the Foreign Service Act of 1980 (hereinafter referred to as the Act), but qualified by sections 305(b)(1) and (2) and section 2403(c) of the Act, the limited appointment of an individual in the Senior Foreign Service shall not cause the number of members of the Senior Foreign Service serving under limited appointments to exceed 5 percent of the total members of the Senior Foreign Service.

(2) Successful applicants under the Senior Career Candidate Program will be appointed to Career Candidate status for a period not to exceed 5 years. Such limited Career Candidate appointments may not be renewed or extended beyond 5 years.

(3) Under section 306 of the Act, Senior Career Candidates may be found qualified to become career members of the Senior Foreign Service. Those who are not found to be so qualified prior to the expiration of their limited appointments will be separated from the Career Candidate Program no later than the expiration date of their appointments. Separated candidates who originally were employees of a Federal department or agency, and who were appointed to the Senior Foreign Service with the consent of the head of that department or agency, will be entitled to reemployment rights in that department or agency in accordance with section 310 of the Act and section 3597 of title 5, United States Code.

(4) The following regulations shall be utilized in conjunction with section 593, Volume 3, Foreign Affairs Manual ("Senior Foreign Service Officer Career Candidate Program"). (Also see Foreign Affairs Manual Circulars No. 8 [applicable to the Department of State only] and No. 9 [applicable to the Departments of State, Agriculture, and Commerce, the Agency for International Development, and the United States Information Agency], dated March 6, 1981.)

(b) *Senior Career Candidate appointments*—(1) *Eligibility requirements.* Senior Career Candidates must meet the following eligibility requirements:

(i) *Citizenship.* Each person appointed as a Senior Career Candidate must be a citizen of the United States.

(ii) *Age.* All career candidate appointments shall be made before the candidate's 60th birthday. Appointments by the United States Information Agency shall be made before the candidate's 58th birthday. The maximum age for appointment under this program is based on the requirement that all career candidates shall be able to: (A) Complete at least two full tours of duty, exclusive of orientation and training; (B) complete the requisite eligibility period for tenure consideration and (C) complete the requisite eligibility period to receive retirement benefits, prior to reaching the mandatory retirement age of 65 prescribed by the Act.

(iii) *Service.* (A) On the date of application, an applicant must have completed a minimum of 15 years of professional work experience, including at least 5 years of service in a position of responsibility in a Federal Government agency or agencies or elsewhere equivalent to that of a Mid-Level Foreign Service officer (classes FS–1 through FS–3). The duties and responsibilities of the position occupied by the applicant must have been similar to or closely related to that of a Foreign Service officer in terms of knowledge, skills, abilities, and overseas work experience. In addition, an applicant must currently be in, or have been in, a position comparable to a Foreign Service officer of class 1 (FS–1), or higher.

(B) Applicants from outside the Federal Government, and Federal employees who at the time of application lack the 15 years of professional work experience or the 5 years of service in a position of responsibility as defined in the preceding paragraph, may, however, be considered if they are found to possess a combination of educational background, professional work experience, and skills

needed by the Foreign Service at the Senior Level in employment categories which normally are not staffed by promotion of Mid-Level career officers.

(C) Non-career members of the Senior Foreign Service of a Federal Government department or agency also may apply for the Senior Career Candidate Program if they meet the eligibility requirements for the program.

(iv) *Certification of need.* Before an application can be processed, the Director of Personnel of the foreign affairs agency concerned must certify that there is a need for the applicant as a Senior Career Candidate based upon (A) the projections of personnel flows and needs mandated by section 601(c)(2) of the Act, and (B) a finding that the combination of educational background, professional work experience, and skills possessed by the applicant is not expected to be available in the immediate future in sufficient numbers within the Senior Foreign Service, including by promotion and/or special training of career personnel. This certification of need will be requested by the Board of Examiners for the Foreign Service from the appropriate foreign affairs agency Director of Personnel.

(2) *Application.* All applicants for the Senior Career Candidate Program must apply in writing through the prospective employing agency to the Board of Examiners for consideration. The applicant shall submit a completed Standard Form 171, "Personnel Qualifications Statement," and Form DSP-34, "Supplement to Application for Federal Employment," to the Board. In addition, the applicant shall submit a narrative statement, not exceeding four typewritten pages in length, describing the applicant's pertinent background and professional work experience, which includes a statement of the applicant's willingness and ability to accept the obligation of world-wide service. The Board may request additional written information from the applicant following receipt of the initial application.

(3) *Qualifications evaluation panel.* (i) The Board of Examiners will establish a file for each applicant, placing in it all available documentation of value in evaluating the applicant's potential for service as a Senior Career Candidate. For an applicant from within the Federal Government, this will include the personnel file from the employing department or agency.

(ii) The complete file will be reviewed by a Qualifications Evaluation Panel of the Board of Examiners to determine whether the applicant meets the statutory and other eligibility requirements, to assess the applicant's skills under the certification of need issued by the prospective employing agency, and to recommend whether the applicant should be examined for possible appointment as a Senior Career Candidate. If the Qualifications Evaluation Panel decides that the applicant is not eligible for examination, the prospective employing agency shall be informed by the Board of the reasons for that decision.

(4) *Written Examination.* The Board of Examiners normally will not require Senior Career Candidate applicants to undergo a written examination. However, the Board may, upon securing the agreement of the prospective employing agency, decide that such applicants should be required to take an appropriate written examination prescribed by the Board. If so, an applicant whose score on the written examination is at or above the passing level set by the Board will be eligible for selection for the oral examination.

(5) *Oral examination.*—(i) *Examining panel.* Applicants recommended by the Qualifications Evaluation Panel will be given an appropriate oral examination by a Panel of Senior Foreign Service deputy examiners of the Board of Examiners. The Oral Examining Panel shall be composed of at least two deputy examiners who are Senior Foreign Service career officers of the prospective employing agency, and at least one deputy examiner who is a Senior Foreign Service career officer from another foreign affairs agency operating under the Foreign Service Act. The Examining Panel shall be chaired by a deputy examiner who is a Senior Foreign Service career officer of the prospective employing agency. At least one of the Examining Panel members shall represent the functional or specialist field for which the applicant is being examined. Determinations of duly constituted panels of deputy examiners are final, unless modified by specific action of the Board of Examiners.

(ii) *Criteria.* (A) The Examining Panel will question the applicant regarding the indicated functional or specialist field and other matters relevant to the applicant's qualifications for appointment as a Senior Career Candidate. Prior to the oral examination, the applicant will be asked to write an essay, on a topic related to Foreign Service work, to enable the Examining Panel to judge the applicant's effectiveness of written expression. This essay requirement may be waived at the request of the head of the prospective employing agency, if, for example, the applicant is a career member of the Senior Executive Service.

(B) The oral examination will be conducted under written criteria, established in consultation with the prospective employing agency and publicly announced by the Board of Examiners. The examination will seek to determine the ability of the applicant to meet the objective of section 101 of the Act, which provides for a Senior Foreign Service "characterized by strong policy formulation capabilities, outstanding executive leadership qualities, and highly developed functional, foreign language, and area expertise."

(iii) *Grading.* Applicants taking the oral examination will be graded as "recommended," or "not recommended" by the Examining Panel. Those graded as "recommended" also will be given a numerical score, under the standard Board of Examiners scoring criteria, for use by the Final Review Panel.

(6) *Background investigation.* Senior Career Candidate applicants recommended by the Examining Panel will be subject to the same background investigation as required for Junior and Mid-Level Foreign Service Officer Career Candidates. The background investigation shall be conducted to determine suitability for appointment to the Foreign Service.

(7) *Medical examination.* Senior Career Candidate applicants recommended by the Examining Panel, and their dependents, will be subject to the same medical examination as required for the Junior and Mid-Level Foreign Service Career Candidates. The medical examination shall be conducted to determine the applicant's physical fitness to perform the duties of a Foreign Service officer on a world-wide basis and, for applicants and dependents, to determine the presence of any physical, neurological, or mental condition of such a nature as to make it unlikely that they would be able to function on a world-wide basis. Applicants and/or dependents who do not meet the required medical standards may be given further consideration, as appropriate, under the procedures of the prospective employing agency.

(8) *Foreign language requirement.* Applicants recommended by the Examining Panel will be required to take a subsequent examination to measure their fluency in foreign languages, and/or their aptitude for learning them. Senior Career Candidates will be subject to the foreign language requirements established for their occupational category by their prospective employing agency. Senior Career Candidate applicants for the Foreign Commercial Service must demonstrate proficiency by examination

in two foreign languages. United States Information Agency Senior Career Candidates, other than Senior Specialist Career Candidates, must demonstrate proficiency in at least one foreign language. Except for the Foreign Commercial Service and the United States Information Agency, an applicant may be appointed without first having passed an examination in a foreign language, but the appointed Senior Career Candidate may not be commissioned as a Career Senior Foreign Service officer unless adequate proficiency in a foreign language is achieved. This language requirement will not apply to candidates in occupational categories which, in the judgment of the prospective employing agency, do not require foreign language proficiency.

(9) *Final review panel.* (A) The entire file of an applicant recommended by the Examining Panel will be reviewed and graded by a Final Review Panel, after the results of the background investigation, medical examination and language examination are received. The Final Review Panel will decide whether or not to recommend the applicant for appointment, taking into account all of the available information concerning the applicant.

(B) The Final Review Panel shall consist of a chairperson who shall be a Deputy Examiner who is a career Senior Foreign Service officer of the prospective employing agency, and at least two other Deputy Examiners of the Board of Examiners. Of the Deputy Examiners serving on the Final Review Panel, the majority shall be career Senior Foreign Service officers of the prospective employing agency; and at least one shall be a career Senior Foreign Service officer of one of the other foreign affairs agencies operating under the Act.

(10) *Certification of appointment.* The file of an applicant recommended by the Final Review Panel will be submitted to the Board of Examiners for consideration and approval. An applicant found by the Board to meet the standards for appointment as a Senior Foreign Service Career Candidate shall be so certified to the Director of Personnel of the prospective employing agency.

(c) *Limited non-career appointments.* (1) Other Senior Foreign Service appointments may be made on a limited non-career basis for individuals who do not wish to compete for career appointments, but for whom a need can be certified by the Director of Personnel of the foreign affairs agency concerned. Such limited non-career senior appointees will be subject to the eligibility requirements set forth in § 11.30(b)(1) (i) and (iv). The maximum age set forth in § 11.30(b)(1)(ii) does not apply to such appointments. However, because Foreign Service members generally are subject to the mandatory retirement age of 65, under section 812 of the Act, limited non-career Senior appointments normally will not extend beyond the appointee's 65th birthday. Limited non-career appointees of the Department of Commerce and the United States Information Agency will not be subject to the language requirements of § 11.30(b)(8). Applicants for limited non-career senior appointments will be subject to the same background investigation and medical examination required of career candidates, but normally they will not be subject to a written or oral examination, or to approval by the Board of Examiners. Processing procedures for such applicants will be established by the Director of Personnel of the foreign affairs agency concerned. Their appointments normally will be limited to the duration of the specific assignments for which they are to be hired, may not exceed 5 years in duration, and may not be renewed or extended beyond 5 years.

(2) Prior to the expiration of their limited non-career senior appointments, if they meet all the eligibility requirements set forth in § 11.30(b)(1), such individuals may elect to compete for career candidate status in the Senior Foreign Service by qualifying at that time for and taking the examinations required of career candidates. If appointed as career candidates, the length of service under their previous limited non-career appointments may be counted under the procedures of the employing agency as part of the trial period of service prescribed before a career candidate can receive a career appointment. The total period of limited appointment (non-career and career candidate) of such individuals may not exceed 5 years in duration.

(3) Nothing in this section will limit the right of an individual who has previously served as a limited non-career senior appointee from subsequently applying for consideration as a new applicant and being appointed as a Senior Career Candidate after a limited non-career appointment has expired.

(d) *Reporting requirement.* The Director of Personnel of each foreign affairs agency shall report annually to the Director General of the Foreign Service, Department of State, the number and nature of the limited Senior Foreign Service appointments (non-career and career candidates) made by that agency under these regulations.

Dated: August 18, 1983.

Clint A. Lauderdale,

Deputy Assistant Secretary for Personnel, Bureau of Personnel, Department of State.

[FR Doc. 83-23251 Filed 8-24-83; 8:45 am]

BILLING CODE 4710-15-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 752

Landscape and Roadside Development

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The Federal Highway Administration (FHWA) is publishing this final rule to implement Section 111 of the Surface Transportation Assistance Act of 1982 (STAA of 1982) which allows the States to permit vending machines in safety rest areas on the rights-of-way of the Interstate highway system. The regulations are modified to allow the installation and operation of vending machines, to exclude vending machines from the prohibition against charging the public for goods and services, and to make the installation, operation, and maintenance of vending machines ineligible for Federal-aid funding.

EFFECTIVE DATE: August 25, 1983.

FOR FURTHER INFORMATION CONTACT: Seppo I. Sillan, Chief, Geometric Design Branch, (202) 426-0312 or Deborah A. Dull, Office of the Chief Counsel, (202) 426-0800, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., ET, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background

Section 111 of the Surface Transportation Assistance Act of 1982 (STAA of 1982) was enacted by the 97th Congress (Pub. L. 97-424, 96 Stat. 2097) on January 6, 1983. It provides that, notwithstanding 23 U.S.C. 111, any State may permit the placement of vending machines in rest and recreation areas and in safety rest areas constructed or located on rights-of-way of the Interstate highway system. Section 111 of 23 U.S.C., prohibits automotive service stations or other commercial establishments within the rights-of-way on the Interstate system.

Section 111 of the STAA of 1982 is a logical extension of a demonstration program mandated by Section 153 of the Surface Transportation Assistance Act of 1978 (Pub. L. 95–599, 92 Stat. 2716). In that project Congress directed the Secretary of Transportation to permit the installation of vending machines in rest and recreation areas and in safety rest areas constructed or located on the rights-of-way of the Interstate highway system. In addition to granting the Secretary authority to determine the articles which could be dispensed, Section 153 also imposed upon the Secretary responsibility for reporting the results of the demonstration project together with any recommendations to Congress, no later than two years after enactment.

Five States, California, Connecticut, Georgia, Kentucky, and Massachusetts participated in the demonstration project. The five States were requested to evaluate the public acceptance and economic benefits of such services as well as any problems related to litter and vandalism and to report their findings to the FHWA. The general findings of this demonstration project indicated that an adequately controlled vending machine operation at Interstate safety rest areas may be of public benefit. These findings together with a recommendation that the demonstration project be extended for an additional two years and expanded to include additional States before a final evaluation was completed are contained in a report transmitted to Congress on November 26, 1980.

The FHWA's existing regulations governing safety rest areas and information centers within safety rest areas as well as eligibility for Federal-aid in the construction and operation of such areas and centers are contained in 23 CFR Part 752, entitled "Landscape and Roadside Development". This rule amends these regulations in several areas discussed below.

Discussion of Regulations

Section 752.1 Purpose.

The provision of guidelines and policies regarding vending machines in safety rest areas has been added to the purpose statement.

Section 752.5 Safety rest areas.

A new paragraph (b) has been added expressly to permit States to allow vending machines to be located in existing or constructed safety rest areas. Since information centers on the Interstate system are within safety rest areas, vending machines also may be allowed in those centers. A vending machine is a coin or currency operated machine capable of automatically dispensing an article or product. By limiting installations to vending machines, it is expressly intended to preclude a vendor from establishing a stand or shop for the purpose of selling the article or product and also to exclude any form of personal salesmanship.

The decision whether to allow the vending machines is discretionary with the States. Unlike the demonstration program in which the Secretary determined the articles that could be dispensed, the States is given authority to make that determination, with the exception that the dispensing of petroleum products or motor vehicle replacement parts will not be allowed. This ban is based on the prohibition in 23 U.S.C. 111 against automotive service stations on the rights-of-way of the Interstate system which Section 111 of the STAA did not modify.

New paragraph (c) establishes that the State highway agency need not operate the vending machines directly. However, States that decide to allow vending machines must give priority to vending machines operated by the blind through the State licensing agency designated pursuant to the Randolph-Sheppard Act (20 U.S.C. 107).

Paragraph (g) (paragraph (e) redesignated) is amended to allow the public to be charged for items dispensed by vending machines.

Section 752.8 Privately operated information centers and systems.

Paragraph (c)(5) is amended to allow the public to be charged for items dispensed by vending machines.

Section 752.11 Federal participation.

Paragraph (d) is amended to make the installation, operation, or maintenance of vending machines ineligible for Federal-aid. This ineligibility for Federal assistance includes any modification in existing rest area facilities or any extra work expressly for vending machines in the construction of new facilities.

The FHWA has determined that this document does not contain a major rule under Executive Order 12291 or a significant regulation under the regulatory policies and procedures of the Department of Transportation. Since the amendments in this document are being issued for the purpose of literally complying with Section 111 of the STAA of 1982 and do not reflect interpretation of statutory language, public comment is impracticable and unnecessary. Therefore, the FHWA finds good cause to make the amendments final without notice and opportunity for comment and without a 30-day delay in effective date under the Administrative Procedure Act. Notice and opportunity for comment are not required under the regulatory policies and procedures of the Department of Transportation because it is not anticipated that such action would result in the receipt of useful information since the statutory language incorporated in the regulation requires no interpretation and provides for no administrative discretion. Since the placement of vending machines will be left to the discretion of the individual States and Federal funds will not be involved, the economic impact of this rulemaking document will be minimal, therefore a full regulatory evaluation is not required.

This rule is not subject to section 3504(h) of the Paperwork Reduction Act, 44 U.S.C. 3501, because it does not impose any further collection or reporting requirements on the States.

In consideration of the foregoing and under the authority of section 111, Pub, L. 97–424, 96 Stat. 2106 (23 U.S.C. 111); 23 U.S.C. 315; and 49 CFR 1.48(b), the Federal Highway Administration hereby amends Chapter 1, Part 752 of Title 23, Code of Federal Regulations, as set forth below.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The procedures provided in OMB Circular A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects apply to these programs.)

List of Subject in 23 CFR Part 752

Grant programs—transportation, Highways and roads, Rights-of-way—roadside development, Rights-of-way—safety rest areas, Vending machines.

Issued on: August 16, 1983.

L. P. Lamm,

Deputy Administrator, Federal Highway Administration.

PART 752—LANDSCAPE AND ROADSIDE DEVELOPMENT

1. Section 752.1 is amended by revising the section to read as follows:

§ 752.1 Purpose.

The purpose of this part is to furnish guidelines and prescribe policies regarding landscaping and scenic enhancement programs, safety rest areas, and scenic overlooks under 23 U.S.C. 319; information centers and systems under 23 U.S.C. 131(i); and

vending machines in safety rest areas under 23 U.S.C. 111.

2. Section 752.5 is amended by adding new paragraphs (b) and (c) and redesignating existing paragraphs (b) through (e) as (d) through (g). Also, existing paragraph (e) (herein redesignated as paragraph (g)) is revised. All changes read as follows:

§ 752.5 Safety rest areas.

* * * * *

(b) The State may permit the placement of vending machines in existing or new safety rest areas located on the rights-of-way of the Interstate system for the purpose of dispensing such food, drink, or other articles as the State determines are appropriate and desirable, except that the dispensing by any means, of petroleum products or motor vehicle replacement parts shall not be allowed. Such vending machines shall be operated by the State.

(c) The State may operate the vending machines directly or may contract with a vendor for the installation, operation, and maintenance of the vending machines. In permitting the placement of vending machines the State shall give priority to vending machines which are operated through the State licensing agency designated pursuant to Section 2(a)(5) of the Randolph-Sheppard Act, U.S.C. 107(a)(5).

* * * * *

(g) No charge to the public may be made for goods and services at safety rest areas except for telephone and articles dispensed by vending machines.

3. Section 752.8 is amended by revising paragraph (c)(5) to read as follows:

§ 752.8 Privately operated information centers and systems.

* * * * *

(c) * * *

(5) No charge to the public may be made for goods or services except telephone and articles dispensed by vending machines.

* * * * *

4. Section 752.11 is amended by adding the following sentence at the end of paragraph (d) to read:

§ 752.11 Federal participation.

* * * * *

(d) * * * Federal-aid funds may not be used for installation, operation, or maintenance of vending machines.

[FR Doc. 83-23361 Filed 8-24-83; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 701

Availability of Department of the Navy Records and Publication of Department of the Navy Documents Affecting the Public; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: This rule sets forth an amended regulation pertaining to the Department of the Navy Privacy Act Program. The rule reflects changes in the Secretary of the Navy Instruction 5211.5 series from which it is derived.

EFFECTIVE DATE: August 25, 1983.

FOR FURTHER INFORMATION CONTACT: Mrs. Gwendolyn R. Aitken (Op-09B1P), Office of the Chief of Naval Operations, Washington, D.C. 20350, Telephone: (202) 694-2004.

SUPPLEMENTARY INFORMATION: Pursuant to the authority cited below, the Department of the Navy amends 32 CFR Part 701, Subpart F and G, derived from the Secretary of the Navy Instruction 5211.5 series which implements within the Department of the Navy the provisions of Department of Defense Directive 5400.11, Department of Defense Privacy Program (32 CFR Part 286a) pertaining to action on requests for release of personal information contained in systems of records under the Privacy Act (5 U.S.C. 552a). It has been determined that invitation of public comment on these changes to the Department of the Navy's implementing instruction prior to adoption would be impracticable and unnecessary, and it is therefore not required under the public rulemaking provisions of 32 CFR Parts 296 andf 701, Subpart E. Interested persons, however, are invited to comment in writing on this amendment. All written comments received will be considered in making subsequent amendments or revisions to 32 CFR Part 701, Subparts F and G, or the instruction upon which it is based. Changes may be initiated on the basis of comments received. Written comments should be addressed to Gwendolyn R. Aitken (Op-09B1P), Office of the Chief of Naval Operations, Washington, DC 20350. It has been determined that this final rule is not a "major rule" within the criteria specified in section 1(b) of Executive Order 12291 and does not have substantial impact on the public.

Lists of Subjects in 32 CFR Part 701

Administrative practice and procedure, Freedom of Information, Privacy.

Accordingly, 32 CFR Part 701, Subparts F and G are amended. Subparts A, B, C, D, and E remain unaffected by this amendment. Subparts F and G are revised to read as follows:

PART 701—AVAILABILITY OF DEPARTMENT OF THE NAVY RECORDS AND PUBLICATION OF DEPARTMENT OF THE NAVY DOCUMENTS AFFECTING THE PUBLIC

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Subpart F—Personal Privacy and Rights of Individuals Regarding Their Personal Records

Subpart G—Privacy Act Exemptions

Subpart F—Personal Privacy and Rights of Individuals Regarding Their Personal Records

Authority: 5 U.S.C. 552a, 32 CFR Part 286a.

§ 701.100 Purpose.

32 CFR Part 701, Subparts F and G delineate revised policies, conditions, and procedures that govern collecting personal information, and safeguarding, maintaining, using, accessing, amending, and disseminating personal information kept by the Department of the Navy in systems of records. They implement 5 U.S.C. 552a (the Privacy Act of 1974), and the Department of Defense Directive 5400.11 series, Personal Privacy and Rights of Individuals Regarding Their Personal Records (DOD Dir. 5400.11) (32 CFR Part 286a), and prescribe:

(a) Procedures whereby individuals can be notified if any system of records contain a record pertaining to them.

(b) Requirements for verifying the identity of individuals who request their records before the records are made available to them.

(c) Procedures for granting access to individuals upon request for their records.

(d) Procedures for reviewing a request from individuals to amend their records, for making determinations on requests, and for appealing adverse determinations.

(e) Procedures for notifying the public of the existence and character of each system of records.

(f) Procedures for disclosing personal information to third parties.

(g) Procedures for exempting systems of records from certain requirements of 5 U.S.C. 552a.

(h) Procedures for safeguarding personal information.

(i) Rules of conduct for the Department of the Navy personnel, who will be subject to criminal penalties for noncompliance with 5 U.S.C. 552a. *See* § 701.113.

§ 701.101 Scope and effect.

(a) *Applicability.* 32 CFR Part 701, Subparts F and G, apply throughout the Department of the Navy, and to any contractor maintaining a system of records to accomplish a Department of the Navy mission. For the purposes of any criminal liabilities adjudged, any contractor and any employee of such contractor shall be considered to be an employee of the Navy Department. Additionally, all requests by individuals for records (located in a system of records) pertaining to themselves which specify either the Freedom of Information Act or the Privacy Act (but not both) shall be treated under the procedures established under the Act specified in the request. When the request specifies, that it be processed under both the Freedom of Information Act and the Privacy Act, Privacy Act procedures should be employed. The individual should be advised that, while the Department of the Navy has elected to process his/her request in accordance with Privacy Act procedures, he/she can be assured that he/she will be provided with all the information that can be released under either the Privacy Act or the Freedom of Information Act. Requests may fall, however, within the scope of other applicable directives as follows:

(1) Requests from an individual about another individual are governed by the provisions of 5 U.S.C. 552 (Freedom of Information Act) and the SECNAVINST 5720.42 series (32 CFR Part 701, Subparts A through D).

(2) Requests by the General Accounting Office for information or records pertaining to individuals, except with respect to the requirement for disclosure accountings as provided in § 701.107(c) are governed by the SECNAVINST 5741.2 series, Relations with the General Accounting Office.

(3) Official and third party requests for information from systems of records controlled by the Office of Personnel Management shall be governed by 5 CFR Parts 293, 294, 297, and the Federal Personnel Manual.

(b) *Other directives.* In case of a conflict, 32 CFR Part 701, Subparts F and G, take precedence over any existing Navy directive that deals with the personal privacy and rights of individuals regarding their personal records, except for disclosure of personal information required by 5 U.S.C. 552 (Freedom of Information Act) and implemented by the SECNAVINST 5720.42 series (32 CFR Part 701, Subparts A through D).

§ 701.102 Policy, responsibilities, and authority

(a) *Policy.* Subject to the provisions of 32 CFR Part 701, Subparts F and G, it is the policy of the Department of the Navy to:

(1) Ensure that all its personnel at all echelons of command or authority comply fully with 5 U.S.C. 552a to protect the privacy of individuals from unwarranted invasions. Individuals covered by this protection are living citizens of the United States or aliens lawfully admitted for permanent residence. A legal guardian of an individual or parent of a minor has the same rights as the individual or minor and may act on the individual's or minor's behalf. (A member of the Armed Forces is not a minor for the purposes of 32 CFR Part 701, Subparts F and G).

(2) Collect, maintain, and use only that personal information needed to support a Navy function or program as authorized by law of Executive order, and disclose this information only as authorized by 5 U.S.C. 552a and 32 CFR Part 701, Subparts F and G. In assessing need, consideration shall be given to alternatives, such as use of information not individually identifible or use of sampling of certain data for certain individuals, only. Additionally, consideration is to be given to the length of time information is needed, and the cost of maintaining the information compared to the risks and adverse consequences of not maintaining the information.

(3) Keep only that personal information that is timely, accurate, complete, and relevant to the purpose for which it was collected.

(4) Let individuals have access to, and obtain copies of, all or any portions of their records, subject to exemption procedures authorized by law and 32 CFR Part 701, Subparts F and G.

(5) Let individuals request amendment of their records when discrepancies proven to be erroneous, or untimely, incomplete, or irrelevant, are noted.

(6) Let individuals request an administrative review of decisions that deny them access to, or refuse to amend their records.

(7) Ensure that adequate safeguards are enforced to prevent misuse, unauthorized disclosure, alteration, or destruction of personal information in records.

(8) Maintain no records describing how an individual exercises his/her rights guaranteed by the First Amendment (freedom of religion, speech, and press; peaceful assemblage; and petition for redress of grievances), unless they are:

(i) Expressly authorized by statute;

(ii) Authorized by the individual about whom the record is maintained;

(iii) Within the scope of an authorized law enforcement activity; or

(iv) For the maintenance of certain items of information relating to religious affiliation for members of the naval service who are chaplains. This should not be construed, however, as restricting or excluding solicitation of information which the individual is willing to have in his/her record concerning religious preference, particularly that required in emergency situations.

(9) Maintain only systems of records which have been published in the **Federal Register.**

(b) *Responsibilities.* (1) The Chief of Naval Operations (Op–09B) is responsible for administering and supervising the execution of 5 U.S.C. 552a and 32 CFR Part 701, Subparts F and G within the Department of the Navy. Additionally, the Chief of Naval Operations (Op–09B) is designated as the principal Privacy Act coordinator for the Department of the Navy.

(2) The Commandant of the Marine Corps is responsible for administering and supervising the execution of 5 U.S.C. 552a and 32 CFR Part 701, Subparts F and G, within the Marine Corps.

(3) Each addressee is responsible for the execution of the requirements of 5 U.S.C. 552a within his/her organization and for implementing and administering a Privacy Act program in accordance

with the provisions of 32 CFR Part 701, Subparts F and G. Each addressee shall designate an official to be Privacy Act coordinator to:

(i) Serve as the principal point of contact on all Privacy Act matters.

(ii) Provide training for activity/command personnel in the provisions of 5 U.S.C. 552a.

(iii) Issue implementing instruction.

(iv) Review internal directives, practices, and procedures, including those for forms and records, for comformity with 32 CFR Part 701, Subparts F and G, when applicable.

(v) Compile and submit input for the annual report and record systems notices.

(vi) Maintain liaison with records-management officials as appropriate (e.g., maintenance and disposal procedures and standards, forms, and reports).

(4) The systems managers are responsible for (with regard to systems of records under their cognizance):

(i) Ensuring that all personnel who in any way have access to the system or who are engaged in the development of procedures or handling records be informed of the requirements of 5 U.S.C. 552a and any unique safeguarding or maintenance procedures peculiar to that system.

(ii) Determining the content of and setting rules for operating the system.

(iii) Ensuring that the system has been published in the **Federal Register** and that any additions or significant changes are prepublished in the **Federal Register.**

(iv) Answering requests for information for individuals.

(v) Keeping accountability records of disclosures.

(vi) Evaluating information proposed for each system for relevance and necessity during the developmental phase of a new system or when an amendment to an existing system is proposed; in addition, annually comparing the system with the records system notice published in the **Federal Register** and considering:

(A) Relationship of each item of information to the statutory or regulatory purpose for which the system is maintained.

(B) Specific adverse consequences of not collecting each category of information.

(C) Possibility of meeting the information requirement through use of information not individually identifiable or through sampling techniques.

(D) Length of time the information is needed.

(E) Cost of maintaining the data compared to the risk or adverse consequences of not maintaining it.

(F) Necessity and relevance of the information to the mission of the command.

(vii) Keeping the Privacy Act coordinator informed of non-routine Privacy Act requests.

(5) Each employee of the Department of the Navy has certain responsibilities for safeguarding the rights of others. Employees shall:

(i) Not disclose any information contained in a system of records by any means of communication to any person, or agency, except as authorized in 32 CFR Part 701, Subparts F and G.

(ii) Not maintain unpublished official files which would fall under the provisions of 5 U.S.C. 552a.

(iii) Safeguard the privacy of individuals and the confidentiality of personal information contained in a system of records.

(iv) Familiarize themselves with the Rules of Conduct. *See* § 701.113.

(c) *Denial authority.* Only the following chief officials, their respective vice commanders, deputies, and those principal assistants specifically designated by the chief official are authorized to deny requests for notification, access, and amendment made under 32 CFR Part 701, Subparts F and G, when the records relate to matters within their respective areas of command, technical, or administrative responsibility, as appropriate:

(1) *For the Navy Department.* The Civilian Executive Assistants; the Chief of Naval Operations; the Commandant of the Marine Corps; the Chief of Naval Material; the Chief of Naval Personnel; the Commanders of Naval Systems Commands; the Commanders of the Naval Intelligence Command, Naval Security Group Command, and Naval Telecommunications Command; the Commander, Naval Medical Command; the Auditor General of the Navy; the Naval Inspector General; the Assistant Deputy Chief of Naval Operations (Civilian Personnel/Equal Employment Opportunity); the Chief of Naval Education and Training; the Chief of Naval Reserve; the Chief of Naval Research; the Commander, Naval Oceanography Command; the Director, Naval Civilian Personnel Command; the heads of Department of the Navy Staff Offices, Boards, and Councils; the Assistant Judge Advocate General (Civil Law); and the Assistant Judge Advocate General (Military Law).

(2) *For the shore establishment.* (i) All officers authorized pursuant to 10 U.S.C. 822, or designated as empowered in section 0103d, JAGINST 5800.7 series, *Manual of the Judge Advocate General,* to convene general courts martial.

(ii) The Director, Naval Investigative Service and the Assistant Commander (Management and Operations), Naval Legal Service Command.

(3) *In the operating forces.* (i) All officers authorized pursuant to 10 U.S.C. 822, or designated as empowered in section 0103d, JAGINST 5800.7 series, *Manual of the Judge Advocate General,* to convene general courts martial.

(d) *Review authority.* (1) The Assistant Secretary of the Navy (Manpower and Reserve Affairs), as the Secretary's designee, shall act upon requests for administrative review of initial denials of requests for amendment of records related to fitness reports and performance evaluations of military personnel.

(2) The Judge Advocate General and the General Counsel, as the Secretary's designees, shall act upon requests for administrative review of initial denials of requests for notification, access, or amendment of records, as set forth in § 701.104 (a), (b), and (c) other than as indicated in paragraph (d)(1) of this section and other than initial denials of requests for notification, access, or amendment of records from civilian Official Personnel Folders or records contained any other Office of Personnel Management (OPM) forms, which will be reviewed by OPM.

(e) The authority of the Secretary of the Navy, as the head of an agency, to request records subject to the 5 U.S.C. 552a from an agency external to the Department of Defense for civil or criminal law enforcement purposes, pursuant to subsection (b)(7) of 5 U.S.C. 552a, is delegated to the Commandant of the Marine Corps, the Director of Naval Intelligence, the Judge Advocate General, and the General Counsel.

§ 701.103 Definitions.

For the purposes of 32 CFR Part 701, Subparts F and G, the following meanings apply:

(a) *Access.* Reviewing or obtaining copies by individuals of records that pertain to themselves, or by agents designated by the individuals, or by individual's legal guardians, that are a part of a system of records.

(b) *Agency.* For purposes of disclosing records, the Department of Defense is an "agency". For all other purposes, including applications for access, appeals from denials, exempting systems of records, etc., the Department of the Navy is the "agency".

(c) *Confidential source.* Any individual or organization that has given information to the Federal government under: (1) An express promise that the identity of the source would be

withheld, or (2) an implied promise to withhold the identity of the source made before 27 September 1975.

(d) *Disclosure.* The conveyance of information about an individual, by any means of communication, to an organization or to an individual who is not the subject of the record. In the context of the 5 U.S.C. 552a and 32 CFR Part 701, Subparts F and G, this term only applies to personal information that is part of a system of records.

(e) *Individual.* A living citizen of the United States, or an alien lawfully admitted for permanent residence; or a member of the United States naval service, including a minor. Additionally, the legal guardian of an individual or a parent of a minor has the same rights as the individual, and may act on behalf of the individual concerned under 32 CFR Part 701, Subparts F and G. Members of the naval service, once properly accepted, are not minors for purposes of 32 CFR Part 701, Subparts F and G. The use of the term "individual" does not, however, vest rights in the representatives of decedents to act on behalf of the decedent under 32 CFR Part 701, Subparts F and G (except as specified in § 701.105(b), nor does the term embrace individuals acting in an entrepreneurial capacity (e.g., sole proprietorships and partnerships).

(f) *Maintain.* When used in the context of records on individuals, includes collect, file or store, perserve, retrieve, update of change, use, or disseminate.

(g) *Official use.* Within the context of 32 CFR Part 701, Subparts F and G, this term encompasses those instances in which officials and employees of the Department of the Navy have a demonstrated need for use of any record to complete a mission or function of the Department, or which is prescribed or authorized by a directive.

(h) *Personal information.* Information about an individual that is intimate or private to the individual, as distinguished from information related solely to the individual's official functions or public life.

(i) *Privacy Act request.* A request from an individual for information about himself/herself concerning the existence of, access to, or amendment of records that are located in a system of records. (The request must cite or reasonably imply that it is pursuant to 5 U.S.C. 552a).

(j) *Record.* Any item, collection, or grouping of information about an individual that is maintained by or for the Department of the Navy or by an element of the Navy Department, operating forces, or shore establishment, including, but not limited to, the individual's education, financial transactions, medical history, and criminal or employment history, and that contains his/her name, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph.

(k) *Risk assessment.* The application of steps in an analysis which considers information sensitivity, vulnerability, and cost to a computer facility or word processing center computerized system, periodically, to select economically, feasible safeguards.

(l) *Routine use.* The disclosure of a record or the use of such record for a purpose which is compatible with the purpose for which the records were collected. Routine use encompasses not only common and ordinary uses but also all proper and necessary uses of the record even if any such use occurs infrequently.

(m) *Statistical record.* A record maintained for statistical research or reporting purposes only, which may not be used in whole or in part in making any determination about an identifiable individual.

(n) *System of records.* A group of records from which information "is", as opposed to "can be", retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. The capability to retrieve information by personal identifiers alone does not subject a system of records to 5 U.S.C. 552a and 32 CFR Part 701, Subparts F and G.

(o) *System manager.* That official who has overall responsibility for records within a particular system. He/she may serve at any level in the Department of the Navy. Systems managers are indicated in the published record systems notices. If more than one official is indicated as a system manager, initial responsibility resides with the manager at the appropriate level (e.g., for local records, at the local activity).

(p) *Working day.* All days excluding Saturday, Sunday, and legal holidays.

§ 701.104 Notification, access, and amendment procedures.

(a) *General—*(1) *Summary of requirement.* (i) Notification procedures are provided under subsection (e)(4) of 5 U.S.C. 552a to enable an individual to ascertain from the appropriate system manager whether or not a particular system of records contains information pertaining to him/her. If the system does contain such a record, the individual may request access to the record, pursuant to subsection (d)(1) of 5 U.S.C. 552a, to ascertain the contents. Amendment procedures are provided under subsections (d)(2) and (3) of 5 U.S.C. 552a, to enable the individual to seek correction or deletion of information about himself/herself in the record which he/she considers to be erroneous. If a request for amendment is denied after a final determination, the individual may file a "statement of dispute," to be noted in the pertinent records and to be shown in connection with disclosures of such records. Individuals have a statutory right to obtain administrative review of denials of requests for amendment, and by 32 CFR Part 701, Subparts F and G, are accorded the right to obtain similar review of denials of requests for notification and access.

(ii) The provisions of this section apply to requests by individuals, or their authorized representatives, for records pertaining to themselves that are contained in systems of records. 32 CFR Part 701, Subparts F and G, does not, however, require that an individual be given notification or access to a record that is not retrieved by name or other individual identifier. Requests for amendment of records contained in a system of records will normally be processed in accordance with 32 CFR Part 701, Subparts F and G, unless: (A) They are routine requests for administrative corrections not specifying that they are not made under 32 CFR Part 701, Subparts F and G or 5 U.S.C. 552a, or (B) they are requests addressed to the Board for Correction of Naval Records, which is governed by other authority.

(2) *System rules.* Systems managers are responsible for ensuring that, for each system of records maintained, a records system notice is published in the **Federal Register**, stating the procedures by which an individual may be notified whether the system contains records pertaining to him/her. Additionally, systems managers are responsible for establishing, and making available to individuals upon request, rules applicable to requests for access or amendment of records within each system. Such rules must conform to the requirements of 32 CFR Part 701, Subparts F and G, and to matters indicated in §§ 701.111 and 701.112. In addition, they should contain the following:

(i) A statement of custodial officials other than the system manager, if any, authorized to grant requests for notification or access;

(ii) The minimum formal requirements for requests, including applicable requirements for requests to be reduced to writing; and, in the case of a request

to provide the requester's records directly to an authorized representative who is other than the parent of a minor, or other legal guardian—an authorization signed within the past 45 days specifying the records to be released and the recipient of the records (notarized authorizations may be required if the sensitivity of the information in the records warrants);

(iii) The information which should be provided by the individual to assist in identifying relevant systems of records and the individual identifiers (e.g., full name, social security number, etc.) needed to locate records in the particular system; and,

(iv) The requirements for verifying the requester's identity, to which the following policies apply:

(A) Prior to being given notification or access to personal information, an individual is required to provide reasonable verification of his/her identity. No verification of identity, however, shall be required of an individual seeking notification or access to records which are otherwise available to any member of the public under 32 CFR Part 701, Subparts A through D.

(B) In the case of an individual who seeks notification, access, or amendment in person, verification of identity will normally be made from those documents that an individual is likely to have readily available, such as an employee or military identification card, driver's license, or medical card.

(C) When notification, access, or amendment is requested by mail, verification of identity may be obtained by requiring the individual to provide certain minimum identifying data, such as date of birth and some item of information in the record that only the concerned individual would likely know. If the sensitivity of the information in the record warrants, a signed and notarized statement of identity may be required.

(D) When a record has already been identified, an individual shall not be denied notification or access solely for refusing to disclose his/her social security number.

(3) *Responsibilities for action on initial requests.* (i) Subject to the provisions of this paragraph and the applicable system manager's rules, requests for notification and access may be granted by officials having custody of the records, even if they are not systems managers or denial authorities. Requests for amendment may be granted by the cognizant system manager. Denials of initial requests for notification, access, or amendment of records under 32 CFR Part 701, Subparts F and G, however, may be made only by those officials designated as denial authorities under § 701.102(c).

(ii) Investigative/non-investigative records.

(A) Copies of investigative records that are compiled by an investigative organization, but are in the temporary custody of another organization, which is holding the record for disciplinary, administrative, judicial, investigative, or other purposes, are the records of the originating investigative organization. Upon completion of the official action, the investigative reports are required to be destroyed or returned, in accordance with the instructions of the originating investigative activity. Individuals seeking notification or access, or making other requests under 32 CFR Part 701, Subparts F and G, concerning such records, shall be directed to the originating investigative organization. For example, a request for notification or access to a Naval Investigative Service report in the temporary custody of another activity should be forwarded directly to the Director, Naval Investigative Service.

(B) Copies of non-investigative records (including medical and/or personnel) located in the files of another agency must be referred for release determination. The originating agency may either authorize the records' release by the agency that located them or request that they be referred for processing. The individual requesting his/her records will be notified of records referred for processing.

(4) *Blanket requests not honored.* Requests seeking notification and/or access concerning all systems of records within the Department of the Navy, or a component thereof, shall not be honored. Individuals making such requests shall be notified that: (i) Requests for notification and/or access must be directed to the appropriate system manager for the particular record system, as indicated in the current **Federal Register** systems notices (a citation should be provided), and (ii) requests must either designate the particular system of records to be searched, or provide sufficient information for the system manager to ascertain the appropriate system. Individuals should also be provided with any other information needed for obtaining considertion of their requests.

(5) *Criteria for determinations.* (i) As further explained in § 701.108, portions of designated records systems (indicated in subpart G of this part) are exempt, in certain circumstances, from the requirement to provide notification, access, and/or amendment. Only denial authorities (and the designated review authority) may exercise an exemption and deny a request, and then only in cases where there is specifically determined to be a significant and legitimate governmental purpose served by denying the request. A request for notification may be denied only when an applicable exemption has been exercised by a denial or review authority. A request for access may be denied by a denial or review authority, in whole or part, on the basis of the exercise of an applicable exemption or for the reasons set forth in paragraph (a)(5) (ii) or (iii) of this section.

(ii) Where a record has been compiled in reasonable anticipation of a civil action or proceeding, a denial authority (or the designated review authority) may deny an individual's request for access to that record pursuant to subsection (d)(5) of 5 U.S.C. 552a: *Provided,* That there is specifically determined to be a significant and legitimate governmental purpose to be served by denying the request. Consultation with the Office of the Judge Advocate General, Office of General Counsel, or other originator, as appropriate, is required prior to granting or denying access to attorney-advice material. This includes, but is not limited to, legal opinions.

(iii) As indicated in § 701.103(e), where a record pertains to an individual who is a minor, the minor's parent or legal guardian is normally entitled to obtain notification concerning, and access to, the minor's record, pursuant to the provisions of this section. When, however, an applicable law or regulation prohibits notification to, or access by, a parent or legal guardian with respect to a particular record, or portions of a record, pertaining to a minor, the provisions of the governing law or regulation and § 701.105, shall govern disclosures of the existence or contents of such records to the minor's parent or legal guardian. (Members of the naval service, once properly accepted, are not minors for the purposes of 32 CFR Part 701, Subparts F and G.)

(iv) Subject to the provisions of this section, a medical record shall be made available to the individual to whom it pertains unless, in the judgment of a physician, access to such record could have an adverse effect upon the individual's physical or mental health. When it has been determined that granting access to medical information could have an adverse affect upon the individual to whom it pertains, the individual may be asked to name a physician to whom the information shall then be transmitted. This shall not be deemed a denial of a request for access.

(6) *Time requirements for making acknowledgements and determinations.* (i) A request for notification, access, or amendment of a record shall be acknowledged in writing within 10 working days (Saturdays, Sundays, and legal holidays excluded) of receipt by the proper office. The acknowledgement shall clearly identify the request and advise the individual when he/she may expect to be advised of action taken on the request. No separate acknowledgement of receipt is necessary if a request for notification or access can be acted upon, and the individual advised of such action, within the 10 working-day period. If a request for amendment is presented in person, written acknowledgement may be provided at the time the request is presented.

(ii) Determinations and required action on initial requests for notification, access or amendment of records shall be completed, if reasonably possible, within 30 working days of receipt by the cognizant office.

(b) *Notification procedures.* (1) *Action upon receipt of request.* Subject to the provisions of this section, upon receipt of an individual's initial request for notification, the system manager or the other appropriate custodial official shall acknowledge the request as required by paragraph (a)(6)(i) of this section, and take one of the following actions:

(i) If consideration cannot be given to the request, because:

(A) The individual's identity is not satisfactorily verified;

(B) The record system is not adequately identified, or the individual has not furnished the information needed to locate a record within the system; or

(C) The request is erroneously addressed to an official having no responsibility for the record or system of records in question;

Inform the individual of the correct means, or additional information needed, for obtaining consideration of his/her request for notification.

(ii) Notify the individual, in writing, whether the system of records contains a record pertaining to him/her (a notification that a system of records contains no records pertaining to the individual shall not be deemed a denial);

(iii) If it is determined that notification should be denied under an available exemption and the official is not a denial authority, forward the request to the cognizant denial authority, with a copy of the requested record, and comments and recommendations concerning disposition; or

(iv) If the official is a denial authority, take the appropriate action prescribed in paragraph (b)(2) of this section.

(2) *Action by denial authority.* (i) If the denial authority determines that no exemption is available or that an available exemption should not be exercised, he/she shall provide the requested notification, or direct the system manager or appropriate custodial official to do so.

(ii) If the denial authority determines that an exemption is applicable and that denial of the notification would serve a significant and legitimate governmental purpose (e.g., avoid interfering with an on-going law enforcement investigation), he/she shall promptly send the requesting individual an original and one copy of a letter stating that no records from the systems of records specified in the request are available to the individual under the 5 U.S.C. 552a. The letter shall also inform the individual that he/she may request further administrative review of the matter within 120 days from the date of the denial letter, by letter to the:

Judge Advocate General (Code 14),
Department of the Navy, 200 Stovall Street,
Alexandria, VA 22332

The individual shall be further informed that a letter requesting such review should contain the enclosed copy of the denial letter and a statement of the individual's reasons for requesting the review.

(iii) A copy of the letter denying notification shall be forwarded directly to the Chief of Naval Operations (Op-09B1) or the Commandant of the Marine Corps (Code M), as appropriate. These officials shall maintain copies of all denial letters in a form suitable for rapid retrieval, periodic statistical compilation, and management evaluation.

(3) *Action by reviewing authority.* Upon receipt of a request for review of a determination denying an individual's initial request for notification, the Judge Advocate General shall obtain a copy of the case file from the denial authority, review the matter, and make a final administrative determination. That official is designated to perform such acts as may be required by or on behalf of the Secretary of the Navy to accomplish a thorough review and to effectuate the determination. Within 30 working days of receipt of the request for review, whenever practicable, the Judge Advocate General shall inform the requesting individual, in writing, of the final determination and the action thereon. If the final determination is to grant notification, the Judge Advocate General may either provide the notification or direct the system manager to do so. If the final determination is to deny notification, the individual shall be informed that it has been determined upon review that there are no records in the specified systems of records that are available to him/her under the Privacy Act.

(c) *Access procedures*—(1) *Fees.* When a copy of a record is furnished to an individual in response to a request for access, he/she will normally be charged duplication fees only. When duplication costs for a Privacy Act request total less than $30, fees may be waived automatically. Normally, only one copy of any record or document will be provided.

(i) Use the following fee schedule:

Office copy (per page)	$.10
Microfiche (per fiche)	.25

(ii) Checks or money orders to defray fees/charges should be made payable to the Treasurer of the United States and deposited to the miscellaneous receipts of the treasury account maintained at the finance office servicing the activity.

(iii) Do not charge fees for:

(A) Performing record searches.

(B) Reproducing a document for the convenience of the Navy.

(C) Reproducing a record in order to let a requester review it if it is the only means by which the record can be shown to him/her (e.g., when a copy must be made in order to delete information).

(D) Copying a record when it is the only means available for review.

(2) *Action upon receipt of request.* Subject to the provisions of this section, upon receipt of an individual's initial request for access, the system manager or other appropriate custodial official shall acknowledge the request as required by paragraph (a)(6)(i) of this section, and take one of the following actions:

(i) If consideration cannot be given to the request because:

(A) The individual's identity is not satisfactorily verified;

(B) The record system is not adequately identified or the individual has not furnished the information needed to locate a record within a system; or

(C) The request is erroneously addressed to an official not having responsibility for granting access to the record or system of record in question;

Inform the individual of the correct means, or additional information needed, for obtaining consideration or his/her request for access.

(ii) If it is determined that the individual should be granted access to

the entire record requested, the official shall inform the individual, in writing, that access is granted, and shall either:

(A) Inform the individual that he/she may review the record at a specified place and at specified times, that he/she may be accompanied by a person of his/her own choosing to review the record (in which event he/she may be asked to furnish written authorization for the record to be discussed in the accompanying person's presence), and that he/she may further obtain a copy of the record upon agreement to pay a duplication fee; or

(B) Furnish a copy of the record, if the individual requested that a copy be sent and agreed in advance to pay duplication fees unless such fees are waived.

(iii) If it is necessary to deny the individual access to all or part of the requested record, and,

(A) The official is not a denial authority—forward the request to the cognizant denial authority, with a copy of the requested record, and comments and recommendations concerning disposition; or

(B) The official is a denial authority—take the action prescribed in paragraph (c)(3) (ii) or (iii) of this section.

(3) *Action by denial authority*—(i) If the denial authority determines that access should be granted to the entire record, he/she shall promptly make it available to the requesting individual in the manner prescribed in paragraph (c)(2)(ii) of this section, or direct the system manager to do so.

(ii) If the denial authority determines that access to the entire record should be denied under the criteria specified in paragraph (a)(5) (i), (ii), or (iii) of this section, he/she shall promptly send the requesting individual an original and one copy of a letter informing the individual of the denial of access and the reasons therefor, including citation of any applicable exemptions and a brief discussion of the significant and legitimate governmental purpose(s) served by the denial of access. The denial letter shall also inform the individual that he/she may request further administrative review of the matter within 120 days from the date of the denial letter, by letter:

(A) If the record is from a civilian Official Personnel Folder or is contained on any other OPM form, to:

Director, Bureau of Manpower, Information Systems, Office of Personnel Management, 1900 E. Street, NW., Washington, D.C. 20415; or

(B) If the record pertains to the employment of a present or former Navy civilian employee, such as, Navy civilian personnel records or an employee's grievance or appeal file, to:

General Counsel, Department of the Navy, Washington, D.C. 20360; or

(C) If for any other record, to:

Judge Advocate General (Code 14), Department of the Navy, 200 Stovall Street, Alexandria, VA 22332.

The individual shall be further informed that a letter requesting such review should contain the enclosed copy of the denial letter and a statement of the individual's reasons for seeking review of the initial determination.

(iii) A copy of the denial letter shall be forwarded directly to the Chief of Naval Operations (Op–09B1) or the Commandant of the Marine Corps (Code M), as provided in paragraph (b)(2)(iii) of this section.

(iv) If the denial authority determines that access to portions of the record should be denied under the criteria specified in paragraph (a)(5)(i), (ii), (iii) of this section, he/she shall promptly make an expurgated copy of the record available to the requesting individual and issue a denial letter as to the portions of the record that are required to be deleted.

(4) *Action by reviewing authority.* Upon receipt of a request for review of a determination denying an individual's initial request for access, the Judge Advocate General or the General Counsel shall obtain a copy of the case file from the denial authority, review the matter, and make a final administrative determination. He/she is designated to perform such acts as may be required by or on behalf of the Secretary of the Navy to accomplish a thorough review and to effectuate the determination.

(i) Within 30 days of receipt of the request for review, if practicable, the Judge Advocate General or the General Counsel shall inform the requesting individual, in writing, of the final determination and the action thereon.

(ii) If such a determination has the effect of granting a request for access, in whole or in part, the Judge Advocate General or the General Counsel may either provide access in accordance with paragraphs (c)(2)(ii)(A) or (B) of this section, or direct the system manager to do so.

(iii) If the final determination has the effect of denying a request for access, in whole or part, the individual shall be informed of the reason(s) and statutory basis for the denial—including regulatory citations for any exemption exercised and an explanation of the significant and legitimate governmental purpose served by exercising the exemption—and his/her rights to seek judicial review.

(iv) If the determination is based, in whole or part, on a security classification, the individual shall be apprised of the matters set forth in § 701.9(d)(4)(ii) of this part relating to declassification review and appeal.

(d) *Amendment procedures*—(1) *Criteria for determinations on requests for amendment.*

(i) As further explained in § 701.108, many of the systems of records listed in Subpart G of this part, are exempt, in part, from amendment requirements. Such exemptions, where applicable, may be exercised only by denial authorities (and by the designated review authorities upon requests for review of initial denials), and then only in cases where there is specifically determined to be a significant and legitimate governmental purpose to be served by exercising the exemption.

(ii) If an available exemption is not exercised, an individual's request for amendment of a record pertaining to himself/herself shall be granted if it is determined, on the basis of the information presented by the requester and all other reasonably available related records, that the requested amendment is warranted in order to make the record sufficiently accurate, relevant, timely, and complete as to ensure fairness in any determination which may be made about the individual on the basis of the record. If the requested amendment would involve the deletion of particular information from the record, the information shall be deleted unless it is determined that—in addition to being accurate, relevant to the individual, timely, and complete—the information is relevant and necessary to accomplish a purpose or function required to be performed by the Department of the Navy pursuant to a statute or Executive order.

(iii) The foregoing is not intended to permit the alteration of evidence presented in the course of judicial or quasi-judicial proceedings. Any changes in such records should be made only through the procedures established for changing such records. These provisions are also not designed to permit collateral attack upon that which has already been the subject of a judicial or quasi-judicial action. For example, an individual would not be permitted to challenge a courts-martial conviction under this instruction, but the individual would be able to challenge the accuracy with which a conviction has been recorded in a record.

(iv) The procedures in paragraph (d) of this section, may be applied to requests for amendments of records contained in a system of records:

Provided, That it can be identified and located.

(2) *Action upon receipt of request.* Subject to the provisions of this section, upon recept of an individual's initial request to amend a record, the system manager (or official occupying a comparable position with respect to a record not contained in a system of records) shall acknowledge the request in the manner prescribed by paragraph (a)(6)(i) of this section, and, within 30 days, if reasonably possible, take one of the following actions:

(i) If consideration cannot be given to the request because:

(A) The individual's identity is not satisfactorily verified:

(B) The individual has not furnished the information needed to locate the record;

(C) The individual has not provided adequate information as to how or why the record should be amended; or

(D) The request is erroneously addressed to an official having no responsibility for the record or systems of records in question;

Inform the individual of the correct means or additional information needed for obtaining consideration of his/her request for amendment (a request may not be rejected, nor may the individual be required to resubmit his/her request, unless this is essential for processing the request).

(ii) If the system manager determines that the individual's request to amend a record is warranted under the criteria in paragraph (d)(1) of this section, he/she shall promptly amend the record and advise the individual, in writing, of that action and its effect. (The system manager also should attempt to identify other records under his/her responsibility affected by the requested amendment, and should make other necessary amendments, accordingly.) Amendments to records should be made in accordance with existing directives and established procedures for changing records, if applicable and consistent with 32 CFR Part 701, Subpart F. The system manager shall advise previous recipients of the record from whom a disclosure accounting has been made that the record has been amended, and of the substance of the correction.

(iii) If the system manager is a denial authority, and denial of the request for amendment, in whole or part, is warranted, take the appropriate action prescribed in paragraph (d)(3)(ii) or (iii) of this section; or

(iv) If the system manager is not a denial authority, but denial of the request for amendment, in whole or part, appears to be warranted, forward the request to the cognizant denial authority with a copy of the disputed record, and comments and recommendations concerning disposition.

(3) Action by denial authority. (i) If the denial authority determines that amendment of the record is warranted under the criteria in paragraph (d)(1) of this section, he/she shall direct the system manager to take the action prescribed in paragraph (d)(2)(ii) of this section.

(ii) If the denial authority determines that amendment of the record is not warranted under the criteria in paragraph (d)(1) of this section, he/she shall promptly send the requesting individual an original and one copy of a letter informing him/her of the denial of the request and the reason(s) for the denial, including a citation of any exemption exercised and a brief discussion of the significant and legitimate governmental purpose(s) served by exercising the exemption. The denial letter shall inform the individual that he/she may request further administrative review of the matter, as follows:

(A) If the record is a fitness report or performance evaluation (including proficiency and conduct marks) from a military personnel file—by letter, within 120 days from the date of the denial letter, to:

Assistant Secretary of the Navy (Manpower and Reserve Affairs), Department of the Navy, Washington, D.C. 20350; or

(b) If the record is from a civilian Official Personnel Folder or is contained in any other Office of Personnel Management form—by letter, within 120 days from the date of the denial letter, to:

Director, Bureau of Manpower Information Systems, Office of Personnel Management, 1900 E. Street, NW., Washington, D.C. 20415; or

(C) If the record pertains to the employment of a present or former Navy civilian employee, such as, Navy civilian personnel records or an employee's grievance or appeal file—by letter, within 120 days from the date of the denial letter, to:

General Counsel, Department of the Navy, Washington, D.C. 20360.

(D) For any other record—by letter, within 120 days from the date of the denial letter, to:

Judge Advocate General (Code 14), Department of the Navy, 200 Stovall Street, Alexandria, VA 22332.

The individual shall be further informed that a letter requesting such review should contain the enclosed copy of the denial letter and a statement of the reasons for seeking review of the initial determination denying the request for amendment. A copy of the denial letter shall be forwarded to the Chief of Naval Operations or the Commandant of the Marine Corps, as provided in paragraph (b)(2)(ii) of this section.

(iii) If the denial authority determines that a request for amendment of a record should be granted in part and denied in part, he/she shall take the action prescribed in paragraph (d)(3)(ii) of this section with respect to the portion of the request which is denied.

(4) *Action by reviewing authority.* Upon receipt of a request for review for a determination denying an individual's initial request for amendment of a record, the Assistant Secretary of the Navy (Manpower and Reserve Affairs), the General Counsel, or the Judge Advocate General, as appropriate, shall obtain a copy of the case file from the denial authority, review the matter, and make a final administrative determination, either granting or denying amendment, in whole or in part. Those officials are designated to perform such acts as may be required by or on behalf of the Secretary of the Navy to accomplish a thorough review and effectuate the determination.

(i) Within 30 working days of receipt of the request for review, the designated reviewing official shall inform the requesting individual, in writing, of the final determination and the action thereon, except that the Assistant Secretary of the Navy (Manpower and Reserve Affairs) may authorize an extension of the time limit where warranted because a fair and equitable review cannot be completed within the prescribed period of time, or for other good cause. If an extension is granted, the requesting individual shall be informed, in writing, of the reason for the delay, and the approximate date on which the review will be completed and the final determination made.

(ii) If, upon completion of review, the reviewing official determines that denial of the request of amendment is warranted under the criteria in paragraph (d)(1) of this section, the individual shall be informed, in writing:

(A) Of the final denial of the request for amendment of the record, and the reason(s) therefor;

(B) Of the right to file with the appropriate system manager a concise statement of the individual's reason(s) for disagreeing with the decision of the agency, and that such statement of dispute must be received by the system manager within 120 days following the

date of the reviewing authority's final determination;

(C) Of other procedures for filing such statement of dispute, and that a properly filed statement of dispute will be made available to anyone to whom the record is subsequently disclosed, together with, if deemed appropriate, a brief statement summarizing the reason(s) why the Department of the Navy refused the request to amend the record;

(D) That prior recipients of the disputed record, to the extent that they can be ascertained from required disclosure accountings, will be provided a copy of the statement of dispute and, if deemed appropriate, a brief statement summarizing the reason(s) why the Department of the Navy refused the request to amend the record; and

(E) Of his/her right to seek judicial review of the reviewing authority's refusal to amend a record.

(iii) If the reviewing official determines upon review that the request for amendment of the record should be granted, he/she shall inform the requesting individual of the determination, in writing, and he/she shall direct the system manager to amend the record accordingly, and to inform previous recipients of the record for whom disclosure accountings have been made that the record has been amended and the substance of the correction.

(5) *Statements of dispute.* When an individual properly files a statement of dispute under the provisions of paragraphs (d)(4)(ii) (B) and (C) of this section, the system manager shall clearly annotate the record so that the dispute is apparent to anyone who may subsequently access, use, or disclose it. The notation itself should be integral to the record. For automated systems of records, the notation may consist of a special indicator on the entire record or on the specific part of the record in dispute. The system manager shall advise previous recipients of the record for whom accounting disclosure has been made that the record has been disputed, if the statement of dispute is germane to the information disclosed, and shall provide a copy of the individual's statement, together with, if deemed appropriate, a brief statement summarizing the reason(s) why the Department of the Navy refused the request to amend the record.

(i) The individual's statement of dispute need not be filed as an integral part of the record to which it pertains provided the record is integrally annotated as required above. It shall, however, be maintained in such a manner as to permit ready retrieval whenever the disputed portion of the record is to be disclosed. When information which is the subject of a statement of dispute is subsequently disclosed, the system manager shall note that the information is disputed, and provide a copy of the individual's statement of dispute.

(ii) The system manager may include a brief summary of the reasons for not making an amendment when disclosing disputed information. Summaries normally will be limited to the reasons stated to the individual. Although these summaries may be treated as part of the individual's record, they will not be subject to the amendment procedures of this section.

§ 701.105 Disclosure to others and disclosure accounting.

(a) *Summary of requirements.* Subsection (b) of 5 U.S.C. 552a prohibits an agency from disclosing any record contained in a system of records to any person or agency, except pursuant to the written request or consent of the individual to whom the record pertains, unless the disclosure is authorized under one or more of the 11 exceptions noted in paragraph (b) of this section. Subsection i(1) of 5 U.S.C. 552a outlines criminal penalties (as prescribed in 32 CFR 701.110) for personnel who knowingly and willfully make unauthorized disclosures of information about individuals from an agency's records. Subsection (c) of 5 U.S.C. 552a requires accurate accountings to be kept, as prescribed in paragraph (c) of this section, in connection with most disclosures of a record pertaining to an individual (including disclosures made pursuant to the individual's request or consent). This is to permit the individual to determine what agencies or persons have been provided information from the record, enable the agency to advise prior recipients of the record of any subsequent amendments or statements of dispute concerning the record, and provide an audit trail for review of the agency's compliance with 5 U.S.C. 552a.

(b) *Conditions of disclosure.* No record contained in a system of records shall be disclosed, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure of the record falls within one of the exceptions. Where the record subject is mentally incompetent, insane, or deceased, no medical record shall be disclosed except pursuant to a written request by, or with the prior written request of, the record subject's next of kin or legal representative, unless disclosure of the record falls within one of the exceptions. Disclosure to third parties on the basis of the written consent or request of the individual is permitted, but not required, by 32 CFR Part 701, Subparts F and G.

(1) *Intra-agency.* Disclosure may be made to personnel of the Department of the Navy or other components of the Department of Defense (DOD) (including private contractor personnel who are engaged to perform services needed in connection with the operation of a system of records for a DOD component), who have a need for the record in the performance of their duties, provided this use is compatible with the purpose for which the record is maintained. This provision is based on the "need to know" concept.

(i) This may include, for example, disclosure to personnel managers, review boards, discipline officers, courts-martial personnel, medical officers, investigating officers, and representatives of the Judge Advocate General, Auditor General, Naval Inspector General, or the Naval Investigative Service, who require the information in order to discharge their official duties. Examples of personnel outside the Navy who may be included are: Personnel of the Joint Chiefs of Staff, Armed Forces Entrance and Examining Stations, Defense Investigative Service, or the other military departments, who require the information in order to discharge an official duty.

(ii) It may also include the transfer of records between Naval components and non-DOD agencies in connection with the Personnel Exchange Program (PEP) and inter-agency support agreements. Disclosure accountings are not required for intra-agency disclosure and disclosures made in connection with interagency support agreements or the PEP. Although some disclosures authorized by paragraph (b) of this section might also meet the criteria for disclosure under other exceptions specified in paragraphs (b)(2) through (12) of this section, they should be treated under paragraph (b)(1) of this section for disclosure accounting purposes.

(2) *Freedom of Information Act.* Disclosure may be made of those records, or information obtained from records, required to be released under the provisions of 5 U.S.C. 552 and 32 CFR Subparts A through D. Disclosure accountings are not required when information is disclosed under the Freedom of Information Act. That act has the general effect of requiring the release of any record which does not fall within one of the nine exemptions specified in Subpart A, § 701.5(b)(4)(ii), including an exemption for records

which, if disclosed, would result in a clearly unwarranted invasion of the personal privacy of an individual. The phrase "clearly unwarranted invasion of personal privacy" states a policy which balances the interest of individuals in protecting their personal affairs from public scrutiny against the interest of the public having available information relating to the affairs of government. The interests of the recipient or of society must be weighed against the degree of the invasion of privacy. Numerous factors must be considered such as: The nature of the information to be disclosed (i.e., Do individuals normally have an expectation of privacy in the type of information to be disclosed?); importance of the public interest served by the disclosure and probability of further disclosure which may result in an unwarranted invasion of privacy; relationship of the requester to the public interest being served; newsworthiness of the individual to whom the information pertains (e.g., high ranking officer, public figure); degree of sensitivity of the information from the standpoint of the individual or the individual's family, and its potential for being misused to the harm, embarrassment, or inconvenience of the individual or the individual's family; the passage ot time since the event which is the topic of the record (e.g., to disclose that an individual has been arrested and is being held for trial by court-martial is normally permitted, while to disclose an arrest which did not result in conviction might not be permitted after the passage of time); and the degree to which the information is already in the public domain or is already known by the particular requester. Examples of information pertaining to civilian personnel, which normally are released without an unwarranted invasion of privacy are: Name, grade, date of grade, gross salary, present and past assignments, future assignments which have been finalized, and office phone number. Disclosure of other personal information pertaining to civilian employees shall be made in accordance with 5 CFR Parts 293, 294, 297, and the Federal Personnel Manual. Determinations as to disclosure of personal information regarding military personnel shall be made using the same balancing test as explained above. The following are examples of information concerning military personnel which can normally be released without the consent of the individual upon request, as they are a matter of public record: name, rank, gross salary, present and past duty assignments, future assignments which are finalized, office phone number, source of commission, promotion sequence number, awards and decorations, education (major area of study, school, year of education, and degree), duty status at any given time, date of birth, marital status, and number, names, sex and ages of dependents.

(i) Disclosure of home addresses and home telephone numbers without permission shall normally be considered a clearly unwarranted invasion of personal privacy. Accordingly, disclosure pursuant to 5 U.S.C. 552 is normally prohibited. Requests for home addresses (includes barracks and Government-provided quarters) may be referred to the last known address of the individual for reply at the person's discretion. In such cases, requesters will be notified accordingly.

(ii) Disclosure is premitted pursuant to the balancing test when circumstances of a case weigh in favor of disclosure. Disclosure of home address to individuals for the purpose of initiating court proceedings for the collection of alimony or child support, and to state and local tax authorities for the purpose of enforcing tax laws, are examples of circumstances where disclosure could be appropriate. However, care must be taken prior to release to ensure that a written record is prepared to document the reasons for the release determination.

(iii) Lists or compilations of names and home addresses, or single home addresses will not be disclosed without the consent of the individual involved, to the public including, but not limited to, individual Members of Congress, creditors, and commercial and financial institutions. Requests for home addresses may be referred to the last known address of the individual for reply at the individual's discretion and the requester will be notified accordingly. This prohibition may be waived when circumstances of a case indicate compelling and overriding interests of the individual involved.

(iv) An individual shall be given the opportunity to elect not to have his/her home address and telephone number listed in a Navy activity telephone directory. The individual shall also be excused from paying additional cost that may be involved in maintaining an unlisted number for Government-owned telephone services if the individual complies with regulations providing for such unlisted numbers. However, the exclusion of a home address and telephone number from a Navy activity telephone directory does not apply to the mandatory listing of such information on a command's recall roster.

(v) Commands are permitted to disclose, to *military personnel within the command only,* the results of and the names of individuals receiving non-judicial punishment. Such disclosure is not considered to be a violation of 5 U.S.C. 552a.

(3) *Routine use.* Disclosure may be made for a "routine use" (as defined in § 701.103(k)) that is compatible with the purpose for which the record is collected and listed as a routine use in the applicable record system notice published in the **Federal Register.** Routine use encompasses the specific ways or processes in which the information is used, including the persons or organizations to whom the record may be disclosed, even if such use occurs infrequently. In addition to the routine uses established by the Department of the Navy for each system of records, common blanket routine uses, applicable to all record systems maintained within the Department of the Navy, have been established. *See* § 701.114. In the interest of simplicity and economy, these blanket routine uses are published only once at the beginning of the Department of the Navy's **Federal Register** compilation of record systems notices rather than in each system notice. Disclosure accountings are required for all disclosures made pursuant to the routine use.

(4) *Bureau of the Census.* Disclosure may be made to the Bureau of the Census for purpose of planning or carrying out a census of survey or related activity authorized by law. Disclosure accountings are required for disclosures made to the Bureau of the Census.

(5) *Statistical research or reporting.* Disclosure may be made to a recipient who has provided adequate written assurance that the record will be used solely as a statistical research or reporting record, provided the record is transferred in a form that is not individually identifiable (i.e., the identity of the individual cannot be deduced by tabulation or other methodology). The written request must state the purpose of the request, and will be made a part of the activity's accounting for the disclosure. When activities publish gross statistics concerning a population in a system of records (e.g., statistics on employer turnover rates, military reenlistment rates, and sick leave usage rates), these are not considered disclosures of records and accountings are not required.

(6) *National Archives.* Disclosure may be made to the National Archives when the record has sufficient historical or other value to warrant continued preservation by the U.S. Government, or for evaluation by the Administrator of General Services or his/her designee to determine whether the record has such value. (Records transferred to a federal records center for storage or safekeeping do not fall under the provision. Such transfers are not considered disclosures under this Act, since the records remain under the control of the transferring element. Therefore, disclosure accounting is not required for transfers of records to federal records centers.) Disclosure accountings are required for disclosures made to the National Archives.

(7) *Civil or criminal law enforcement activity.* Disclosure may be made to another agency or instrumentality of any government jurisdiction within or under the control of the United States, for a civil or criminal law enforcement activity, if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the activity which maintains the record, specifying the particular record desired and the law enforcement purpose for which the record is sought. The head of the agency or instrumentality may have delegated authority to request records to other officials. Requests by these designated officials shall be honored if they provide satisfactory evidence of their authorization to request records. Blanket requests for all records pertaining to an individual shall not be honored. A record may also be disclosed to a law enforcement activity: *Provided,* That such disclosure has been established as a "routine use" in the published record system notice. Disclosure to foreign law enforcement agencies is not governed by the provisions of 5 U.S.C. 552a and this section, but may be made only pursuant to established "blanket routine uses" contained in § 701.114, pursuant to an established "routine use" published in the individual record system notice, or pursuant to other governing authority. Disclosure accountings are required for disclosure to civil or criminal law enforcement agencies, and also for disclosures pursuant to a routine use, but need not be disclosed to the individual if the law enforcement agency has requested in writing that it not be.

(8) *Emergency conditions.* Disclosure may be made under emergency conditions involving compelling circumstances affecting the health and safety of a person, provided that notification of the disclosure is transmitted to the last known address of the individual to whom the record pertains. For example, an activity may disclose records when the time required to obtain the consent of the individual to whom the record pertains might result in a delay which could impair the health or safety of a person. The individual about whom the records are disclosed need not necessarily be the individual whose health or safety is in peril (e.g., release of dental charts on several individuals in order to identify a person injured in an accident). In instances where information under alleged emergency conditions is requested by telephone, an attempt will be made to verify the inquirer's and medical facility's identities and the caller's telephone number. The requested information, if then considered appropriate and of an emergency nature, may be provided by return call. Disclosure accountings are required for disclosures made under emergency conditions.

(9) *Congress and Members of Congress.* Disclosure may be made to either House of Congress, or, to the extent of matters within its jurisdiction, to any committee or subcommittee thereof, or to any joint committee of Congress or subcommittee thereof. Disclosure may not be made, however, to a Member of Congress requesting in his/her individual capacity or on behalf of a constituent, except in accordance with the following rules:

(i) Upon receipt of an oral or written request from a Member of Congress or his/her staff, inquiry should be made as to the identity of the originator of the request. If the request was prompted by a request for assistance by the individual to whom the record pertains, the request information may be disclosed to the requesting Congressional office.

(ii) If the request was originated by a person other than the individual to whom the record pertains, the Congressional office must be informed that the requested information cannot be disclosed without the written consent of the individual to whom the record pertains. If the Congressional office subsequently states that it has received a request for assistance from the individual or has obtained the individual's written consent for disclosure to that office, the requested information may be disclosed.

(iii) If the Congressional office requests the Department of the Navy to obtain the consent of the individual to whom the record pertains, that office should be informed that it is the policy of the Department not to interfere in the relationship of a Member of Congress and his/her constituent, and that the Department therefore does not contact an individual who is the subject of a congressional inquiry.

(iv) If the Congressional office insists on Department of the Navy cooperation, an effort should be made to contact, through his/her command, the individual to whom the records pertain and ascertain whether the individual consents to the disclosure. If neither the Congressional office nor the Department of the Navy obtains the individual's written consent, only information required to be released under 5 U.S.C. 552 and 32 CFR Part 701, Subparts A through D should be disclosed.

Disclosure accountings are required for disclosures made to Congress or Members of Congress, except nonconsensual disclosures pursuant to 5 U.S.C. 552 provided for in paragraph (b)(9)(iv) of this section.

(10) *Comptroller General.* Disclosure may be made to the Comptroller General of the United States, or to any of his/her authorized representatives, in the course of the performance of the duties of the General Accounting Office. *See* § 701.101(a)(2) and the SECNAVINST 5741.2 series. Disclosure accountings are required for disclosures to the Comptroller General or General Accounting Office.

(11) *Court of competent jurisdiction.* Disclosure may be made in response to an order from a court of competent jurisdiction (signed by a state or Federal court judge), subject to the following provisions:

(i) When a record is disclosed under compulsory legal process, and the issuance of that order is made public by the court which issued it, activities shall make reasonable efforts to notify the individual to whom the record pertains of the disclosure and the nature of the information provided. This requirement may be satisfied by notifying the individual by mail at the last known address contained in the activity records. Disclosure accountings are required for disclosures made pursuant to court orders.

(ii) Upon being served with an order which is not a matter of public record, an activity shall seek to be advised as to when it will become public. An accounting for the disclosure shall be made at the time the activity complies with the order, but neither the identity of the party to whom the disclosure was made nor the purpose of the disclosure shall be made available to the concerned individual unless the

court order has become a matter of public record.

(12) *Disclosure of records to contractors.* The disclosure of records required by the contractor for the operation, use or maintenance of a system of records in the performance of a government contract shall not require the consent of the individual to whom the record pertains or the maintenance of a disclosure accounting record since systems of records operated under contract to accomplish a Navy function, is in effect, maintained by the Department of the Navy. Disclosure of personal information between the Department of the Navy and the contractor is considered to be the same as between those officers and employees of the Department of the Navy who have a need for the records in the performance of their duties.

(c) *Disclosure accountings*—(1) *Responsibilities.* With respect to a disclosure of a record which it maintains in a system of records, each activity is responsible for keeping an accurate accounting of the date, nature, and purpose of the disclosure, and the name and address of the person or agency to whom the disclosure is made. When disclosure is made by an activity other than the activity that is responsible for maintaining the record, the activity making the disclosure is responsible for giving written notification of the above information to the activity responsible for maintaining the record, to enable the latter activity to keep the required disclosure accounting.

(2) *Disclosures for which accountings are required.* A disclosure accounting is required for all disclosures of records maintained in a system of records, except: Intra-agency disclosures pursuant to paragraph (b)(1) of this section; Freedom of Information Act disclosures pursuant to paragraph (b)(2) of this section or paragraph (b)(9)(iv) of this section; or disclosure pursuant to paragraph (b)(12) of this section; or disclosures for statistical research or reporting purposes pursuant to paragraph (b)(5) of this section. A disclosure accounting is required for a disclosure made to another person or agency pursuant to the request or consent of the individual to whom the record pertains. There is no requirement for keeping an accounting for disclosures of disclosure accountings.

(3) *Accounting method.* Since the characteristics of various records maintained within the Department of the Navy vary widely, no uniform method for keeping disclosure accountings is prescribed. For most paper records, it may be suitable to maintain the accounting on a record-by-record basis, physically affixed to the records. The primary criteria are that the selected method be one which will:

(i) Enable an individual to ascertain what persons or agencies have received disclosures pertaining to him/her;

(ii) Provide a basis for informing recipients of subsequent amendments or statements of dispute concerning the record; and

(iii) Provide a means to prove, if necessary, that the activity has complied with the requirements of 5 U.S.C. 552a and this subpart.

(4) *Retention of accounting record.* A disclosure accounting, if one is required, shall be maintained for the life of the record to which the disclosure pertains, or for at least five years after the date of the disclosure for which the accounting is made, whichever is longer. Nothing in 5 U.S.C. 552a or 32 CFR Part 701, Subparts F and G requires retaining the disclosed record itself longer than for the period of time provided for it in the SECNAVINST 5212.5 series, but the disclosure accounting must be retained for at least five years.

(5) *Accounting to the individual.* Unless an applicable exemption has been exercised, systems managers or other appropriate custodial officials shall provide all information in the disclosure accounting to an individual requesting such information concerning his/her records, except entries pertaining to disclosures made pursuant to paragraph (b)(11)(ii) of this section and disclosures made at the written request of the head of another agency or government instrumentality for law enforcement purposes under paragraph (b)(7) of this section. Activities should maintain the accounting of the latter two types of disclosures in such a manner that the notations are readily segregable, to preclude improper release to the individual. The process of making the accounting available may also require transformation of the data in order to make it comprehensible to the individual. Requests for disclosure accountings otherwise available to the individual may not be denied unless a denial authority for the designated review authority has exercised an applicable exemption and denied the request, and then only when it has been determined that denial of the request would serve a significant and legitimate Government purpose (e.g., avoid interfering with an ongoing law enforcement investigation). Appropriate procedures prescribed in § 701.104(b), for exercising an exemption, denying a request and reviewing a denial apply also to disclosure accounting to the individual.

(d) *Accuracy requirements.* Prior to disclosing any record about an individual to any person other than to personnel of the agency, with a need to know, and other than pursuant to 5 U.S.C. 552 and 32 CFR Part 701, Subparts A through D, reasonable efforts are required to ensure that such records are accurate, complete, timely, and relevant for Department of the Navy purposes. It may be appropriate to advise the recipient that the information was accurate as of a specific date, or otherwise give guidance concerning its quality.

(e) *Mailing lists.* No activity nor any member or employee of the Department of the Navy shall sell or rent individuals' names and addresses unless such action is authorized by law. This provision should not be construed to require the withholding of names and addresses otherwise permitted to be made public.

§ 701.106 Collection of personal information from individuals.

(a) *Collection directly from the individual.* Personal information shall be collected, to the greatest extent practicable, directly from the individual when the information may adversely affect an individual's rights, benefits, and privileges under Federal programs. The collection of information from third parties shall be minimized. Exceptions to this policy may be made when warranted. The following are examples, not necessarily exhaustive, of situations which may warrant exceptions:

(1) There is need to ensure the accuracy of information supplied by an individual by verifying it through a third party, e.g., verifying information for a security clearance;

(2) The nature of the information is such that it can be obtained only from a third party, such as supervisor's assessment of an employee's performance in a previous job or assignment; or

(3) Obtaining the information from the individual would present exceptional practical difficulties or would result in unreasonable cost.

(b) *Informing individuals from whom personal information is requested.* (1) Individuals who are asked to supply personal information about themselves for a system of records must be advised of:

(i) The authority (statute or Executive order) which authorizes the solicitation;

(ii) All major purposes for which the Department of the Navy uses the information (e.g., pay entitlement, retirement eligibility, or security clearance);

(iii) A brief summary of those routine uses to be made of the information as published in the **Federal Register** and distributed by current OPNAVNOTE 5211, and

(iv) Whether disclosure is mandatory or voluntary, and the possible consequences for failing to respond.

(2) This statement, which is referred to as a "Privacy Act statement," must be given regardless of the medium used in requesting the information, e.g., a blank sheet, preprinted form with a control number, format, questionnaire, survey sheet, or interview. It may be provided on the form used to collect the information, or on a separate form or sheet, a copy of which may be retained by the individual. There is no requirement that the individual sign the statement.

(3) When the Privacy Act statement is to be attached or provided with the form, the statement will be assigned the same identifying number as the form used in collecting the information, and the suffix, "Privacy Act Statement." For example, a DD Form 398 would be identified as "DD Form 398—Privacy Act Statement . . ." For unnumbered formats, such as questionnaires and survey report forms, the Privacy Act statement will bear the report control symbol, if one applies, or the OMB number, i.e., "OMB Approval No. 21-R0268, Privacy Act Statement." The statement will be positioned in such a manner that individuals from whom the information is being collected will be informed about the act before they begin to furnish any of the information requested.

(4) For the purpose of determining whether a Privacy Act statement is required, "personal information" should be considered to be information about an individual that is intimate or private to the individual, as distinguished from information related solely to the individual's official functions. *See* § 701.105(b)(2). It ordinarily does not include such information as the time, place, and manner of, or reasons or authority for, an individual's execution or omission of acts directly related to the duties of his/her Federal employment or military assignment.

(5) The head of the proponent activity (i.e., the initiating or sponsoring activity) is responsible for determining whether a Privacy Act statement is required, and for ensuring that it is prepared and available as an attachment or as a part of the form, etc.

(c) *Social Security Numbers*—(1) *Requesting an individual's social security number (SSN).* Department of the Navy activities may not deny an individual any right, benefit, or privilege provided by law because the individual refuses to disclose his/her SSN, unless such disclosure is required by Federal statute or, in the case of systems of records in existence and operating before January 1, 1975, where such disclosure was required under statute or regulation adopted prior to January 1, 1975 to verify the identity of an individual. E.O. 9397 authorizes this Department to use the SSN as a system of numerical identification of individuals.

(2) *Informing an individual when requesting his/her SSN.* When an individual is requested to disclose his/her social security number, he/she must be given a statement containing information required in paragraph (b) of this section.

(3) An activity may request an individual's SSN even though it is not required by Federal statute, or is not for a system of records in existence and operating prior to January 1, 1975. However, the separate Privacy Act statement for the SSN, alone, or a merged Privacy Act statement, covering both the SSN and other items of personal information, must make clear that disclosure of the number is voluntary. If the individual refuses to disclose his/her SSN, the activity must be prepared to identify the individual by alternate means.

(4) Once a military member or civilian employee of the Department of the Navy has disclosed his/her SSN for purposes of establishing personnel, financial, or medical records upon entry into naval service or employment, the SSN becomes his/her service or employment identification number. It is not required that such an individual be informed of the items under paragraph (b)(1) of this section when he/she is subsequently requested to provide or verify this identification number in connection with those records.

§ 701.107 Safeguarding personal information.

(a) *Legislative requirement.* The Privacy Act requires establishment of appropriate administrative, technical, and physical safeguards to ensure the security and confidentiality of records, and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is required.

(b) *Responsibilities.* At each location, and for each system of records, an official shall be designated as having responsibility for safeguarding the information therein. Specific safeguards for individual systems must be tailored to the existing circumstances, with consideration given to sensitivity of the data, need for continuity of operations, need for accuracy and reliability in operations, general security of the area, cost of safeguards, etc.

(c) *Minimum safeguards.* Ordinarily, personal information should be afforded at least the protection required for information designated as "For Official Use Only." For privacy, the guideline is to provide reasonable safeguards to prevent inadvertent or unauthorized disclosures of record content, during processing, storage, transmission, and disposal.

(d) *Automatic data processing.* The Chief of Naval Operations (Code Op-942) is responsible for determining and formulating policies and procedures, as necessary, to ensure that ADP systems containing personal information contain adequate safeguards to protect personal privacy, and are in accordance with the OPNAVINST 5239.1 series and SECNAVINST 5239.1 series.

(e) *Disposal*—(1) *General.* Reasonable care must be taken to ensure that personal information is not subject to unauthorized disclosure during records disposal. Records which contain personal information pertaining to individuals should be disposed of in such a manner as to preclude recognition or reconstruction of information contained therein, such as by pulping, tearing, shredding, macerating or burning. Records recorded on magnetic tapes or other magnetic media may be disposed of by degaussing or erasing. If contractors are hired to haul trash containing personal information, contract provisions as specified in § 701.109(a) should be incorporated into the contract. If paper trash containing personal information is sold for recycling, legal assistance should be obtained to insert in the sale contract clauses that will make the buyer a Government contractor subject to the provisions of 5 U.S.C. 552a.

(2) *Massive computer cards and printouts.* (i) The transfer of large quantities of computer cards and printout in bulk to a disposal activity, such as the Defense Property Disposal Office, is not a release of personal information under this instruction. The volume of such data when turned over in bulk transfers make it difficult, if not impossible, to identify a specific individual record. Therefore, there are no special procedures required when disposing of large numbers of punch cards, computer printouts or other large detailed listings and normal document disposal procedures may be followed.

(ii) If the systems manager believes that the data to be transferred in bulk for disposal is in a form where it is individually recognizable or is not of a sufficient quantity to preclude compromise, the records should be disposed of in accordance with this paragraph.

§701.108 Exemptions.

(a) *Summary.* Subsections (j) and (k) of 5 U.S.C. 552a authorize the Secretary of the Navy to adopt rules designating eligible systems of records as exempt from certain requirements of 5 U.S.C. 552a. In accordance with 32 CFR Part 701, Subpart E, publication of a general notice of a proposed rule concerning exemptions for systems of records is required to appear in the **Federal Register** at least 30 days prior to the effective date, in order to afford interested persons an opportunity to comment. 32 CFR Part 701, Subpart G, indicates the systems designated as exempted, the type of exemption claimed, the authority and reasons for invoking the exemption, and the provisions of 5 U.S.C. 552a from which each system has been exempted. The two categories of exemptions are general and specific. No system of records, however, is automatically exempt from all provisions of 5 U.S.C. 552a.

(b) *General exemption.* To be eligible for a general exemption under the authority of subsection (j)(2), 5 U.S.C. 552a, the system of records must be maintained by an activity whose principal function involves the enforcement of criminal laws and must consist of:

(1) Data, compiled to identify individual criminals and alleged criminals which consists only of identifying data and arrest records and type and disposition of charges; sentencing, confinement, and release records; and parole and probation status;

(2) Data that supports criminal investigations (including efforts to prevent, reduce, or control crime) and reports of informants and investigators that identify an individual; or

(3) Reports on a person, compiled at any state of the process of law enforcement, from arrest or indictment through release from supervision.

(c) *Specific exemptions.* To be eligible for a specific exemption under the authority of subsection (k), 5 U.S.C. 552a, the pertinent records within a designated system must contain one or more of the following:

(1) Information specifically authorized to be classified. Before denying a person access to classified information, the denial authority must make sure that it is properly classified under the criteria of E.O. 12065, and that it must remain so in the interest of national defense or foreign policy ((k)(1) exemption).

(2) Investigative records compiled for law enforcement purposes (other than that claimed under the general exemption). If this information has been used to deny someone a right, however, the Department of the Navy must release it unless doing so would reveal the identity of a confidential source ((k)(2) exemption).

(3) Records maintained in connection with providing protective services to the President of the United States or other individuals protected pursuant to 18 U.S.C. Sec. 3056 ((k)(3) exemption).

(4) Records used only for statistical, research, or other evaluation purposes, and which are not used to make decisions on the rights, benefits, or privileges of individuals, except as permitted by 13 U.S.C. 8 (Use of census data) ((k)(4) exemption).

(5) Data, compiled to determine suitability, eligibility, or qualifications for Federal service, Federal contracts, or access to classified information. This information may be withheld only if disclosure would reveal the identity of a confidential source ((k)(5) exemption).

(6) Test or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service, the disclosure of which would compromise the objectivity or fairness of the testing or examination process ((k)(6) exemption).

(7) Information to determine promotion potential in the Armed Forces. This information may be withheld only to the extent that disclosure would reveal the identity of a confidential source ((k)(7) exemption).

(d) *Limitations on denying notification, access, and/or amendment on the basis of an exemption*—(1) *Classified information.* Prior to denying a request for notification, access or amendment concerning a classified record on the basis of a subsection (k)(1) exemption, denial authorities having classification jurisdiction over the classified matters in the record shall review the record to determine if the classification is proper under the criteria of the OPNAVINST 5510.1 series. If the denial authority does not have classification jurisdiction, immediate coordination shall be effected with the official having classification jurisdiction, in order to obtain a review of the propriety of the classification. If it is determined upon review that the classification is proper, consideration shall also be given to the appropriateness of permitting the requester to view the record in classified form: *Provided,* That he/she has or can be given the requisite security clearance.

(2) *Law enforcement records.* Requests for notification or access shall not be denied on the basis of a subsection (k)(2) exemption if the requested record has been used as a basis for denying the individual a right, benefit, or privilege to which he/she would be entitled in the absence of the record, except that access may be limited to the extent necessary to protect the identity of a confidential source, as defined in paragraph (e) of this section. Additionally, neither a subsection (j)(2) nor a subsection (k)(2) exemption shall be the basis for a denial of a request for notification or access concerning a record, or a portion thereof, unless granting the request is in accordance with the exemptions specified in 5 U.S.C. 552a, and would:

(i) Interfere with enforcement proceedings;

(ii) Deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Constitute an unwarranted invasion of personal privacy;

(iv) Disclose the identity of a confidential source or disclose confidential information furnished only by a confidential source in the course of a criminal investigation or in the course of a lawful national security intelligence investigation;

(v) Disclose investigative techniques and procedures not already in the public domain and requiring protection from public disclosure to ensure their effectiveness;

(vi) Endanger the life or physical safety of law-enforcement personnel; or

(vii) Otherwise be deemed not releasable under 5 U.S.C. 552 and 32 CFR Part 701, Subparts A through D.

(e) *Confidential sources.* For the purposes of subsection (k) exemptions, a "confidential source" is a person who has furnished information to the Federal government under:

(1) An express promise that his/her identity would be held in confidence, or

(2) An implied promise made prior to September 27, 1975, that his/her identity would be held in confidence.

(f) *Promises of confidentiality.* Express promises of confidentiality shall be granted on a selective basis, and only when such promises are needed and are in the interest of the service. Officials exercising denial authority shall establish appropriate procedures and standards governing the granting of confidentiality for records systems under their cognizance.

§ 701.109 Contractors.

(a) *Contracts to maintain records.* Any unit, activity, or official letting a contract that involves the maintenance of a system of records to accomplish a Department of the Navy purpose shall include in that contract such terms as are necessary to incorporate the relevant provisions of 5 U.S.C. 552a in accordance with Defense Acquisition Regulation 1–327, "Protection of Individual Privacy," July 1, 1976.

(b) *Contracting officers.* Contracting officers shall review all requirements for service contracts to determine if the requirements may result in the design, development, or operation of a system of records on individuals. If it is determined that such is involved, the solicitation to meet the requirement shall contain notice similar to the following:

Warning

This procurement action requires the contractor to do one or more of the following: operate, use or maintain a system of records on individuals to 1974 (Pub. L. 93–597; 5 U.S.C. 552a) imposes requirements on how these records are collected, maintained, used, and disclosed. Violations of the Privacy Act may result in termination of any contract resulting from this solicitation as well as imposition of criminal or civil penalties.

§ 701.110. Judicial sanctions.

(a) Subsection (i)(1) of 5 U.S.C. 552a prescribes criminal penalties for violation of its provisions, Any member or employee of the Department of the Navy may be found guilty of a misdemeanor and fined not more than $5,000 for willfully:

(1) Maintaining a system of records without first meeting the public notice requirements.

(2) Disclosing information protected under the Privacy Act to any unauthorized person/agency.

(3) Obtaining or disclosing information about an individual under false pretenses.

§ 701.111 Rules of access to agency records.

5 U.S.C. 552a, as implemented in 32 CFR Part 701, Subparts F and G, provides for individuals to have access to agency records, pertaining to themselves, with certain limited exceptions. The following rules of access are in effect:

(a) Requests for access must be submitted in writing to (*name or organizational title of record custodian*).

(b) Individuals desiring to review records pertaining to themselves are urged to submit their requests by mail or in person, 10 days before the desired review date, Every effort will be made to expedite access when necessary, but records ordinarily cannot be made available for review on the day of the request. In the case of a request to provide records directly to an authorized representative who is other than the parent of a minor of other legal guardian, an authorization signed within the preceding 45 days, by the individual to whom the records pertain, specifying the records to be released, will be required. Notarized authorizations may be required if the sensitivity of the information in the records warrants.

(c) Information should be provided by the individual to assist in identifying relevant systems of records and individual indentifiers should also be furnished (e.g., full name, social security number, etc.) to locate records in the particular system.

(d) Review of the record may be accomplished between the hours of —— and —— in room —— of building ——.

(e) When the individual reviews records in person, the custodian will require the presentation of indentification before permitting access to the record. Acceptable forms of identification include military identification card, base or building pass, driver's license, or similar document. When the individual requests access to information by mail, verification of identity may be obtained by requiring him/her to provide certain minimum identifying data such as date of birth and any other item in the record that only the concerned individual would likely know.

(f) Individuals may be accompanied by a person of their own choosing when reviewing the record. The custodian will not, however, discuss the record in the presence of the third person without the written authorization of the individual to whom the record pertains.

(g) On request, copies of the record will be provided at a cost specified. Fees will not be assessed if the cost is less than $30.

(h) A medical record will not be released to the individual if, in the judgment of a physician, the information contained therein could have an adverse affect on the individual's physical or mental well-being. In such circumstances, the individual will be asked to provide to the record custodian the name of a personal physician along with written authorization for release of the record to that physician. The record then will be provided to the named physician.

(i) Questions concerning these Rules of Access, or, information contained in the record, should be addressed to (*title or official of organizational title*), room ——, building ——, telephone number ——.

§ 701.112 Rules for amendment requests.

5 U.S.C. 552a, as implemented by 32 CFR Part 701, Subparts F and G, provides for individuals to request amendment of their personal records when the individuals believe the records are inaccurate, irrelevant, untimely, or incomplete. The following rules for amendment requests are in effect:

(a) Requests must be in writing and must indicate that they are being made under the Privacy Act (5 U.S.C. 552a), 32 CFR Part 701, Subparts F and G, or the SECNAVINST 5211.5 series. Requests should contain sufficient information to locate and identify the particular record which the requester is seeking to amend (e.g., full name, social security number, date of birth, etc.). A request should also contain a statement of the changes desired to be made to the record, the reasons for requesting amendment, and any available information the requester can provide in support of the request, including pertinent documents and related records.

(b) Requests for amendment must be submitted to the appropriate system manager designated in the published record system notice.

(c) A letter indicating receipt will be sent to the requester within 10 working days after the request has been received by the appropriate system manager. The letter will contain details as to when the requester may expect to be advised of action taken on the request. The requester may also be asked to provide additional verification of his/her identity. This is to protect the privacy of other individuals by ensuring that the requester is seeking to amend his/her own records and not, inadvertently or intentionally, the records of another individual.

(d) A letter indicating whether or not the request for amendment has been granted will be sent to the requester as soon as a decision has been reached by the appropriate authority. If it is determined that the requested amendment is warranted, the requester will be advised of the action taken and of the effect of that action. If it is determined that the requested amendment is not warranted, the requester will be advised of the reasons for the refusal and of the procedures and time limits within which the requester can seek further review of the refusal.

§ 701.113 Rules of conduct under the Privacy Act.

(a) *Maintaining personal records.* It is unlawful to maintain systems of records

about individuals without prior announcement in the **Federal Register.** Anyone who does is subject to criminal penalties up to $5,000. Even with such notice, care shall be taken to keep only such personal information as is necessary to do what law and the President, by Executive order, require. The information is to be used only for the purposes described in the **Federal Register.**

(b) *Disclosure.* Information about an individual shall not be disclosed to any unauthorized individual. Anyone who makes an unauthorized disclosure on purpose may be fined up to $5,000. Every member or employee of the Department of the Navy who maintains records about individuals has an obligation to do his/her part in protecting personal information from unauthorized disclosure. 32 CFR Part 701, Subparts F and G, describe when disclosures are authorized.

(c) *Individual access.* Every individual, with certain exceptions, has the right to look at any record the Department of the Navy keeps on him/her, to copy it, and to request to have it corrected if he/she considers it wrong. The individual attempting to exercise these rights shall be given courteous and considerate assistance.

(d) *Ensuring accuracy.* The Department of the Navy has an obligation to use only accurate, timely, relevant, and complete information when making decisions about individuals. Every member, official, and employee involved in keeping records on individuals shall assist in the discharge of this obligation.

§ 701.114 Blanket routine uses.

(a) *Routine use—Law enforcement.* In the event that a system of records maintained by this component to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may referred, as a routine use, to the appropriate agency, whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation or order issued pursuant thereto.

(b) *Routine use—Disclosure when requesting information.* A record from a system of records maintained by this component may be disclosed as a routine use to a federal, state, or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information, relevant to a component decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

(c) *Routine use—Disclosure of requested information.* A record from a system of records maintained by this component may be disclosed to a federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

(d) *Routine use—Congressional inquiries.* Disclosure from a system of records maintained by this component may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

(e) *Routine use—Within the Department of Defense.* A record from a system of records maintained by this component may be disclosed as a routine use to other components of the Department of Defense if necessary and relevant for the performance of a lawful function such as, but not limited to, personnel actions, personnel security actions and criminal investigations of the component requesting the record.

(f) *Routine use—Private relief legislation.* Relevant information contained in all systems of records of the Department of Defense published on or before August 22, 1975, will be disclosed to the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular A-19 at any stage of the legislative coordination and clearance process as set forth in that Circular.

(g) *Routine use—Disclosures required by international agreements.* A record from a system of records maintained by this component may be disclosed to foreign law enforcement, security, investigatory, or administrative authorities in order to comply with requirements imposed by, or to claim rights conferred in international agreements and arrangements including those regulating the stationing and status in foreign countries of Department of Defense military and civilian personnel.

(h) *Routine use—Disclosure to state and local taxing authorities.* Any information normally contained in IRS Form W-2, which is maintained in a record from a system of records maintained by this Component may be disclosed to state and local taxing authorities with which the Secretary of the Treasury has entered into agreements pursuant to Title 5, U.S.C., Sections 5516, 5517, 5520, and only to those state and local taxing authorities for which an employee or military member is or was subject to tax regardless of whether tax is or was withheld. This routine use is in accordance with Treasury Fiscal Requirements Manual Bulletin Nr. 76-07.

(i) *Routine use—Disclosure to the Office of Personnel Management (OMP).* A record from a system of records subject to the Privacy Act and maintained by this component may be disclosed to the OPM concerning information on pay and leave, benefits, retirement deductions, and any other information necessary for OPM to carry out its legally authorized Government-wide personnel management functions and studies.

Subpart G—Privacy Act Exemptions

Authority: 5 U.S.C. 552a, 32 CFR 286a.

§ 701.115 Purpose.

32 CFR Part 701, Subparts F and G contains rules promulgated by the Secretary of the Navy, pursuant to 5 U.S.C. 552a (j) and (k), and Subpart F, § 701.108, to exempt certain systems of Department of the Navy records from specified provisions of 5 U.S.C. 552a.

§ 701.116 Exemption for classified records.

All systems of records maintained by the Department of the Navy and its components shall be exempted from the requirements of 5 U.S.C. 552a(d) pursuant to 5 U.S.C. 552a(k)(1), to the extent that the system contains any information properly classified under E.O. 12356 and that is required by that Executive order to be kept secret in the interest of national defense or foreign policy. This exemption is applicable to parts of all systems of records including those not otherwise specifically designated for exemptions herein which contain isolated items of properly classified information.

§ 701.117 Exemptions for specific Navy record systems.

(a) *Office of the Assistant Deputy Chief of Naval Operations (Civilian Personnel/Equal Employment Opportunity).*

(1) *ID—N05527–5.*

Sysname. Navy Central Clearance Group (NCCG) Records.

Exemption. Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (d), (e)(4) (G) and (H), and (f).

Authority. 5 U.S.C. 552a(k) (1) and (5).

Reasons. Exempted portions of this system contain information considered relevant and necessary to make a determination as to qualifications, eligibility, or suitability for Federal employment, or access to classified information, and that was obtained by providing an express or implied promise to the source that his/her identity would not be revealed to the subject of the record.

(2) *ID—N05520–3.*

Sysname. Civilian Personnel Security Files

Exemption. Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (d), (e)(4)(G) through (I), and (f).

Authority. 5 U.S.C. 552a (k)(1), (2), and (5).

Reasons. Exempted portions of this system contain information which has been properly classified under E.O. 12356, and which is required to be kept secret in the interest of national defense or foreign policy. Exempted portions of this system also contain information considered relevant and necessary to make a determination as to qualifications, eligibility, or suitability for Federal employment or access to classified information, and that was obtained by providing express or implied promise to the source that his/her identity would not be revealed to the subject of the record. Granting individuals access to certain information compiled for law enforcement purposes in this system of records could interfere with orderly investigations by disclosing the existence of investigations and investigative techniques, and result in the concealment, destruction, or fabrication of evidence.

(b) *Naval Military Personnel Command.*

(1) *ID—N05520–1.*

Sysname. Personnel Security Eligibility Information System

Exemption. Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (d), (e)(4)(G) through (I), and (f).

Authority. 5 U.S.C. 552a (k)(1), (2), (5) and (7).

Reasons. Granting individuals access to information collected and maintained in this system of records could interfere with orderly investigations; result in the disclosure of classified material; jeopardize the safety of informants, witnesses, and their families; disclose investigative techniques; and result in the invasion of privacy of individuals only incidentally related to an investigation. Material will be screened to permit access to unclassified information that will not disclose the identity of sources who provide information to the Government under an express or implied promise of confidentiality.

(2) *ID—N01610–1.*

Sysname. Navy Personnel Evaluation System

Exemption. Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (d), (e)(1), (e)(4)(G) through (I), and (f).

Authority. 5 U.S.C. 552a (k)(1), (2), (5), and (7).

Reasons. Granting individuals access to information collected and maintained in this system could result in disclosure of classified material, jeopardize the safety of informants and witnessess and their families, and result in the invasion of privacy of individuals only incidentally related to an investigation. Material will be screened to permit access to unclassified material and to information that will not disclose the sources who provided the information under an express or implied promise of confidentiality.

(3) *ID—N05354–1.*

Sysname. Equal Opportunity Information and Support System.

Exemption. Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (d), (e)(4)(G) through (I), and (f).

Authority. 5 U.S.C. 552a (k)(1), and (5).

Reasons. Granting access to information in this system of records could result in the disclosure of classified material, or reveal the identity of a source who furnished information to the Government under an express or implied promise of confidentiality. Material will be screened to permit access to unclassified material and to information that will not disclose the identity of a confidential source.

(4) *ID—N01420–1.*

Sysname. Officer Promotion System.

Exemption. Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (d), (e)(1), (e)(4)(G) through (I), and (f).

Authority. 5 U.S.C. 552a (k)(1), (5), (6), and (7).

Reasons. Granting individuals access to this system of records could result in the disclosure of classified material, or the identification of sources who provided information to the Government under an express or implied promise of confidentiality. Material will be screened to permit access to unclassified material and to information that does not disclose the identity of a confidential source.

(5) *ID—N01070–3.*

Sysname. Navy Personnel Records System.

Exemption. Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (d), (e)(1), (e)(4)(G) through (I), and (f).

Authority. 5 U.S.C. 552a (k)(1) and (5).

Reasons. Granting individuals access to certain portions of the information collected and maintained in this system of records could result in the unauthorized disclosure of classified material. Material will be screened in order to provide access to unclassified information that does not disclose the identity of a source who provided information under an express or implied promise of confidentiality.

(6) *ID—N01640–1.*

Sysname. Individual Correctional Records.

Exemption. Portions of this system are exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (c)(4), (d), (e)(2), (e)(3), (e)(4) (G) through (I), (e)(5), (e)(8), (f), and (g).

Authority. 5 U.S.C. 552a(j)(2).

Reasons. Granting individuals access to portions of these records pertaining to consisting of, but not limited to, disciplinary reports, criminal investigations, and related statements of witnesses, and such other related matter in conjunction with the enforcement of criminal laws, could interfere with orderly investigations, with the orderly administration of justice, and possibly enable suspects to avoid detection or apprehension. Disclosure of this information could result in the concealment, destruction, or fabrication of evidence, and jeopardize the safety and well-being of informants, witnesses and their families, and law enforcement personnel and their families. Disclosure of this information could also reveal and render ineffectual investigative techniques, sources, and methods, used by these components and could result in the invasion of the privacy of individuals only incidentally related to an investigation. The exemption of the individual's right of access to portions of these records, and the reasons therefore, necessitate the exemption of this system of records from the requirement of the other cited provisions.

(c) *Navy Recruiting Command.*

(1) *ID—N01131–1.*

Sysname. Officer Selection and Appointment System.

Exemption. Portions of this system of records are exempt from the following

subsections of 5 U.S.C. 552a: (c)(3), (d), (e)(1), (e)(4)(G) through (I), and (f).

Authority. 5 U.S.C. 552a (k)(1), (5), (6), and (7).

Reasons. Granting individuals access to portions of this system of records could result in the disclosure of classified material, or the identification of sources who provided information to the Government under an express or implied promise of confidentiality. Material will be screened to permit access to unclassified material and to information that does not disclose the identity of a confidential source.

(2) *ID—N01133–2.*

Sysname. Recruiting Enlisted Selection System.

Exemption. Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (d), (e)(1), (e)(4)(G) through (I), and (f).

Authority. 5 U.S.C. 552a (k)(1), (5), (6), and (7).

(d) *Naval Security Group Command.*

(1) *ID—N05527–4.*

Sysname. Naval Security Group Personnel Security/Access Files.

Exemption. Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (d), (e)(1), (e)(4)(G) through (I), and (f).

Authority. 5 U.S.C. 552a (k)(1) through (5).

Reasons. Exempted portions of this system contain information that has been properly classified under E.O. 12356, and that is required to be kept secret in the interest of national defense or foreign policy. Exempted portions of this system also contain information considered relevant and necessary to make a determination as to qualification, eligibility or suitability for access to classified special intelligence information, and that was obtained by providing an express or implied promise to the source that his/her identity would not be revealed to the subject of the record.

(e) *Naval Investigative Service.*

(1) *ID—N05520–4.*

Sysname. NIS Investigative Files System.

Exemption (1). Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (c)(4), (d), (e)(2), and (3), (e)(4)(G) through (I), (e)(5), (e)(8), (f) and (g).

Authority (1). 5 U.S.C. 552a (j)(2).

Reasons (1). Granting individuals access to information collected and maintained by this component relating to the enforcement of criminal laws could interfere with orderly investigations, with the orderly administration of justice, and possibly enable suspects to avoid detection or apprehension. Disclosure of this information could result in the concealment, destruction, or fabrication of evidence and jeopardize the safety and well being of informants, witnesses and their families, and law enforcement personnel and their families. Disclosure of this information could also reveal and render ineffectual investigative techniques, sources, and methods used by this Component and could result in the invasion of the privacy of individuals only incidentally related to an investigation. The exemption of the individual's right of access to his/her records, and the reasons therefore, necessitate the exemption of this system of records from the requirements of the other cited provisions.

Exemption (2). Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (d), (e)(1), (e)(4)(G) through (I), and (f).

Authority (2). 5 U.S.C. 552a (k)(1), (k)(3), (k)(4), (k)(5), and (k)(6).

Reasons (2). The release of disclosure accountings would permit the subject of an investigation to obtain valuable information concerning the nature of that investigation, and the information contained, or the identity of witnesses or informants, and would therefore present a serious impediment to law enforcement. In addition, disclosure of the accounting would amount to notice to the individual of the existence of a record. Access to the records contained in this system would inform the subject of the existence of material compiled for law enforcement purposes, the premature release of which could prevent the successful completion of investigation, and lead to the improper influencing of witnesses, the destruction of records, or the fabrication of testimony.

Exempt portions of this system also contain information that has been properly classified under E.O. 12356, and that is required to be kept secret in the interest of national defense or foreign policy.

Exempt portions of this system also contain information considered relevant and necessary to make a determination as to qualifications, eligibility, or suitability for Federal civilian employment, military service, Federal contracts, or access to classified information, and was obtained by providing an express or implied assurance to the source that his/her identity would not be revealed to the subject of the record. The notice for this system of records published in the **Federal Register** sets forth the basic statutory or related authority for maintenance of the system.

The categories of sources of records in this system have been published in the **Federal Register** in broad generic terms. The identity of specific sources, however, must be withheld in order to protect the confidentiality of the source, of criminal and other law enforcement information. This exemption is further necessary to protect the privacy and physical safety of witnesses and informants.

This system of records is exempted from procedures for notice to an individual as to the existence of records pertaining to him/her dealing with an actual or potential civil or regulatory investigation, because such notice to an individual would be detrimental to the successful conduct and/or completion of an investigation, pending or future. Mere notice of the fact of an investigation could inform the subject or others that their activities are under, or may become the subject of, an investigation. This could enable the subjects to avoid detection, to influence witnesses improperly, to destroy records, or to fabricate testimony.

Exempt portions of this system contain screening board reports. Screening board reports set forth the results of oral examination of applicants for a position as a special agent with the Naval Investigative Service. Disclosure of these records would reveal the areas pursued in the course of the examination and thus adversely affect the result of the selection process. Equally important, the records contain the candid views of the members composing the board. Release of the records could affect the willingness of the members to provide candid opinions and thus diminish the effectiveness of a program which is essential to maintaining the high standard of the Special Agent Corps, i.e., those records constituting examination material used solely to determine individual qualifications for appointment in the Federal Service.

(f) *Naval Intelligence Command.*

(1) *ID—N03834–1.*

Sysname. Special Intelligence Personnel Access File.

Exemption. Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (d), (e)(1), (e)(4) (G) through (I), and (f).

Authority. 5 U.S.C. 552a (k)(1) and (5).

Reasons. Exempted portions of this system contain information that has been properly classified under E.O. 12356, and that is required to be kept secret in the interest of national defense or foreign policy. Exempted portions of this system also contain information considered relevant and necessary to make a determination as to qualifications, eligibility, or suitability for access to classified information and

was obtained by providing an express or implied assurance to the source that his/her identity would not be revealed to the subject of the record.

(g) *Naval Material Command.*

(1) *ID—N04385–1.*

Sysname. Investigatory (Fraud) System.

Exemption. Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (d), (e)(1), (e)(4) (G) through (I), and (f).

Authority. 5 U.S.C. 552a (k)(1), (2), and (5).

Reasons. Exempted portions of this system contain information that has been properly classified under E.O. 12356, and that is required to be kept secret in the interest of national defense or foreign policy. Exempted portions of this system also contain information considered relevant and necessary to make a determination as to qualifications, eligibility, or suitability for Federal employment, and Federal contracts, and that was obtained by providing an express or implied promise to the source that his/her identity would not be revealed to the subject of the record. Granting individuals access to certain information collected and maintained by this component relating to the enforcement of criminal laws could interfere with orderly investigations, with orderly administration of justice, and possibly enable suspects to avoid detection or apprehension. Disclosure of this information could result in the concealment, destruction, or fabrication of evidence, and could also reveal and render ineffectual investigative techniques, sources, and methods used by this component.

(h) *Naval Resale System Office.*

(1) *ID—N012930–1.*

Sysname. Industrial Relations Personnel Records.

Exemption. Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (d), (e)(4) (G) and (H), and (f).

Authority. 5 U.S.C. 552a(k) (5) and (6).

Reasons. Exempted portions of this system contain information considered relevant and necessary to make a determination as to the qualifications, eligibility, or suitability for Federal employment, and was obtained by providing an express or implied promise to the source that his/her identity would not be revealed to the subject of the record. Exempted portions of this system also contain test or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service, the disclosure of which would compromise the objectivity or fairness of the testing or examination process.

(i) *Navy and Marine Corps Exchanges and Commissaries.*

(1) *ID—N04060–1.*

Sysname. Navy and Marine Corps Exchange and Commissary Security Files.

Exemption. Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (d), (e)(1), (e)(4) (G) through (I), and (f).

Authority. 5 U.S.C. 552a(k)(2).

Reasons. Granting individuals access to information collected and maintained by these activities relating to the enforcement of criminal laws could interfere with orderly investigations, with orderly administration of justice, and possibly enable suspects to avoid detection or apprehension. Disclosure of this information could result in the concealment, destruction, or fabrication of evidence, and could also reveal and render ineffectual investigative techniques, sources, and methods used by these activities.

(j) *Naval Clemency and Parole Board.*

(1) *ID—N05819–3.*

Sysname. Naval Clemency and Parole Board Files.

Exemption. Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (c)(4), (d), (e)(4)(G), and (f).

Authority. 5 U.S.C. 552a(j)(2).

Reasons. Granting individuals access to records maintained by this Board could interfere with internal processes by which Board personnel are able to formulate decisions and policies with regard to clemency and parole in cases involving naval prisoners and other persons under the jurisdiction of the Board. Material will be screened to permit access to all material except such records or documents as reflect items of opinion, conclusion, or recommendation expressed by individual board members or by the board as a whole.

The exemption of the individual's right of access to portions of these records, and the reasons therefor, necessitate the partial exemption of this system of records from the requirements of the other cited provisions.

(k) *Office of the Secretary.*

(1) *ID—N01070–9.*

Sysname. White House Support Program.

Exemption. Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (d), (e)(1), (e)(4) (G) through (I), and (f).

Authority. 5 U.S.C. 552a (k)(1), (2), (3), and (5).

Reasons. Exempted portions of this system may contain information which has been properly classified under E.O. 12356, and which is required to be kept secret in the interest of national defense or foreign policy. Exempted portions of this system may also contain information considered relevant and necessary to make a determination as to qualifications, eligibility, or suitability for access to classified information, and which was obtained by providing an express or implied promise to the source that his/her identify would not be revealed to the subject of the record. Exempted portions of this system may also contain information collected and maintained in connection with providing protective services to the President and other individuals protected pursuant to 18 U.S.C. 3056. Exempted portions of this system may also contain investigative records compiled for law-enforcement purposes, the disclosure of which could reveal the identity of sources who provide information under an express or implied promise of confidentiality, compromise investigative techniques and procedures, jeopardize the life or physical safety of law-enforcement personnel, or otherwise interfere with enforcement proceedings or adjudications.

(l) *Security Operations Activities.*

(1) *ID—N05527–1.*

Sysname. Security Incident System.

Exemption. Portions of this system of records are exempt from the following subsections of 5 U.S.C 552a: (c)(3), (c)(4), (d), (e)(2) and (3), (e)(4)(G) through (I), (e)(5), (e)(8), (f) and (g).

Authority. 5 U.S.C. 552a (j)(2).

Reasons. Granting individuals access to information collected and maintained by this component relating to the enforcement of criminal laws could interfere with orderly administration of justice, and possibly enable suspects to avoid detection or apprehension. Disclosure of this information could result in concealment, destruction, or fabrication of evidence, and jeopardize the safety and well being of informants, witnesses and their families, and of law enforcement personnel and their families. Disclosure of this information could also reveal and render ineffectual investigative techniques, sources, and methods used by this component, and could result in the invasion of privacy of individuals only incidentally related to an investigation.

The exemption of the individual's right of access to his/her records, and the reason therefore, necessitate the exemption of this system of records from the requirements of other cited provisions.

(m) *Naval Medical Command.*

(1) *ID—N06320–2.*

Sysname. Family Advocacy Program System.

Exemption. Portions of this system of records are exempt from the following subsections of 5 U.S.C 552a: (c)(3) and (d).

Authority. 5 U.S.C. 552a (k)(2) and (5).

Reasons. Exemption is needed in order to encourage persons having knowledge of abusive or neglectful acts toward children to report such information, and to protect such sources from embarrassment or recriminations, as well as to protect their right to privacy. It is essential that the identities of all individuals who furnish information under an express promise of confidentiality be protected. Additionally, granting individuals access to information relating to criminal and civil law enforcement, as well as the release of certain disclosure accountings, could interefere with ongoing investigations and the orderly administration of justice, in that it could result in the concealment, alteration, destruction, or fabrication of information; could hamper the indentification of offenders or alleged offenders and the disposition of charges; and could jeopardize the safety and well being of parents and their children.

Exempted portions of this system also contain information considered relevant and necessary to make a determination as to qualifications, eligibility, or suitability for Federal employment and Federal contracts, and that was obtained by providing an express or implied promise to the source that his/her identity would not be revealed to the subject of the record.

§ 701.118 Exemptions for specific Marine Corps records systems.

a. ID—MMN00018.

Sysname. Base Security Incident Reporting System.

Exemption. Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (c)(4), (d), (e)(2) and (3), (e)(4)(G) through (I), (e)(5), (e)(8), (f), and (g).

Authority. 5 U.S.C. 552a (j)(2).

Reasons. Granting individuals access to information collected and maintained by these activities relating to the enforcement of criminal laws could interfere with orderly investigations, with the orderly administration of justice, and might enable suspects to avoid detection or apprehension. Disclosure of this information could result in the concealment, destruction, or fabrication of evidence, and jeopardize the safety and well being of informants, witnesses and their families, and law enforcement personnel and their families. Disclosure of this information could also reveal and render ineffectual investigative techniques, sources, and methods used by this component, and could result in the invasion of the privacy of individuals only incidentally related to an investigation.

The exemption of the individual's right of access to his/her records, and the reasons therefor, necessitate the exemption of this system of records from the requirements of other cited provisions.

b. ID—MIN00001.

Sysname. Personnel Security Eligibility and Access Information System.

Exemption. Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (d), (e)(1), (e)(4)(G) through (I), and (f).

Authority. 5 U.S.C. 552a (k)(2), (3), and (5) as applicable.

Reasons. Exempt portions of this system contain information that has been properly classified under E.O. 12356, and that is required to be kept secret in the interest of national defense or foreign policy.

Exempt portions of this system also contain information considered relevant and necessary to make a determination as to qualifications, eligibility, or suitability for Federal civilian employment, military service, Federal contracts, or access to classified, compartmented, or otherwise sensitive information, and was obtained by providing an expressed or implied assurance to the source that his/her identity would not be revealed to the subject of the record.

Exempted portions of this system further contain information that identifies sources whose confidentiality must be protected to ensure that the privacy and physical safety of these witnesses and informants are protected.

Dated: August 22, 1983.

F. N. Ottie,

Lieutenant Commander, JAGC, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 83-23290 Filed 8-24-83; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 09-83-20]

Special Local Regulations; Milwaukee Air Show

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for the MILWAUKEE AIR SHOW which is to be conducted over Lake Michigan at the Milwaukee Summerfest Grounds on September 18, 1983. The regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATES: These regulations become effective on 18 September at 11:00 am and terminate at 12:30 pm on 18 September 1983.

FOR FURTHER INFORMATION CONTACT: MSTC Bruce Graham, Office of Search and Rescue, Ninth Coast Guard District, 1240 E 9th St., Cleveland, OH 44199, (216) 522-4420.

SUPPLEMENTARY INFORMATION: A notice of proposed rule making has not been published for these regulations and they are being made effective in less than 30 days from the date of publication. Following normal rule making procedures would have been impractical. The application to hold the event was not received in a timely manner, and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of this regulation are MSTC Bruce Graham, project officer, Office of Search and Rescue and LCDR A. R. Butler, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulations

The Milwaukee Air Show will be conducted over Lake Michigan at the Milwaukee Summerfest Grounds on September 18, 1983. This event will have low flying aircraft demonstrations, aircraft aerobatics, parachutists, and other events which could pose hazards to navigation in the area. Vessels desiring to transit the area may do so only with prior approval of the Patrol Commander (Officer-in-Charge, U.S. Coast Guard Station, Milwaukee, Wisconsin).

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended by adding a temporary § 100.35-0920 to read as follows:

§ 100.35-0920 Lake Michigan/Milwaukee Harbor.

(a) *Regulated Area.* That portion of Lake Michigan and Milwaukee Harbor enclosed by a line running from a point

on the shore at 43 degrees 02.6 minutes North 87 degrees 53.2 minutes West to a point on the breakwall at 43 degrees 02.6 minutes North 87 degrees 52.8 minutes West then along the breakwall to its end at position 43 degrees 01.6 minutes North 87 degrees 52.9 minutes West then west to the pierhead light at position 43 degrees 01.6 minutes North 87 degrees 53.7 minutes West.

(b) *Special Local Regulations.* (1) Vessels desiring to transit the restricted area may do so only with the prior approval of the Patrol Commander and when so directed by that officer. Vessels will be operated at a no wake speed and in a manner which will not endanger participants in the event or any other craft. These rules shall not apply to participants, or vessels of the patrol in the performance of their assigned duties.

(2) No vessel shall anchor or drift in the area restricted to navigation.

(3) A succession of sharp, short, signals by whistle or horn from vessels patrolling the areas under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels signalled shall stop and shall comply with the orders of the Patrol Vessel; failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(4) All persons in charge of, or operating vessels in the area covered by the above Special Local Regulations are required to promptly obey the directions of the Patrol Commander and the men acting under his instructions in connection with the enforcement of these Special Local Regulations.

(5) This section is effective from 11:00 A.M. (local time) until 12:30 P.M. (local time), September 18, 1983.

(46 U.S.C. 454; 49 U.S.C. 1655(b); 49 CFR 1.46(b); and 33 CFR 100.35)

Dated: August 16, 1983.

Henry H. Bell,

Rear Admiral, Ninth Coast Guard District, U.S. Coast Guard.

[FR Doc. 83-23358 Filed 8-24-83; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 100

[CGD 09-83-16]

Special Local Regulations; 1983 Cleveland National Air Show, Ohio

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for the CLEVELAND NATIONAL AIR SHOW which is to be conducted over the eastern portion of Cleveland Harbor on the 3rd, 4th, and 5th of September, 1983. The regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATES: These regulations become effective on 3 September and terminate on 5 September, 1983, from 8:00 a.m. to 6:00 p.m.

FOR FURTHER INFORMATION CONTACT: MSTC Bruce Graham, Office of Search and Rescue, Ninth Coast Guard District, 1240 E 9th St., Cleveland, OH 44199, (216) 522-4420.

SUPPLEMENTARY INFORMATION: A notice of proposed rule making has not been published for these regulations and they are being made effective in less than 30 days from the date of publication. Following normal rule making procedures would have been impractical. The application to hold the event was not received in a timely manner, and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of this regulation are MSTC Bruce Graham, project officer, Officer of Search and Rescue and LCDR A. R. Butler, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulations

The 1983 Cleveland National Air Show will be conducted over the eastern portion of Cleveland Harbor on September 3, 4, and 5, 1983. This event will have low flying aircraft demonstrations, high performance aircraft aerobatics, parachutists, and other events which could pose hazards to navigation in the area. Vessels desiring to transit the area may do so only with prior approval of the Patrol Commander (Officer-in-Charge, U.S. Coast Guard Station, Cleveland, Ohio).

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

PART 100—AMENDED

Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended by adding a temporary § 100.35-0916 to read as follows:

§ 100.35-0916 Lake Erie/Cleveland Harbor.

(a) *Regulated Area:* That portion of Lake Erie and Cleveland Harbor enclosed by a line running from the northwest corner of Dock No. 34 northwest to 41 degrees 31 minutes North 81 degrees 42 minutes 16 seconds West, then east to a point on the breakwall at 41 degrees 32 minutes 02 seconds North 81 degrees 40 minutes 03 seconds West, then southeast to a point on shore at 41 degrees 31 minutes 54 seconds North 81 degrees 39 minutes 54 seconds West.

(b) *Special Local Regulations.* (1) Vessels desiring to transit the restricted area may do so only with the prior approval of the Patrol Commander and when so directed by that officer. Vessels will be operated at a no wake speed and in a manner which will not endanger participants in the event or any other craft. These rules shall not apply to participants, or vessels of the patrol in the performance of their assigned duties.

(2) No vessel shall anchor or drift in the area restricted to navigation.

(3) A succession of sharp, short, signals by whistle or horn from vessels patrolling the areas under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels signalled shall stop and shall comply with the orders of the Patrol Vessel; failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(4) All persons in charge of, or operating vessels in the area covered by the above Special Local Regulations are required to promptly obey the directions of the Patrol Commander and the men acting under his instructions in connection with the enforcement of these Special Local Regulations.

(5) This section is effective from 8:00 A.M. (local time) until 6:00 P.M. (local time), September 3, 4, and 5, 1983.

(46 U.S.C. 454; 49 U.S.C. 1655(b); 49 CFR 1.46(b); and 33 CFR 100.35)

Dated: August 16, 1983.

Henry H. Bell,

Rear Admiral, Ninth Coast Guard District, U.S. Coast Guard.

[FR Doc. 83-23356 Filed 8-24-83; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 110

[CGD5-82-30]

Anchorage Ground; Eastern Branch, Elizabeth River, Norfolk, VA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of Verebely and Associates, the Coast Guard is disestablishing Anchorage R in the Eastern Branch of the Elizabeth River, Norfolk, Virginia. This change is being made to allow construction of a rip-rap dike within a portion of Anchorage R to stabilize the shoreline. Because of the

historical non-use of this anchorage ground, elimination of Anchorage R will not adversely affect the needs of navigation.

EFFECTIVE DATE: September 26, 1983.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander T. T. ALLAN, III, Assistant Chief, Port and Vessel Safety Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23705 (804) 398-6691.

SUPPLEMENTARY INFORMATION: On April 28, 1983 the Coast Guard published a notice of proposed rulemaking in the **Federal Register** for this regulation (48 FR 19184). Interested persons were requested to submit comments and no comments were received.

Drafting Information

The drafters of the regulation are Lieutenant Junior Grade M. S. KUSHLA, Project Officer, Port and Vessel Safety Branch, Fifth Coast Guard District, and Commander D. J. KANTOR, Project Attorney, Fifth Coast Guard District Legal Office.

Discussion of Comments

No comments were received.

Economical Assessment and Certification

This regulation is considered to be nonsignificant in accordance with DOT Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5). Its economic impact is expected to be minimal since the anchorage ground is no longer being used. Based upon this assessment, it is certified in accordance with section 605(b) of the Regulatory Flexibility Act (5 U.S.C 605(b)) that this regulation will not have a significant economic impact on a substantial number of small entities. Also, this regulation has been reviewed in accordance with Executive Order 12291 of February 17, 1981, on Federal Regulations and has been determined not to be a major rule under the terms of that order.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

Final Regulation

§ 110.168 [Amended]

In consideration of the foregoing, Part 110 of Title 33, Code of Federal Regulations is amended by removing § 110.168(e)(2) and redesignating § 110.168(e)(3) as (e)(2).

(33 U.S.C. 471; 49 U.S.C. 1655(g)(1); 49 CFR 1.46; and 33 CFR 1.05-1(g))

Dated: August 11, 1983.

John D. Costello,

Rear Admiral, U.S. Coast Guard. Commander, Fifth Coast Guard District.

[FR Doc. 83-23352 Filed 8-24-83; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 117

[CGD3 82-019]

Drawbridge Operation Regulations; Raccoon Creek, New Jersey

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of New Jersey Department of transportation, the Coast Guard is changing the regulations governing the Route 130 Bridge across Raccoon Creek at Bridgeport, New Jersey by requiring that advance notice of opening be given between 11 p.m. and 7 a.m. This change is being made because there are relatively few bridge openings during these hours. This action will relieve the bridge owner of the burden of having a person constantly available to open the draw and will still provide for the reasonable needs of navigation.

EFFECTIVE DATE: This rule becomes effective on September 26, 1983.

FOR FURTHER INFORMATION CONTACT: William C. Heming, Bridge Administrator, Third Coast Guard District (212) 668-7994.

SUPPLEMENTARY INFORMATION: On August 19, 1982, the Coast Guard published a proposed rule (47 FR 36227) concerning this amendment. The Commander, Third Coast Guard District, also published this proposal as a Public Notice dated November 12, 1982. In each notice, interested persons were given until October 4, 1982 and December 13, 1982, respectively to submit comments.

Drafting Information

The drafters of this rule are Ernest J. Feemster, project manager, and LCDR Frank E. Couper, project attorney.

Discussion of Comments

One response was received on the public notice and it objected to the proposed rule and suggested that provision be made for four hours advance notice. The Coast Guard agrees with the respondent and feels four hour notice is valid since there is one known commercial, water-dependent facility above the bridge. This facility does not operate on a regular schedule. Since there have been only a few requests for openings from 11 p.m. to 7 a.m., this change to the proposed rule is not expected to impose a much greater burden on the bridge owner. The order of listing the Route 130 and Conrail Bridges has been reversed in the final rule to reflect the order they appear on the waterway. This is a technical and not a substantive change. A draft economic evaluation has not been prepared because of minimal economic impact. This is because provision has been made to accommodate the few vessels expected to require an opening.

Economic Assessment and Certification

These final regulations have been reviewed under the provisions of Executive Order 12291 and have been determined not to be major rules. They are considered to be nonsignificant in accordance with guidelines set out in the Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5 of 22 May 1980). As explained above, an economic evaluation has not been conducted since its impact is expected to be minimal. In accordance with section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), it is also certified that these rules will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended by redesignating § 117.225(f)(16-a) as § 117.225(f)(16-a)(ii) and adding a new § 117.225(f)(16-a)(i). As revised § 117.225(f)(16-a) reads as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

§ 117.225 Navigable waters in the State of New Jersey; bridges where constant attendance of draw tenders is not required.

* * * * *

(f) * * *

(16-a) Raccoon Creek; (i) Route 130 New Jersey State Highway Bridge, mile 1.8, at Bridgeport. The draw shall open on signal except that from 11 p.m. to 7 a.m. the draw need not open unless at least four hours' advance notice is given.

(ii) Conrail railroad bridge, mile 2.8 at Bridgeport. At least four hours' advance notice required for opening this bridge during January, February and December between 10 p.m. and 6 a.m. on regular weekdays and at all times on Saturday, Sunday and national holidays during these months.

* * * * *

(33 U.S.C. 499; 49 U.S.C. 1655(g)(2); 49 CFR 1.46(c)(5); 33 CFR 1.05-1(g)(3))

Dated: August 2, 1983.

W. E. Caldwell,

Vice Admiral, U.S. Coast Guard, Commander, Third Coast Guard District.

[FR Doc. 83-23346 Filed 8-24-83; 8:45 am]

BILLING CODE 4910-14-M

Coast Guard

33 CFR Part 117

[CGD3 82-015]

Drawbridge Operation Regulations; Hackensack River, New Jersey

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the New Jersey Department of Transportation, the Coast Guard is changing the regulations governing the Route 46 drawbridge at Little Ferry, New Jersey. This change will provide that the draw need not open at any time but contains the provision that the bridge shall be restored to operational condition within six months should the needs of navigation warrant. This change is being made because no known requests have been made to open the draw since 1976. This action will relieve the bridge owner of the burden of maintaining the machinery and of having a person available to open the draw and will still provide for the reasonable needs of navigation.

EFFECTIVE DATE: This rule becomes effective on September 26, 1983.

FOR FURTHER INFORMATION CONTACT: William C. Heming, Bridge Administrator, Third Coast Guard District, (212) 668-7994.

SUPPLEMENTARY INFORMATION: On November 12, 1982, the Coast Guard published a proposed rule (47 FR 51169) concerning this amendment. The Commander, Third Coast Guard District, also published this proposal as a Public Notice dated October 20, 1982. In each notice interested persons were given until December 27, 1982 and November 30, 1982, respectively to submit comments.

Drafting Information

The drafters of this rule are Ernest J. Feemster, project manager, and LCDR Frank E. Couper, project attorney.

Discussion of Comments

Two responses were received on the public notice concerning this proposed regulation; both objected to the proposed rule. One respondent felt that requests will likely occur in the future from sail vessels. The Coast Guard does not discount this possibility but feels that provisions have been made in the rule to account for such an occurrence. The other respondent felt that movable bridges should be able to open (especially in an emergency) in considerable less time than six months. The Coast Guard acknowledges that a bridge should be required to open as soon as possible (in an emergency) but feels that the existing 35 foot vertical bridge clearance can accomodate any necessary, emergency vessel.

The proposed rule and the public notice implied that this bridge was also called the "Gregory Avenue" bridge. This was erroneous since only the Route 46 bridge across the Passaic River is called the Gregory Avenue bridge—not the Route 46 bridge across the Hackensack River. All references to Gregory Avenue are deleted in this final rule. This action does not affect the substance of this rulemaking. An economic evaluation has not been conducted because of minimal economic impact since no conceivable, adverse impacts will result from this rulemaking.

Economic Assessment and Certification

These final regulations have been reviewed under the provisions of Executive Order 12291 and have been determined not to be major rules. They are considered to be nonsignificant in accordance with guidelines set out in the Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5 of 22 May 1980). As explained above, an economic evaluation has not been conducted since its impact is expected to be minimal. In accordance with § 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), it is also certified that these rules will not have a significant economic impact on a substantial number of small entities because no small entities will be affected.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended by revising § 117.200(a)(4)(vi) to read as follows:

§ 117.200 Newark Bay, Passaic and Hackensack Rivers, N.J., and their navigable tributaries; bridges.

(a) * * *

(4) * * *

(vi) State Route 46 bridge, Little Ferry, mile 14.0, Hackensack River. The draw need not be opened for the passage of a vessel. However, the draw shall be restored to operational condition within six months after notification by the Commander Third Coast Guard District, to take such action.

* * * * *

(33 U.S.C. 499; 49 U.S.C. 1655(g)(2); 49 CFR 1.46(c)(5); 33 CFR 1.05-1(g)(3))

Dated: August 11, 1983.

W. E. Caldwell,

Vice Admiral, U.S. Coast Guard, Commander, Third Coast Guard District.

[FR Doc. 83-23359 Filed 8-24-83; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 165

[COTP Baltimore, MD Reg. 83-10]

Safety Zone Regulations; Severn River, Annapolis, MD

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a safety zone at Annapolis, MD on the Severn River. The zone is needed to protect both spectator and participant craft from a safety hazard associated with a Marine Corps Insertion/Extraction Demonstration. Entry into this zone is prohibited unless authorized by the captain of the port.

EFFECTIVE DATES: This regulation becomes effective on 12 August 1983 at 9:30 a.m. It terminates on 12 August 1983 at 12:00 noon unless sooner terminated by The Captain Of The Port.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Larry H. Gibson, USCG Marine Safety Office, Custom House, Baltimore, MD 21202, (301) 962-5105.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking was not published for this regulation and it is being made effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to prevent an accident or damage to the spectator and participant crafts involved.

Drafting Information

The drafter of this regulation is Lieutenant (JG) Edward A. Richards, project officer for the captain of the port

Discussion of Regulation

The event requiring this regulation will occur on 12 August 1983. There will be personnel suspended above and dropping into the water from hovering helicopters. This action will prevent a

possible accident due to intruding boats which could harm participants or spectators.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

PART 165—[AMENDED]

In consideration of the foregoing, Part 165 of Title 33, Code of Federal Regulations, is amended by adding a new § 165.T0510 to read as follows:

§ 165.T0510 Safety Zone: Severn River, Annapolis, MD.

(a) *Location.* The following area is a safety zone: From the Western abutment of Old Severn River Bridge approximate position 38–59–29N, 076–29–28W. Then following the shoreline of the Severn River in a southeasterly direction to the Triton Light approximate position 38–58–53N, 076–28–36W. Then following a line across the width of the Severn River on a bearing of 076 degrees true to the western side of the U.S. Naval Station, Annapolis, MD. Small Boat Basin approximate position 38–58–57N, 076–28–12W. Then following along the eastern abutment of the Old Severn River Bridge approximate Position 38–59–40N, 076–29–09W. Then following a line drawn by the Old Severn River Bridge between its eastern and western abutments.

(b) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the captain of the port.

(33 U.S.C. 1225 and 1231; 49 CFR 1.46; 33 CFR 165.3)

Dated: August 10, 1983.

J. C. Carlton,

Captain, U.S. Coast Guard, Captain of the Port, Baltimore, MD.

[FR Doc. 83-23357 Filed 8-24-83; 8:45 am]

BILLING CODE 4910-14-M

33 CFR 165

[Third Coast Guard District Reg. CCGD3-83-45]

Safety Zone Regulations: New Jersey, New York Harbor, Newark Bay

AGENCY: Coast Guard, DOT

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a safety zone in New Jersey, New York Harbor, Newark Bay. This zone is needed to protect vessels from the safety hazards associated with the demolition of the CNJ Newark Bay Bridge. Entry into this zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATES: This regulation is effective at 12:00 PM E.D.S.T. 10 August 1983 and terminates upon completion of the current demolition of the work being done on the CNJ Newark Bay Bridge, with the Zone to be terminated no later than 01 November 1983.

FOR FURTHER INFORMATION CONTACT: Captain of the Port, New York (212)–668–7917.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking was not published for this regulation and it is being made effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to public interest since immediate action is needed to respond to any potential hazards.

Drafting Information

The drafters of this regulation are Lieutenant J. M. Collin, Project Officer for the Captain of the Port, and Lieutenant Commander J. J. D'Alessandro, Project Attorney, Third Coast Guard District Legal Office.

Discussion of Regulation

The circumstances requiring this regulation result from the potential hazards to navigation associated with the demolition operation on the CNJ Newark Bay Bridge and the relocation of the Newark Bay Lighted Buoys "4A and "4B".

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

PART 165—[AMENDED]

In consideration of the foregoing, Part 165 of Title 33, Code of Federal Regulations, is amended by adding 165-T-03-367 to read as follows:

§ 165-T-03-367 Safety Zone: New Jersey, New York Harbor, Newark Bay South Reach.

(a) *Location:* The following area is a Safety Zone: the waters within a boundary extending from the Newark Bay Lighted Buoy "4B" in position 40 39'20.2"N 74 08'45 1"W, thence easterly on a course of 100 degrees true a distance of approximately 200 yards to position 40 39'19.3"N 74 08'40"W, thence southwest on a course of 210 degrees true a distance of 275 yards to position 40 39'13"N 74 08'43"W, thence west on a course of 278 degrees true a distance of approximately 155 yards to the Newark Bay Channel Buoy "4A" in position 40 39'13.6"N 74 08'47.4"W, thence northeast on a course of 018 degrees true to the starting point.

(b) *Regulations:* (1) In accordance with the general regulations in 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port.

(33 U.S.C. 1225 and 1231; 49 CFR 1.46; 33 CFR 165.3)

Dated: August 15, 1983.

M. W. Pierson,

Commander, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 83-23353 Filed 8-24-83; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-5-FRL 2247-8]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: EPA is approving as a revision to the Ohio State Implementation Plan (SIP) an amendment to the definition of air contaminant as contained in Section 3704.01(B) of the Ohio Revised Code. The revised language amending the definition excludes the air emissions that may be caused by farming activities. This revision will not result in any increase in air emissions.

DATE: This action will be effective October 24, 1983, unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

ADDRESSES: Copies of this revision to the Ohio SIP are available for inspection at: The Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, D.C. 20408.

Copies of the SIP revision, public comments on the notice of proposed rulemaking and other materials relating to this rulemaking are available for inspection at the following addresses: (It is recommended that you telephone Debra Marcantonio at (312) 886–6088 before visiting the Region V Office).

Environmental Protection Agency, Region V, Air Programs Branch, 230

South Dearborn Street, Chicago, Illinois 60604

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

Written comments should be sent to: Gary Gulezian, Chief, Regulatory Analysis Section, Air Programs Branch, Region V, Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Debra Marcantonio, Air Programs Branch, Region V, Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6088.

SUPPLEMENTARY INFORMATION: On June 29, 1982, Ohio EPA submitted as a revision to the Ohio SIP an amendment to the definition of air contaminant as contained in Section 3704.01(B) of the Ohio revised Code. This revision was part of the legislation contained in the Amended Substitute Bill 78 and was enacted into law in Ohio on June 29, 1983.

The revised language amending the definition of air contaminant excludes the air emissions that may be caused by farming activities. Only nontraditional emissions from farming activities, e.g., agricultural tilling, would be exempted by this rule. Since there are currently no EPA requirements that affect these operations, the revised definition is approvable. The result of this exemption is to exclude certain restricted farming operations under specified conditions, from Ohio's permitting requirements. However, the emissions generated by these activities will continue to be included in applicable inventories used for attainment demonstrations and other air quality analyses as appropriate.

Because EPA considers today's action noncontroversial and routine, we are approving it today without prior proposal. The action will become effective on October 24, 1983. However, if we receive notice by September 26, 1983 that someone wishes to submit critical comments, then EPA will publish: (1) A notice that withdraws the action, and (2) a notice that begins a new rulemaking by proposing the action and establishing a comment period.

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

Under 5 U.S.C. Section 605(b), I have certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

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

Lists of Subjects in 40 CFR Part 52

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

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

This notice is issued under authority of Sections 110 of the Clean Air Act, as amended (42 U.S.C. 7410).

Dated: August 18, 1983.

William D. Ruckelshaus,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

Subpart KK—Ohio

1. Section 52.1870(c) is amended by adding paragraph (47) as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

(47) On June 29, 1982, the State submitted an amendment to the definition of air contaminant as contained in Section 3704.01(B) of the Ohio Revised Code.

[FR Doc. 83-23315 Filed 8-24-83; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[A-6-FRL 2421-7]

Approval and Promulgation of Implementation Plans; State of Oklahoma

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: The Governor of the State of Oklahoma has submitted Amendments to the State Implementation Plan (SIP) involving the Prevention of Significant Deterioration (PSD) of air quality program. On December 7, 1982, EPA proposed to approve the State's PSD regulations provided that the State amended then to require applicants to meet the growth provisions of 40 CFR 51.24 (n)(3)(ii) and (o)(2). EPA received no comments to the notice of proposed rulemaking. The State made the necessary change and submitted it on May 19, 1983. In addition, the State also modified several parts of the regulations to clarify some items. A letter of October 6, 1982, from the State had clarified its Regulation 1.4. The State's amendments to 1.4 submitted as of May 19, 1983, now render moot several items in that October 6 letter. Today's notice is published to advise the public that EPA is approving the State's submittal. The rationale for this action is contained in this notice and the final Technical Support Memorandum. EPA retains enforcement jurisdiction over sources which EPA permitted prior to today's approval of the State's PSD program since the State's rules do not require compliance with EPA issued PSD permits.

EFFECTIVE DATE: This promulgation is effective August 25, 1983.

ADDRESSES: Copies of the State's submittal and EPA's Technical Evaluation Memorandum are available at the following locations:

Air Branch, Environmental Protection Agency, Region 6, InterFirst Two, 1201 Elm Street, Dallas, Texas 75270

Public Information Reference Unit, 401 M Street SW., Washington, D.C. 20460

Oklahoma Air Quality Service, Department of Health, NE. 10th and Stonewall, Oklahoma City, Oklahoma 73105

A copy of the State's submittal is also available at the Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: George I. Kennedy, Technical Section, Environmental Protection Agency, Region 6, Air Branch, InterFirst Two, 1201 Elm Street, Dallas, Texas 75270, (214) 767-1594.

SUPPLEMENTARY INFORMATION: On August 7, 1980, EPA promulgated 40 CFR 51.24, which amended regulations for the prevention of significant deterioration (PSD) program (45 FR 52676). On April 12, 1982, the Governor of Oklahoma submitted an SIP revision to fulfill the PSD requirements. Earlier on April 2, 1979, the Governor had submitted Regulation 1.3 Table II definition of PSD increments. EPA reviewed the State's submittals, to assure that they met the requirements of 40 CFR 51.24. EPA identified one major deficiency, which the State agreed to address. In addition EPA requested that the State clarify 25 points to assure that it would satisfy 40

CFR 51.24. The State provided these clarifications by letter of October 6, 1982.

In the EPA's review, the most significant distinctions noted by EPA are listed in the notice of proposed rulemaking of December 7, 1982, (47 FR 54984). In March 1983, the Oklahoma Air Quality Council adopted an amended regulation 1.4 in which the Commissioner requires applicants to meet the growth provisions of 40 CFR 51.24 (n)(3)(ii) and (o)(2). The amended Regulation 1.4 was then forwarded to the Board of Health for approval. The State also incorporated the following requirements which had been explained previously in the October 6 letter:

(1) The State requires that ambient air monitoring be done according to 40 CFR 58.

(2) The requirements of 1.4.4(d) (2) and (3) do not exempt a source from meeting NAAQS.

(3) The additional impact evaluation, 1.4.4(f)(11), is required as in 40 CFR 51.24(o).

(4) The definition of "building, structure, facility or installation" includes secifically "groupings under the control of persons under common control."

(5) The State clarified its use of EPA Air Quality Models and Techniques in the dispersion analysis of PSD permits.

(6) In 1.4.4.(f)(4) the phrase "cause" has been expanded to the phrase "cause or contribute to ".

(7) Section 1.4.4(g)(2) has been modified to read "the permit application for a proposed new source or modification * * *" clarifying that analysis for impairing visibility applies to new sources *and* modifications.

(8) A typographical error in 1.4.4(d)(6) has been corrected.

This March 1983 amendment of Regulation 1.4 renders moot the following comments in the State's letter of October 6, 1982: Section I Comment 1, Section II Comments 1, 2, 3, 5, 22, 23, 24 and 25. The remaining comments in Section II remain valid. This October 6 submittal is incorporated by reference as a part of the SIP. The Board of Health approved this SIP revision on May 14, 1983. The State submitted this final regulation on May 19, 1983. This submittal contains changes which do not alter the approvability of the PSD rules as proposed by EPA. EPA specifically solicited comments on the issues and received none. EPA reviewed the State's latest submittal and prepared a Technical Support Memorandum to update the Evaluation Report [1], previously prepared. This memorandum and report, based upon the criteria of 40 CFR 51.24, are available for inspection during normal business hours at the EPA regional office, and at the other addresses listed above.

In view of this discussion, the State's making the necessary change, and in the absence of comments from its proposed approval, EPA is approving this SIP revision to incorporate PSD for the reasons cited in the December 7 notice.

On December 18, 1980, Oklahoma had requested delegation of the technical and administrative review portion of the PSD program until a PSD SIP revision could be approved. Partial PSD delegation was granted on July 16, 1981. A notice of this action was published in the **Federal Register** on February 17, 1982 (47 FR 6992). Additional authority to inspect PSD sources and perform compliance review was granted on April 26, 1982, and notice of this action published on July 16, 1982 (47 FR 31063).

Effective today, that part of the delegation which affects sources permitted after today under the Oklahoma program is rescinded and the State will have authority to issue PSD permits and enforce them under its approved PSD SIP. The delegation remains in effect, however, for EPA issued PSD permits; EPA retains enforcement authority over permits it issued previously. The delegation also remains in effect for sources locating on lands over which Oklahoma does not have jurisdiction under the Clean Air Act to issue PSD permits.

EPA finds good cause to make these amendments effective immediately. Sources seeking permits will be able to apply to the State for permit approval, and will not have to be reviewed by both the State and EPA.

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

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

This action is a SIP approval issued under the authority of Sections 110 and Part C Subpart 1 of the Clean Air Act, as amended, 42 U.S.C. 7410 and Part C.

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

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by 60 days from today. This action may not be challenged later in proceedings to enforce its requirements. [See 307(b)(2).]

List of Subjects in 50 CFR Part 52

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

Dated: August 18, 1983.

William D. Ruckelshaus,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLAN

Subpart LL—Oklahoma

1. 40 CFR Part 52, is amended by adding § 52.1920(c)(26) to read as follows:

§ 52.1920 Identification of plan.

* * * * *

(c) * * *

(26) On April 2, 1979, the State of Oklahoma submitted an amendment to Regulation 1.3 *Defining Terms Used in Oklahoma Air Pollution Control Regulations* (i.e., Table II) and on April 12, 1982, and on May 19, 1983, the State submitted revisions to the State's Permit Regulation 1.4 including adding 1.4.4 [Major Sources—Prevention of Significant Deterioration (PSD) Requirements for Attainment Areas] to provide for PSD new source review. A Letter of Clarification of October 6, 1982, was also submitted.

§ 52.1929 [Amended]

2. 40 CFR Part 52 is amended by revising § 52.1929 to read as follows:

§ 52.1929 Significant deterioration of air quality.

Regulation for preventing significant deterioration of air quality.

The Oklahoma plan, as submitted, does not apply to certain sources in the State. Therefore the provisions of § 52.21 (b) through (w) are hereby incorporated by reference, made a part of the Oklahoma State Implementation Plan and are applicable to the following major stationary sources or major modifications:

(a) Sources permitted by EPA prior to approval of the Oklahoma PSD program for which EPA retains enforcement authority.

[1] Evaluation Report for the Oklahoma State Implementation Plan (SIP) for Prevention of Significant Deterioration (PSD) dated October 15, 1982, with supplemental Technical Support Memorandum dated March 31, 1983.

(b) Sources proposing to locate on lands over which Oklahoma does not have jurisdiction under the Clean Air Act to issue PSD permits.

[FR Doc. 83-23313 Filed 8-24-83; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 65

[A-3-FRL 2350-8]

Delayed Compliance Order Issued by the Pennsylvania Department of Environmental Resources to American Can Company; Approval

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Administrator of the Environmental Protection Agency hereby approves a Delayed Compliance Order issued by the Pennsylvania Department of Environmental Resources to American Can Company. The Order requires the company to bring air emissions from its metal can manufacturing facility in Lemoyne, Pennsylvania into compliance with certain regulations contained in the Federally approved Pennsylvania State Implementation Plan (SIP) by April 9, 1985. Because of the Administrator's approval, compliance with the Order by American Can Company will preclude suits under the Federal enforcement and citizen suit provisions of the Clean Air Act for violations of the SIP regulations covered by the Order during the period the Order is in effect.

DATES: This rule will take effect on August 25, 1983.

FOR FURTHER INFORMATION CONTACT: Joseph Arena, Air Enforcement Section (3AW14), Air & Waste Management Division, U.S. EPA, Region III, Sixth and Walnut Streets, Philadelphia, Pennsylvania 19106, (215) 597-4561.

ADDRESSES: A copy of the Delayed Compliance Order, and supporting material, and any comments received in response to a prior **Federal Register** notice proposing approval of the Order are available for public inspection and copying (for appropriate charges) during normal business hours at: U.S. EPA, Region III, Air & Waste Management Division (3AW14), Sixth and Walnut Streets, Philadelphia, Pennsylvania 19106.

SUPPLEMENTARY INFORMATION: On January 25, 1983 the Regional Administrator of the Environmental Protection Agency's Region III Office published in the **Federal Register**, Vol. 48 No. 17, a notice proposing approval of a Delayed Compliance Order issued by the Pennsylvania Department of Environmental Resources to American Can Company. The notice asked for public comments by February 23, 1983 on the EPA proposal.

No public comments have been received by this Office, therefore the delayed compliance order issued to American Can Company is approved by the Administrator of EPA pursuant to the authority of Section 113(d)(2) of the Clean Air Act, 42 U.S.C. 7413(d)(2). The order places American Can Company on a schedule to bring its metal can manufacturing facility in Lemoyne into compliance as expeditiously as practicable with Title 25 Pennsylvania Code, § 129.52, "Surface Coating Process", a part of the federally approved Pennsylvania State Implementation Plan. The order also imposes interim requirements which meet Section 113(d)(1)(C) and 113(d)(7) of the act, and emission monitoring and reporting requirements. If the conditions of the Order are met, it will permit American Can Company to delay compliance with the SIP regulations covered by the order until April 9, 1985. The company is unable to immediately comply with these regulations. EPA has determined that its approval of the Order shall be effective (the date of publication of this notice) because of the need to immediately place American Can Company on a schedule which is effective under the Clean Air Act for compliance with the applicable requirements of the Implementation Plan.

List of Subjects in 40 CFR Part 65

Air pollution control.

(42 U.S.C. 7413(d), 7601)

Dated: August 18, 1983.

William D. Ruckelshaus,

Administrator, Environmental Protection Agency.

In consideration of the foregoing, Part 65 of Chapter I of Title 40 of the Code of Federal Regulations is amended as follows:

PART 65—DELAYED COMPLIANCE ORDER

By adding the following entry to the table in § 65.431.

§ 65.431 EPA approval of State Delayed Compliance Orders issued to major stationary sources.

* * * * *

Source	Location	Order No.	Date of FR proposal	SIP regulations involved	Final compliance date
American Can Co.	Lemoyne, PA		Jan. 25, 1983	Section 129.52 of title 25.	April 9, 1985.

[FR Doc. 83-23302 Filed 8-24-83; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 81

[A-5-FRL 2421-6]

Designation of Areas for Air Quality Planning Purposes; Minnesota

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice of final rulemaking.

SUMMARY: This notice changes the attainment status designation for Air Quality Control Region 131 (comprised of the seven counties of Anoka. Carver, Dakota, Hennepin, Ramsey, Scott, and Washington) in Minnesota relative to the total suspended particulate (TSP) National Ambient Air Quality Standards. Based upon the review of available monitoring and modeling data, EPA is reducing the size of the primary nonattainment area and redesignating the remainder of the AQCR to either secondary nonattainment or attainment.

DATE: This final rulemmaking becomes effective September 26, 1983.

ADDRESSES: Copies of the redesignation request and the supporting data are available at the following addresses:

Regulatory Analysis Section, Air and Radiation Branch, Region V, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604

Minnesota Pollution Control Agency, 1935 West County Road B-2, Roseville, Minnesota 55113

FOR FURTHER INFORMATION CONTACT: Delores Sieja at the EPA, Region V, address above or call (312) 886-6038.

SUPPLEMENTARY INFORMATION: The Clean Air Act Amendments of 1977 added Section 107(d) to the Clean Air Act (the Act). This section directed each state to submit to the Administrator of EPA a list of the attainment status for all areas within the state. The Administrator was required to promulgate the state lists, with any necessary modifications. The Administrator published these lists in the **Federal Register** on March 3, 1978 (43 FR 8962), and made necessary amendments in the **Federal Register** on

October 5, 1978 (43 FR 45993). These area designations are subject to revision whenever sufficient data become available to warrant a redesignation. EPA may redesignate an area to attainment if it is supported by all available data including eight consecutive quarters of the most recent, quality assured, representative ambient air quality data which show no violation of the National Ambient Air quality Standards (NAAQS).

On March 3, 1978 (43 FR 9005), EPA designated Air Quality Control Region (AQCR) 131 (comprised of the seven counties of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott and Washington) as nonattainment of the primary NAAQS for total suspended particulates. On August 24, 1982, the Minnesota Pollution Control Agency (MPCA) requested the following redesignation for the seven counties.

I. Anoka County

Cities of Fridley, Columbia Heights, Hill Top, and Spring Lake Park; Secondary nonattainment.

Remainder of the county; attainment.

II. Carver County

Entire County; attainment.

III. Dakota County

Cities of West St. Paul, South St. Paul, Mendota Heights, Sunfish Lake, Rosemount, Inver Grove Heights, Hastings, Mendota, and Lilydale; Secondary, nonattainment.

Remainder of the county; attainment.

IV. Hennepin County

Cities of Minneapolis and St. Louis Park; Primary nonattainement.

Cities of Richfield, Edina, Golden, Valley, New Hope, Crystal, Robbinsdale, Brooklyn Center, and Brooklyn Park; Secondary nonattainment.

Remainder of the county; attainment.

V. Ramsey County

City of St. Paul; primary nonattainment.

Cities of North Oaks, White Bear, and White Bear Lake; attainment.

Remainder of the county; secondary nonattainment.

VI. Scott County

Entire county; attainment.

VII. Washington County

Cities of Oakdale, Newport, St. Paul Park, Cottage Grove, and Grey Cloud Island; Secondary nonattainment.

Remainder of the county; attainment.

To support their request, the State referenced a contractor report entitled "Technical Support Document for the Redesignation of the AQCR 131 Nonattainment Boundaries for TSP (Minneapolis/St. Paul)," dated June, 1982. This report examines monitoring data for 1980 and 1981 and includes an analysis of the most recent modeling study performed by the State as part of its Part D State Implementation Work for AQCR 131. The State relied on the results of the contractor report, with a few exceptions, as the basis for their redesignation request. On November 2, 1982, the State submitted additional modeling data.

It must be emphasized that this redesignation is the first attempt to accurately define the boundaries of the true nonattainment area within the AQCR. Although only a subarea in AQCR 131 was actually nonattainment, the entire AQCR was classified originally as nonattainment for simplicity. Thus, the change in designation from primary nonattainment to full attainment for much of the AQCR does not necessarily reflect an actual change in air quality. Rather, it is based on a closer examination of the actual spatial extent of nonattainment. This is not to say that there has not been an air quality improvement in parts of the AQCR. Ambient monitoring does show lower concentrations in recent years, especially in the suburbs of the twin cities. Implementation of and compliance of the Federally-approved Part D TSP SIP for the twin cities area appears to be an important reason for this improvement.

Note.—The designation of the suburbs as secondary nonattainment means that additional enforceable emission reductions are still required in these areas.

EPA reviewed the available monitoring and modeling data and on March 29, 1983 (48 FR 13053) proposed to approve the requested redesignations as outlined above. Because the notice of proposed rulemaking contains a detailed evaluation of the support data as it applies to each county, it will not be discussed in this notice.

Interested parties were given until April 28, 1983, to submit comments on the proposed redesignation. No comments were received. Therefore, based on EPA's analysis of the available data and pursuant to Section 107 of the Clean Air Act, EPA approves the redesignation, as described above.

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

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 24, 1983. This action may not be challenged later in proceedings to enforce its requirements. [See Section 307(b)(2)].

Lists of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

(Sec. 107(d) of the Act, as amended (42 U.S.C. 7407(d))

Dated: August 18, 1983.

William D. Ruckelshaus,

Administrator.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

Subpart C—Section 107 Attainment Status Designations

Section 81.324 of Part 81 of Chapter I, Title 40, Code of Federal Regulations is being amended. In the table for "Minnesota—TSP" the entry for AQCR 131 is revised to read as follows: (It should be noted that AQCR 131 is comprised of seven counties. The designations for AQCR 131 will now be listed on a county—specific basis.)

§ 81.324 Minnesota.

MINNESOTA—TSP

	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
AQCR 131 (comprised of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, Washington Counties)				
Anoka County:				
Cities of Fridley, Columbia Heights, Hill Top, and Spring Lake Park.		X		
Remainder of the county				X
Carver County				X
Dakota County:				
Cities of West St. Paul, South St. Paul, Mendota Heights, Sunfish Lake, Rosemount, Inver Grove Heights, Hastings, Mendota, and Lilydale.		X		
Remainder of the county				X
Hennepin County:				
Cities of Minneapolis and St. Louis Park	X			
Cities of Richfield, Edina, Golden Valley, New Hope, Crystal, Robbinson, Brooklyn Center, and Brooklyn Park.		X		
Remainder of the county				X
Ramsey County:				
City of St. Paul	X			

MINNESOTA—TSP—Continued

	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
Cities of North Oaks, White Bear, and White Bear Lake.				X
Remainder of the county		X		
Scott County				X
Washington County:				
Cities of Oakdale, Newport, St. Paul Park, Cottage Grove, and Grey Cloud Island.		X		
Remainder of the county				X

[FR Doc. 83-23316 Filed 8-24-83; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 81

[A-5-FRL 2421-5]

Designation of Areas for Air Quality Planning Purposes; Ohio

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice of final rulemaking.

SUMMARY: This notice changes the air quality attainment designation relative to the National Ambient Air Quality Standards (NAAQS) for total suspended particulates (TSP) for Lucas County, Ohio. Based upon the review of available monitoring data EPA is designating the Cities of Toledo and Oregon as secondary nonattainment and the remainder of the County attainment.

DATE: This final rulemaking becomes effective September 26, 1983.

ADDRESSES: Copies of the redesignation request and the supporting air quality data are available at the following addresses:

Regulatory Analysis Section, Air and Radiation Branch, Region V, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604

Ohio Environmental Protection Agency, Office of Air Pollution Control, 361 East Broad Street, Columbus, Ohio 43216

FOR FURTHER INFORMATION CONTACT: Delores Sieja at the EPA, Region V, address above or call (312) 886-6038.

SUPPLEMENTARY INFORMATION: The Clean Air Act Amendments of 1977 added Section 107(d) to the Clean Air Act (the Act). This section directed each State to submit to the Administrator of EPA a list of the NAAQS attainment status for all areas within the State. The Administrator was required to promulgate the State lists, with any necessary modifications. The Administrator published these lists in the **Federal Register** on March 3, 1978 (43 FR 8962), and make necessary amendments in the **Federal Register** on October 5, 1978 (43 FR 45993). These area designations are subject to revision whenever sufficient data become available to warrant a redesignation.

On June 9, 1982 (47 FR 25016) in a notice of direct final rulemaking, EPA approved redesignation requests for 15 counties in Ohio. The approval included Lucas County, in which the TSP primary nonattainment area was reduced in size to include only the City of Toledo, east of the Maumee River. The remainder of the County was designated attainment. In that notice, EPA advised the public that if someone wished to submit adverse or critical comments, then EPA would withdraw its approval and begin a new rulemaking by proposing the action and establishing a 30-day comment period.

EPA received notice that a member of the public wished to submit an adverse or critical comment only on the approval of Lucas County, and therefore, in accordance with applicable procedures, on September 17, 1982 (47 FR 41143), EPA withdrew only the final action for Lucas County. In a separate notice, also published on September 17, 1982, EPA proposed to reduce the size of the TSP primary nonattainment area to include only the City of Toledo, east of the Maumee River, and to designate the remainder of the County as attainment. EPA received comments from a grain terminal, an oil company, the State of Ohio, and the Toledo Environmental Services Agency.

Both the City and the State requested that the designation of Lucas County be modified to: Secondary nonattainment for the Cities of Toledo and Oregon, and attainment for the remainder of the County. To support their requests, the City and the State submitted data collected at numerous sites in the County between January 1980 and August 1982. After reviewing this data, EPA determined a new proposal was warranted and therefore on March 1, 1983, (48 FR 8497) EPA proposed to approve the modified redesignation request.

Interested parties were given until March 31, 1983, to submit comments on the proposed redesignation. In addition, EPA advised the public that it would not be responding to the grain terminal and oil company comments received on EPA's September 17, 1982 notice because the action taken in the March 1, 1983 notice supercedes the September 17, 1982 action. However, if notice is received that these comments continue to be applicable they will be addressed. EPA received no new comments on the March 31, 1983, notice of proposed rulemaking but received notification from the oil company that it wished its comments submitted on the September 17, 1982 notice to be considered by the Agency. Therefore, at this time EPA will respond to those comments.

Comment: The oil company agreed with the September 17, 1982 proposed redesignation of Lucas County in which the TSP primary nonattainment area was reduced in size to include only the City of Toledo, east of the Maumee River. As support for this redesignation the company submitted a summary of data for the period February 1980—February 1981 collected from their monitoring network located around their refinery in the City of Oregon.

Response: EPA agrees that the 1980-1981 data supplied by the oil company, in conjunction with available State data, supported the proposed designation in the September 17, 1982 notice. However, subsequent to the position taken in the September 17, 1982, notice EPA received data for 1982 from the State and City. The 1982 data showed that violations of the secondary NAAQS for TSP were recorded at four sites: (Toledo-26 Main Street, Toledo-60 North Westwood, Toledo-Eastside Sewage, and Oregon-Municipal Building). The 60 North Westwood site is located west of the Maumee River and the other three sites are located east of the Maumee River. Therefore, EPA now believes that a secondary TSP designation is appropriate for both the Cities of Toledo and Oregon, in their entirety.

Finally, although no public comments were received questioning the reason for the reduction in TSP concentrations that has occurred in the original Toledo primary nonattainment area over the past few years, EPA believes that this issue should be addressed. No primary violations have been measured in the County since 1979. This improvement can be linked to actual emission reductions (e.g. permanent source shutdowns, installation of pollution control equipment, and changes in operating practice) at local combustion sources. Air quality modeling and filter analysis have identified this source category as being responsible for a

substantial portion of the previous high concentrations in the area.

After having taken into consideration the oil company's comment which was submitted regarding the March 1, 1983, redesignation of Lucas County, EPA believes the position taken in that notice is appropriate. Therefore, pursuant to Section 107 of the Clean Air Act, EPA approves the redesignation as follows:

Cities of Toledo and Oregon	Secondary Nonattainment
Remainder of the County	Attainment

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

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 24, 1983. This action may not be challenged later in proceedings to enforce its requirements. [See Section 307(b)(2)].

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

(Sec. 107(d) of the Act, as amended (42 U.S.C. 74070)

Dated: August 18, 1983.

William D. Ruckelshaus,

Administrator.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

Subpart C—Section 107 Attainment Status Designations

Section 81.336 of Part 81 of Chapter I, Title 40 Code of Federal Regulations is amended. In the table for "Ohio—TSP" the entry for Lucas County should be revised to read as follows:

§ 81.36 Ohio.

OHIO—TSP

	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
Lucas:				
Cities of Toledo and Oregon		X		
The Remainder of Lucas County				X

[FR Doc. 83-23314 Filed 8-24-83; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 145

[OW-FRL-2408-4]

Alabama Department of Environmental Management; Underground Injection Control, Program Approval

AGENCY: Environmental Protection Agency.

ACTION: Approval of State program.

SUMMARY: The State of Alabama has submitted an application under Section 1422 of the Safe Drinking Water Act for the approval of an Underground Injection Control (UIC) program governing Classes I, III, IV, and V injection wells. After careful review of the application and comments received from the public, the Agency has determined that the State's program to regulate Classes I, III, IV, and V injection wells meets the requirements of Section 1422 of the Act. Therefore, this application is approved.

EFFECTIVE DATE: This approval is effective August 25, 1983.

FOR FURTHER INFORMATION CONTACT: Curtis F. Fehn, Chief, Groundwater Section, U.S. Environmental Protection Agency, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365, (404) 881-3866.

SUPPLEMENTARY INFORMATION: Part C of the Safe Drinking Water Act (SDWA) provides for an Underground Injection Control (UIC) program. Section 1421 of the SDWA requires the Administrator to promulgate minimum requirements for effective State programs to prevent underground injection which endangers drinking water sources. The Administrator is also to list in the **Federal Register** each State for which in his judgment a State UIC program may be necessary. Each State listed shall submit to the Administrator an application which contains a showing satisfactory to the Administrator that the State: (i) Has adopted after reasonable notice and public hearings, a UIC program which meets the requirements of regulations in effect under Section 1421 of the SDWA; and (ii) will keep such records and make such reports with respect to its activities under its UIC program as the Administrator may require by regulations. After reasonable opportunity for public comment, the Administrator shall by rule approve, disapprove or approve in part and disapprove in part, the State's UIC program.

The State of Alabama was listed as needing a UIC program on June 19, 1979 (44 FR 35288). The State submitted an application under Section 1422 on June 28, 1982, for the approval of a UIC program governing Classes I, III, IV, and V injection wells. The program would be administered by the Alabama Department of Environmental Management (ADEM).

On July 26, 1982, EPA published notice of its receipt of the application, requested public comments, and scheduled a public hearing on the Alabama UIC program submitted by the ADEM (47 FR 32175). Neither requests for public hearing nor requests to offer testimony at such hearing were received by EPA. Therefore, pursuant to the provisions of 40 CFR 145.31(c), the public hearing was canceled because of expressed lack of sufficient public interest. After careful review of this application, which includes the Memoranda Of Agreement (MOA), I have determined that the Alabama UIC program submitted by the ADEM to regulate Classes I, III, IV, and V injection wells meets the requirements of Section 1422 of the SDWA, and hereby approve it.

List of Subjects in 40 CFR Part 145

Indians—lands, Water supply, Reporting and recordkeeping requirements, Intergovernmental relations, Penalties, Confidential business information.

OMB Review

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

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I certify that approval by EPA under Section 1422 of the Safe Drinking Water Act of the application by the Alabama Department of Environmental Management will not have a significant econmic impact on a substantial number of small entities, since this rule only approves State actions. It imposes no new requirements on small entities.

Dated: August 18, 1983.

William D. Ruckelshaus,

Administrator.

[FR Doc. 83-23311 Filed 8-24-83; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 145

[OW-FRL-2408-5]

Maine Department of Environmental Protection; Underground Injection Control, Program Approval

AGENCY: Environmental Protection Agency.

ACTION: Approval of State Program.

SUMMARY: The State of Maine has submitted an application under Section 1422 of Safe Drinking Water Act for the approval of an Underground Injection Control (UIC) program governing Classes I, II, III, IV, and V injection wells. After careful review of the application, the Agency has determined that the State's injection well program for all classes of injection wells meets the requirements of Section 1422 of the Act and, therefore, approves it.

EFFECTIVE DATE: This approval is effective September 26, 1983.

FOR FURTHER INFORMATION CONTACT: Carol M. Wood, Water Supply Branch, Environmental Protection Agency, Region I, JFK Federal Building, Boston, Massachusetts 02203, (617) 223–6486.

SUPPLEMENTARY INFORMATION: Part C of the Safe Drinking Water Act (SWDA) provides for an Underground Injection Control (UIC) program. Section 1421 of the SDWA requires the Administrator to promulgate minimum requirements for effective State programs to prevent underground injection which endangers drinking water sources. The Administrator is also to list in the **Federal Register** each State for which, in his judgment, a State UIC program may be necessary. Each State listed shall submit to the Administrator an application which contains a showing satisfactory to the Administrator that the State: (i) Has adopted after reasonable notice and public hearings, a UIC program which meets the requirements of regulations in effect under Section 1421 of the SDWA; and (ii) will keep such records and make such reports with respect to its activities under its UIC program as the Administrator may require by regulations. After reasonable opportunity for public comment, the Administrator shall by rule approve, disapprove or approve in part and disapprove in part, the State's UIC program.

The State of Maine was listed as needing a UIC program on March 19, 1980 (45 FR 17632). The State submitted an application under Section 1422 on March 7, 1983, for a UIC program to be administered by the Maine Department of Environmental Protection (MDEP). On March 18, 1983 EPA published notice of receipt of the application, requested public comments, and offered a public hearing on the UIC program submitted by the MDEP (48 FR 11468).

Neither requests for public hearing nor requests to offer testimony at such hearing were received by EPA. Therefore, pursuant to the provisions of 40 CFR 145.31(c), the public hearing was cancelled because of lack of sufficient public interest. After careful review of the application, which includes the Memoranda of Agreement (MOA), I have determined that the Maine UIC program for Classes I, II, III, IV, and V injection wells submitted by the MDEP meets the requirements established by the Federal regulations pursuant to Section 1422 of the SDWA and, hereby, approve it.

List of Subjects in 40 CFR Part 145

Indians—lands, Reporting and recordkeeping requirements, Intergovernmental relations, Penalties, Confidential business information, Water Supply.

OMB Review

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

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I certify that approval by EPA under Section 1422 of the Safe Drinking Water Act of the application by the Maine Department of Environmental Protection will not have a significant economic impact on a substantial number of small entities since this rule only approves State actions. It imposes no new requirements on small entitites.

Dated: August 18, 1983.

William D. Ruckelshaus,

Administrator.

[FR Doc. 83-23310 Filed 8-24-83; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 145

[OW-FRL-2408-6]

Mississippi Department of Natural Resources; Underground Injection Control, Program Approval

AGENCY: Enviromental Protection Agency.

ACTION: Approval of State Program.

SUMMARY: The State of Mississippi has submitted an application under Section 1422 of the Safe Drinking Water Act for the approval of an Underground Injection Control (UIC) program governing Classes I, III, IV, and V injection wells. After careful review of the application and comments received from the public, the Agency has determined that the State's program to regulate Classes I, III, IV, and V injection wells meets the requirements of Section 1421 of the Act. Therefore, this application is approved.

EFFECTIVE DATE: This approval is effective September 26, 1983.

FOR FURTHER INFORMATION CONTACT: Curtis F. Fehn, Chief, Groundwater Section, U.S. Environmental Protection Agency, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365, (404) 881–3866.

SUPPLEMENTARY INFORMATION: Part C of the Safe Drinking Water Act (SDWA) provides for an Underground Injection Control (UIC) program. Section 1421 of the SDWA requires the Administrator to promulgate minimum requirements for effective State programs to prevent underground injection which endangers drinking water sources. The Administrator is also to list in the **Federal Register** each State for which in his judgment a State UIC program may be necessary. Each State listed shall submit to the Administrator an application which contains a showing satisfactory to the Administrator that the State: (i) Has adopted after reasonable notice and public hearings, a UIC program which meets the requirements of regulations in effect under Section 1421 of the SDWA; and (ii) will keep such records and make such reports with respect to its activities under its UIC program as the Administrator may require by regulations. After reasonable opportunity for public comment, the Administrator shall by rule approve, disapprove or approve in part and disapprove in part, the State's UIC program.

The State of Mississippi was listed as needing a UIC program on September 25, 1978 (43 FR 43420). The State submitted an application under Section 1422 on March 10, 1982, for the approval of a UIC program governing Classes I, III, IV, and V injection wells. The program would be administered by the Mississippi Department of Natural Resources (MDNR). On April 8, 1982, EPA published notice of its receipt of the application, requested public comments, and scheduled a public hearing on the Mississippi UIC program submitted by the MDNR (47 FR 15147). Neither requests for public hearing nor requests to offer testimony at such hearing were received by EPA. Therefore, pursuant to

the provisions of 40 CFR 145.31(c), the public hearing was cancelled because of lack of sufficient public interest. After careful review of this application, which includes the Memorandum of Agreement (MOA) and written comments from the public, I have determined that the Mississippi UIC program submitted by the MDNR to regulate Classes I, III, IV, and V injection wells meets the requirements of Section 1422 of the SDWA, and hereby approve it.

List of Subjects in 40 CFR Part 145

Indians—lands, Water supply, Reporting and recordkeeping requirements, Intergovernmental relations, Penalties, Confidential business information.

OMB Review

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

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I certify that approval by EPA under Section 1422 of the Safe Drinking Water Act of the application by the Mississippi Department of Natural Resources will not have a significant economic impact on a substantial number of small entities, since this rule only approves State actions. It imposes no new requirements on small entities.

Dated August 18, 1983.

William D. Ruckelshaus,

Administrator.

[FR Doc. 83-23309 Filed 8-24-83; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Child Support Enforcement

45 CFR Part 303

Requests To Use the Federal Parent Locator Service in Parental Kidnapping and Child Custody Cases

AGENCY: Office of Child Support Enforcement (OCSE), HHS.

ACTION: Final rule.

SUMMARY: Section 9 of Pub. L. 96-611, the Parental Kidnapping Prevention Act of 1980, provides that a State may enter into an agreement with the Office of Child Support Enforcement (OCSE) to obtain Federal Parent Locator Service (PLS) information for use in parental kidnapping and child custody cases. To implement section 9, we published a Final Rule with Comment Period on these provisions on November 3, 1981 (46 FR 54554). The comments received in response to that publication, our responses to them and changes made to the final rule are discussed below. The purpose of the regulations is to expand the use of the Federal Parent Locator Service to include requests for information in parental kidnapping and child custody cases.

EFFECTIVE DATE: August 25, 1983.

FOR FURTHER INFORMATION CONTACT: Judith Hagopian, (301) 443-5350, Office of Child Support Enforcement, Department of Health and Human Services, Room 1010, 6110 Executive Boulevard, Rockville, Maryland, 20852.

SUPPLEMENTARY INFORMATION: A notice informing the public of a new routine use of information was published in the **Federal Register** on September 4, 1981, as required by the Privacy Act.

Statutory Provisions

Before enactment of section 9 of Pub. L. 96-611, the Social Security Act (the Act) allowed States to obtain information from the Federal PLS to locate absent parents only for the purposes of establishing paternity or establishing and enforcing child support obligations. Various Federal statutes and OCSE regulations expressly prohibited States from acquiring the information for any other purpose. Section 9 of Pub. L. 96-611, effective July 1, 1981, amended the Act by amending sections 454 and 455 and adding a new section 463. The new section 463 provides that States may enter into an agreement with the Secretary of Health and Human Services to obtain information from the Federal PLS for use in locating a parent or child for the purposes of making or enforcing a child custody determination or in cases of parental kidnapping.

The new law amends section 454 of the Act by requiring that States amend their State IV-D plans to indicate whether or not they wish to perform this new function. Section 455 as amended precludes the payment of Federal matching funds for the costs of carrying out agreements under the new section 463.

Provisions of Final Regulations Published November 3, 1981

Because OCSE already has regulations that govern State IV-D agency use of the Federal PLS, we implemented many of the new statutory requirements simply by adding language to the following regulations to extend use of the Federal PLS to parental kidnapping and child custody cases. 45 CFR 302.35 now specifies those persons authorized to request Federal PLS information through the State PLS in connection with parental kidnapping and child custody cases. 45 CFR 303.70 (formerly § 302.70) now allows access to Federal PLS information in parental kidnapping and child custody cases. Section 303.70(e)(1) requires States to collect or pay fees to offset Federal costs of processing Federal PLS requests in connection with parental kidnapping and child custody cases. 45 CFR 304.20(b) and 304.23(h) prohibit Federal funding of any expenditures incurred in providing Federal PLS information in connection with parental kidnapping and child custody cases.

45 CFR 303.15, added to implement section 463 of the Act, sets forth the requirements for an agreement which the State must enter into with OCSE if it wishes to use the Federal PLS to obtain information for enforcing any State of Federal law with respect to the unlawful taking or restraint of a child, or making or enforcing a child custody determination. In addition, § 303.15(c)(1) specifies the type of information that OCSE will make available to the State under the agreement and sets forth the conditions that the State must meet in requesting data and ensuring that the data are safeguarded. To date, 18 States have entered into agreements to use the Federal PLS in parental kidnapping and child custody cases.

Section 303.15(c)(5) also requires that the State agree to distinguish parental kidnapping and child custody requests from child support enforcement requests. Because no Federal financial participation (FFP) is available under the statute, § 303.15(c)(7) provides that the State must agree to impose, collect and account for fees to offset OCSE processing costs and must agree to transmit the Federal portion of the fees in the amount and in the manner prescribed by OCSE in instructions.

Finally, under § 303.15(c)(8), the State must agree to restrict access to the data, store it securely, and otherwise ensure its confidentiality. Under this requirement, the State must agree to send the information directly to the requestor, make no other use of the information, and destroy any records related to the request that are confidential in nature.

In order to assist States in deciding whether to enter into an agreement to use the Federal PLS to obtain information in parental kidnapping and child custody cases, we attached the necessary agreement as an appendix to § 303.15.

45 CFR 303.69, added to provide procedures for requests for Federal PLS information by agents or attorneys of the United States, specified that, if a case involves a State with an agreement in effect under the new §303.15, the Ferderal agent or attorney must request information through the State parent locator service. Section 303.69 further specified that the Federal agent or attorney may request information directly from the Federal PLS only if no States involved in the case have agreements. We have provided instructions to the Federal Bureau of Investigation and to the Executive Office for United States Attorneys regarding procedures for U.S. attorneys and agents to follow when making such request.

Changes to Final Regulations

This document makes certain changes to the final regulations as a result of comments received in response to the regulations published in the **Federal Register** on November 3, 1981.

Section 303.70(e)(1) stated that the IV-D agency shall collect *or* pay the fees required under sections 453(e)(2) and 454(17) of the Act to be charged to individuals making requests to the Federal PLS. In response to a comment received, we revised § 303.70(e)(1) to require the IV-D agency to "pay the fees required under sections 453(e)(2) and 454(17) of the Act." In addition, we added a new § 303.70(e)(2) and redesignated the old paragraph (e)(2) as (e)(5). The new § 303.70(e)(2) clarifies that the fee required under section 453(e)(2) of the Act (related to requests made for child support purposes) must be charged to the resident parent, legal guardian, attorney or agent of a child who is not receiving aid under title IV-A of the Act.

While section 453(e)(2) of the Act specifies from whom a State must collect a fee for a Federal PLS request, section 454(17) (related to requests made in parental kidnapping and child custody cases) requires only that the State "impose and collect (in accordance with regulations of the Secretary) a fee," without specifying from whom it must be collected. We added a new § 303.70(e)(3) and redesignated the old paragraph (e)(3) as (e)(6) in order to permit States either to charge an individual requesting information or to absorb, without charging the individual requesting information, the fee required under section 454(17) of the Act. This will enable States which want to absorb the fees required under section 454(17) to do so. It does not relieve a State which absorbs the fees from paying the Federal government for its portion of the costs.

We added a new § 303.70(e)(4) which requires fees under sections 453(e)(2) and 454(17) to be reasonable so as not to discourage use of Federal PLS services by authorized persons. Paragraph (e)(4) was added in response to requests from States that we issue guidelines for States to follow in establishing their fees. Although we are not mandating what fees States should charge to cover State costs, States must establish fees which are reasonable and as close to actual costs as possible so as not to discourage use of Federal PLS services by authorized persons.

Section 303.69(a)(2) required the Federal agent or attorney to make the request through the State PLS if a case involved one or more States that had an agreement under § 303.15. Section 303.69(a)(3) permitted the agent or attorney to request the information directly from the Federal PLS only if the case involved States that did not have agreements. In response to a comment received, we revised § 303.69 by removing paragraphs (a) (2) and (3), redesignating paragraph (a)(1) as paragraph (a), and revising the text to allow Federal agents and attorneys to request information directly from the Federal PLS in all cases. Direct access by Federal agents and attorneys would ensure stringent security of confidential information and would eliminate the additional time and effort of submitting requests through the State. We also revised § 303.69(e) to provide that a fee *may* (as opposed to "will") be charged for requests made directly to the Federal PLS by Federal agents and attorneys in cases involving the unlawful taking or restraint of a child. We believe that waiving the Federal fee in processing requests from Federal agents and attorneys is both reasonable and cost-effective because of the likelihood that we will receive few requests of this type.

Response to Comments

We received comments on the final rule from five State agencies and one private organization. A summary of the substantive comments and our responses follows.

1. *Comment:* Three commenters stated that the definition of person authorized to request Federal PLS information in parental kidnapping and child custody cases at § 303.15 needed clarification. Section 303.15(a)(1) defines an authorized persons as any agent or attorney of any State having an agreement who has the duty or authority under State law to enforce a child custody determination, any court having jurisdiction to make or enforce a child custody determination, or any agent of the court, and any agent or attorney of the United States, or of a State having an agreement, who has the duty or authority to investigate, enforce, or bring a prosecution with respect to the unlawful taking or restraint of a child. One commenter asked if private attorneys were included as authorized persons in the definition. Another commenter asked if the definition included court requests for Federal PLS information in connection with child custody determinations in adoption and parental rights termination cases.

Response: We believe the definition, which is taken from the statute, is sufficient since it provides States some flexibility to establish who qualifies as an authorized person under State law. Because States are in the best position to determine who is qualified under State law, and because we believe it is important to continue to provide this flexibility, we have not changed the regulation.

However, in response to the question of whether private attorneys are considered authorized persons, we offer the following information. Section 463(d)(2)(A) of the Act applies to those agents and attorneys who are empowered to act on behalf of the State to enforce a child custody determination. Examples of such agents are officers employed by the State, such as social workers and law enforcement officials, including a State's attorney empowered to act on behalf of the State to prosecute a parental kidnapping or child custody case. It does not include a private attorney. In addition, we do not consider private attorneys to be agents of the court for purposes of section 463(d)(2)(B) since they do not have the authority to make or enforce a child custody determination. Consequently, neither parents nor their private legal representatives may apply directly to the State PLS for Federal PLS information in parental kidnapping and child custody cases. Parents or their legal representatives may, however, petition a court to request location information from the Federal PLS concerning the absconding parent and missing child. Similarly, a parent can request the appropriate State officials who are authorized persons to make a location request, provided that the State has a law covering the wrongful taking or restraint of a child.

In response to the comment regarding court requests for Federal PLS information in connection with child custody determinations in adoption and parental rights termination cases,

section 463 of the Act allows the release of Federal PLS information for enforcing any State or Federal law with respect to a child custody determination. Thus, it is reasonable and appropriate for a court to request Federal PLS information in a child custody case involving the above circumstances.

2. *Comment:* Three commenters stated that FFP should be made available to States which enter into agreements with OCSE to use the Federal PLS in parental kidnapping and child custody cases.

Response: Because section 9 of Pub. L. 96-611 prohibits FFP for any expenditures made to carry out an agreement under section 463 of the Act, OCSE has no discretion with respect to providing reimbursement for these expenditures.

3. *Comment:* Two commenters stated that, if broadly interpreted, 45 CFR 303.15(c)(8)(vi) could mean that in addition to destroying confidential records, even the requests for information must be destroyed. The commenters were concerned that such an interpretation would reduce a State's ability to keep track of requests for billing, accounting and audit purposes.

Response: 45 CFR 303.15(c)(8)(vi) provides that the State must agree to destroy any confidential records and information related to the requests after the information has been sent to the requestor. This means that confidential records and information in the form of data obtained from the Federal PLS must be destroyed, not the request itself or information obtained from the requestor. Therefore, States are not precluded from maintaining information such as names and addresses of the requestors and the names of persons being sought for billing, accounting and audit purposes. We believe the regulation is sufficiently clear on this point.

4. *Comment:* Two commenters requested that guidelines be issued to States for establishing State fees and billing procedures.

Response: Because we have no way of determining State costs, we have not mandated what fees States must charge to cover such costs. However, we agree that some guidelines should be provided. Therefore, we have added § 303.70(e)(4) to require that fees be reasonable and as close to actual costs as possible so as not to discourage the use of Federal PLS services by authorized persons. (See discussion under "Changes to Final Regulations.")

5. *Comment:* One commenter stated that § 303.70(e)(1) should say that "the IV-D agency shall collect and pay the fees required under sections 453(e)(2) and 454(17) of the Act," instead of "collect or pay the fees * * *" to be consistent with section 454(17) of the Act and § 303.15(c)(6).

Response. To clarify the requirements for paying fees under sections 453(e)(2) and 454(17) of the Act, we revised § 303.70(e)(1) to require the IV-D agency to "pay the fees" required under those two sections of the Act. In addition, we added a new § 303.70(e)(2) to clarify from whom the IV-D agency must collect a fee required under section 453(e)(2) of the Act for requests involving child support. We believe States have discretion to collect or absorb the fees required under section 454(17) of the Act and § 303.15(c)(6) for requests involving parental kidnapping and child custody. Therefore, we added a new § 303.70(e)(3) to allow States either to charge the authorized person requesting information, or to absorb the fee required under section 454(17). (See discussion under "Changes to Final Regulations.")

6. *Comment:* One State commented that it would like to absorb the fee required under section 454(17) of the Act and to reimburse the Federal government from State funds. Because the State receives so few requests for Federal PLS information in connection with parental kidnapping and child custody cases, setting up a billing and accounting system for the collection of fees would not be cost effective.

Response: We believe that the purpose of the fee provision is to ensure both that the Federal government is reimbursed for its costs and that no State costs are charged to the Federal government. Because section 454(17) of the Act does not specify from whom the fee must be collected, a State could absorb the costs if it believes that doing so would be more cost efficient. It is still necessary, however, for OCSE to be able to distinguish child support enforcement requests from parental kidnapping and child custody requests since the cost of the latter is not eligible for FFP. Therefore, a State must still maintain a system, containing nonconfidential information, which separates child support enforcement requests from parental kidnapping and child custody requests. (See discussion under "Changes to Final Regulations.")

7. *Comment:* We received three substantive comments on § 303.69, Requests by agents or attorneys of the United States for information from the Federal PLS. One commenter supported allowing direct access to the Federal PLS by Federal agents and attorneys in States without agreements. Another commenter stated it would be more efficacious if all Federal agents and attorneys had direct access to the Federal PLS and States were not required to honor requests from them. A third commenter requested that OCSE not charge fees for requests made to the Federal PLS Federal agents and attorneys who have the duty or authority to investigate, enforce or bring a prosecution with respect to the unlawful taking or restraint of a child.

Response: We agree that it would be simpler for Federal agents and attorneys to request information directly from the Federal PLS. This would eliminate the additional step of going through the State. We believe such a policy is feasible and would not place an undue burden on the Federal PLS staff since we anticipate the volume of requests from Federal agents and attorneys to be low. Therefore, we revised § 303.69 by removing paragraphs (a)(2) and (3), redesignating paragraph (a)(1) as paragraph (a), and revising the text to allow direct access to the Federal PLS by Federal agents and attorneys in all cases involving the unlawful taking or restraint of a child. (See discussion under "Changes to Final Regulations.") This does not preclude Federal agents and attorneys from going through the State PLS if they so choose, and the State PLS must process these requests. We have also amended § 303.69(e) to provide that a fee may (instead of "will") be charged for requests made directly to the Federal PLS by Federal agents and attorneys in such cases. As long as the volume of such requests remains low, setting up of a billing and accounting system for the collection of such fees would not be cost effective.

8. *Comment:* Two commenters requested changes be made to the signatory page of the agreement. One commenter stated that requesting the Governor to sign the agreement and the Attorney General to certify it was too time consuming. Another commenter requested that the agreement be revised to clarify that the Governor *or* the Governor's designee may sign the agreement.

Response: In response to both commenters we believe revision of the agreement is unnecessary. Section 303.15(d)(1) clearly states that an agreement must be signed either by the Governor of the State or by the Governor's designee. We also believe that the Attorney General's signature is necessary whenever the Federal government and the State enter into an agreement under section 463 of the Act to certify the authority of the signing State official to commit the State to the agreement and to ensure the legality of the agreement under State law. In addition, OCSE requires the consent of

the Governor or his/her designee and the Attorney General to the execution of the agreement to ensure that the highest State authorities are aware of the consequences of any misuse of Federal PLS information.

9. *Comment:* One commenter referred to Article V of the agreement which states that the Director, OCSE, will not be liable for any financial loss incurred by the State through use of any data furnished pursuant to the agreement. The commenter questioned whether this Article is intended to place liability solely on the State, whether the State in turn can disclaim liability for any losses incurred through the use of data supplied, and whether this Article is negotiable and may be modified on a State by State basis.

Response: Article V limits the Director's liability only and may not be modified. OCSE is not in a position to determine if a State can, through means other than the agreement, disclaim its liability for any losses incurred through the use of data furnished pursuant to the agreement. That is a matter of State law. However, since the State acts as a conduit of information between the authorized person and the Federal PLS, the State is responsible for adopting policies and procedures for safeguarding and releasing such information according to Article IV of the agreement.

10. *Comment:* Several States were confused regarding the role of the State PLS in parental kidnapping and child custody cases.

Response: Pub. L. 96-611 authorizes the use of the Federal PLS in parental kidnapping and child custody cases contingent upon a signed agreement between the State and the Director of OCSE on behalf of the Secretary of HHS. The IV-D agency and its components (including the State PLS) are not authorized to perform activities in connection with parental kidnapping or child custody cases, as evidenced by the lack of Federal funding for such activities under the law. A State choosing to implement the service covered by these regulations acts only as a conduit of information between the authorized person making the request and the Federal information source, the Federal PLS.

States may wish to develop their own systems, outside the IV-D agency, for using public information to locate missing children and parents within the State. As long as Federal funds are not used for these purposes, there would be no violation of either IV-D regulations or Pub. L. 96-611.

Regulatory Impact Analysis

This rule makes minor revisions to an existing rule that allows States to request use of the Federal PLS in parental kidnapping and child custody cases. The major change in the rule is to allow Federal agents and attorneys to make direct requests from the PLS. While the Federal government will absorb the cost of this provision, the cost will be insignificant since there should be few direct requests. Therefore, we have determined that the rule is not major under the criteria of Executive Order 12291 and a Regulatory Impact Analysis is not required. For the reason cited above, the Secretary certifies that this rule will not have a significant economic impact on a substantial number of small entities; a Regulatory Flexibility Analysis under the Regulatory Flexibility Act of 1980 (Pub. L. 96-354) is, therefore, not required.

OMB Clearance

The reporting requirements in these regulations have been cleared by the Office of Management and Budget under number 0960-0258.

List of Subjects in 45 CFR Part 303

Child welfare, Grant programs/social programs.

PART 303—[AMENDED]

The final rules with comment period published in the **Federal Register** on November 3, 1981 (46 FR 54554) are adopted as final rules with the following changes:

1. 45 CFR 303.70(e) is amended by revising paragraph (e)(1), redesignating paragraphs (e) (2) and (3) as paragraphs (e) (5) and (6) and adding new paragraphs (e) (2), (3) and (4) to read as follows:

§ 303.70 Requests by the State parent locator service for information from the Federal Parent Locator Service (PLS).

* * * * *

(e)(1) The IV-D agency shall pay the fees required under sections 453(e)(2) and 454(17) of the Act.

(2) The IV-D agency shall charge the resident parent, attorney or agent of a child who is not receiving aid under title IV-A of the Act the fee required under section 453(e)(2) of the Act.

(3) The IV-D agency may charge an individual requesting information or pay without charging the individual the fee required under section 454(17) of the Act.

(4) The fees required under sections 453(e)(2) and 454(17) of the Act shall be reasonable and as close to actual costs as possible so as not to discourage use of Federal PLS services by authorized individuals.

(5) For processing requests on behalf of the resident parent, legal guardian, attorney or agent of the child who is not receiving aid under title IV-A of the Act (see 45 CFR 302.35(c)(3)), the Office will collect the fees from the IV-D agency by an offset of the State's quarterly grant award.

(6)(i) For costs of processing requests on behalf of persons authorized to receive information in parental kidnapping and child custody cases, the Federal government will bill the IV-D agency periodically. A separate fee will be charged to cover costs of searching for a social security number before processing a request for location information.

(ii) The IV-D agency shall transmit payment to the Federal government upon receipt of a bill. If a State fails to pay the appropriate fees charged by the Office, this will result in termination of the services provided under section 463 of the Act.

(iii) Fees shall be transmitted in the amount and manner prescribed by the Office in instructions.

2. 45 CFR 303.69 is revised by removing paragraphs (a) (2) and (3), redesignating paragraph (a)(1) as paragraph (a), and changing the text to read as follows:

§ 303.69 Requests by agents or attorneys of the United States for information from the Federal Parent Locator Service (PLS).

(a) Agents or attorneys of the United States may request information directly from the Federal PLS in connection with a parental kidnapping or child custody case. (See § 303.15(a) of this part for a definition of persons authorized to request the information.)

(b) All requests under this section shall be made in the manner and form prescribed by the Office.

(c) All requests under this section shall contain the information specified in § 303.70(c) of this part.

(d) All requests under this section shall be accompanied by a statement, signed by the agent or attorney of the United States, attesting to the following:

(1) The request is being made solely to locate an individual in connection with a parental kidnapping or child custody case.

(2) Any information obtained through the Federal PLS shall be treated as confidential, shall be used solely for the purpose for which it was obtained and shall be safeguarded.

(e) A fee may be charged to cover the costs of processing requests for

information. A separate fee may be charged to cover costs of searching for a social security number before processing a request for location information.

(Section 1102 of the Social Security Act (42 U.S.C. 1302) and sections 454(17), 455(a), and 463 of the Social Security Act (42 U.S.C. 654(17), 655(a), and 663))

(Catalog of Federal Domestic Assistance Program No. 13.679, Child Support Enforcement Program)

Dated: May 9, 1983.

John A. Svahn,

Director, Office of Child Support Enforcement.

Approved: July 29, 1983.

Margaret M. Heckler,

Secretary.

[FR Doc. 83-23292 Filed 8-24-83; 8:45 am]

BILLING CODE 4190-11-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 42

[CGD 79-153]

Freeboards; Load Line Regulations

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: These regulations clarify the freeboard requirements of the load line regulations. The clarifications are based on internationally accepted interpretations of the International Convention on Load Lines of 1966.

EFFECTIVE DATE: September 26, 1983.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Perrini, Office of Merchant Marine Safety (G-MTH-5/13), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, D.C. 20593, (202) 426-2606.

SUPPLEMENTARY INFORMATION: On February 4, 1982, the Coast Guard published a notice of proposed rulemaking in the **Federal Register** (47 FR 5266). Interested persons were given until April 5, 1982 to submit comments. Seven comments were received from three commentors. Drafting Information: The principal persons involved in drafting this final rule are Mr. Frank Perrini, Naval Architect, Office of Merchant Marine Safety, and LT Walter J. Brudzinski, Project Attorney, Office of Chief Counsel.

Discussion of Comments

Three comments addressed the damaged stability assumptions for B-100 vessels; three comments addressed free surface calculations; and one comment questioned the wording in the residual stability requirements.

One comment, in addressing proposed § 42.20-8(b)(1), notes that, for B-100 vessels not greater than 225 meters (738 feet) in length, flooding in the machinery space was not excluded as is done in both the existing rule and the Resolution. The existing rules in § 42.20-10(f) require flooding to "any two adjacent fore and aft compartments, neither of which is the machinery space." This section also refers to paragraph (c)(4) which gives general flooding requirements and permeability assumptions for Type B freeboard reductions ". . . excluding the machinery space. . . ." Part (10)(a)(ii) of the Resolution also implies exclusion of the machinery space for vessels not greater than 225 meters by reference to Part (8)(d).

Two comments note that proposed § 42.20-8(b)(2) did not exclude damage to the machinery bulkhead for vessels over 225 meters as in the existing rules and the Resolution. The existing rules include ". . . flooding of the machinery space, taken alone . . .", implying no damage to machinery bulkheads. Exclusion of damage to machinery bulkheads is stated in Part (10)(a)(iii) and implied in Part (10)(b) of the Resolution.

These comments state that the proposed rules, considering these variations, appeared to be more severe than the existing rules for B-100 vessels, both above and below 225 meters in length. The comments add that this would have a significant effect on large hold bulk carriers and ore/bulk/oil vessels, if these types of vessels were allowed a B-100 load line.

The Coast Guard agrees that the wording of the proposed § 42.20-8(b)(1) did not clearly exclude flooding of the machinery space. Therefore that paragraph has been modified and renumbered under § 42.20-8(a)(1) to read, "If the vessel is 225 meters (738 feet) or less in length, it must be able to withstand the flooding of any two adjacent fore and aft compartments, excluding the machinery space."

The Coast Guard also agrees that the wording of proposed § 42.20-8(b)(2) did not clearly exclude damage to machinery space bulkheads. Accordingly, that paragraph has been modified and renumbered under § 42.20-8(a)(2) to read, "If the vessel is over 225 meters (738 feet) in length, the flooding standard of [vessels less than 738 feet] must be applied, treating the machinery space, taken alone, as a floodable compartment."

Three comments note a substantive difference in the free surface assumptions for cargo liquids required in proposed § 42.20-10(a)(2) as compared to the existing rules and the Resolution. The existing rules in § 42.20-3(f)(4) require only those compartments existing in the full load condition to be considered for free surface. The existing rules are silent on the percentage of fullness, but full homogeneous loading is implied in § 42.20-3(f)(1). Sections (11)(b)(ii) and (iii) of the Resolution require that cargo tanks be fully loaded (98 percent) or completely empty and Section (11)(b)(v) requires that the free surface be calculated in that condition. In the proposed rules, cargo tanks were considered to be either 98 percent full or completely empty for the initial conditions in § 42.20-9 (c) and (d). The proposed rules, however, would have required in § 42.20-10(a)(2) that "the maximum free surface of each compartment must be included, assuming the compartment to be 70% full. . . ." One comment states that this significantly increases the free surface requirements over both the existing rule and the Resolution. Another comment notes that the proposed section represented a major substantive change which results in the loss of cargo carrying capacity. The Coast Guard agrees and has modified the proposed section on free surface requirements to parallel those of the Resolution. Section § 42.20-10(2) has been modified and renumbered under § 42.20-10(b) to read as follows:

"For cargo liquids, unless the compartment is assumed to be empty as required by § 42.20-9(b)(3), the free surface of those compartments containing liquids is calculated at an angle of heel of not more than 5 degrees."

One comment, in addressing § 42.20-12(e) of the proposed rules regarding residual stability, objects to the use of the sentence, "The Commandant gives consideration to the potential hazard presented by protected or unprotected openings which may become temporarily immersed within the range of residual stability." This comment states that this requirement would impose undue structural stresses on parts of the hull and deckhouse when they are subjected to the associated increased head pressure and wave action, and that lifeboats would be submerged. The Coast Guard agrees that in actual practice these conditions could occur. However, the intent of the residual stability criteria is to prolong the buoyancy and stability of the hull after it has incurred major flooding and structural damage. This would afford additional time for rescue of persons

and possible salvage of the vessel. It is not the intent of these regulations to guarantee indefinite structural integrity under these conditions. With regard to lifeboats, assuming this degree of damage, they should have already been launched. All of paragraph (e) including this sentence has been reworded and restructured to conform to the standard format on residual stability which will be used in future Coast Guard regulations on subdivision and stability. The proposed sentence has been simplified as § 42.20–12(e)(4) to read as follows:

"Each submerged opening must be weathertight (e.g. a vent fitted with a ball check valve)."

Evaluation

The Coast Guard has evaluated this final rule under Executive Order 12291 and finds that it is not a major regulation. The Coast Guard has reviewed this final rule under DOT Order 2100.5 of May 22, 1980, "Policies and Procedures for Simplification, Analysis and Review of Regulations" and has determined that it is nonsignificant. The impact of this final rule would be minimal since no substantive changes are being made to the regulations; therefore, no economic evaluation has been prepared. In accordance with section 605(b) of the Regulatory Flexibility Act (94 Stat. 1164), it is also certified that these rules will not have a significant impact on a substantial number of small entities since no substantive changes are being made to the regulations.

Paperwork Reduction Act

This final rule does not contain any recordkeeping or reporting requirements subject to approval by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507 *et seq.).*

List of Subjects in 46 CFR Part 42

Vessels, Penalties.

PART 42—DOMESTIC AND FOREIGN VOYAGES BY SEA

In consideration of the foregoing, Part 42 of Title 46, Code of Federal Regulations is amended to read as follows:

1. The authority citation for Part 42 reads as follows:

Authority: Pub. L. 93–115, 87 Stat. 418 (46 U.S.C. 86); Pub. L. 87–620, 76 Stat. 416 (46 U.S.C. 88a); Pub. L. 89–670, 80 Stat. 938 (49 U.S.C. 1655(b)); 49 CFR 1.46(b).

2. By revising § 42.09–5 to read as follows:

§ 42.09–5 All vessels—division into types.

(a) For the purposes of this part, each vessel to which this part applies is either a Type "A" or a Type "B" vessel.

(b) A Type "A" vessel is a vessel that—

(1) Is designed to carry only liquid cargoes in bulk;

(2) Has a high degree of watertight and structural integrity of the deck exposed to the weather, with only small openings to cargo compartments that are closed by watertight gasketed covers of steel or other material considered equivalent by the Commandant; and

(3) Has a low permeability of loaded cargo compartments.

(c) A Type "B" vessel is any vessel that is not a Type "A" vessel.

(d) Requirements governing the assignment of freeboards for Types "A" and "B" vessels are in Subparts 42.20 and 42.25 of this part.

3. By revising paragraph (a)(2) of § 42.09–10 to read as follows:

§ 42.09–10 Stability, subdivision, and strength.

(a) * * *

(2) Additional stability, subdivision, and strength requirements are in §§ 42.09–1, 42.13–1, 42.13–5, and 42.15–1. The applicable flooded stability requirements are in §§ 42.20–3 through 42.20–13.

* * * * *

4. By revising paragraph (a) of § 42.15–80 to read as follows:

§ 42.15–80 Special conditions of assignment for Type "A" vessels.

(a) *Machinery casings.* Machinery casings on Type "A" vessels as defined in § 42.09–5(b) must be protected by an enclosed poop or bridge of at least standard height, or by a deckhouse of equal height and equivalent strength, except that machinery casings may be exposed if there are no openings giving direct access from the freeboard deck to the machinery space. A door complying with the requirements of § 42.15–10 is permitted in the machinery casing if it leads to a space or passageway which is as strongly constructed as the casing and is separated from the stairway to the engine room by a second weathertight door of steel or equivalent material.

* * * * *

§§ 42.20–1 through 42.40–10—[Removed]

5. By removing existing §§ 42.20–1 through 42.20–10 and adding new §§ 42.20–3 and 42.20–5 through 42.20–13 to read as follows:

§ 42.20–3 Freeboard assignment: Type "A" vessels.

(a) A Type "A" vessel is assigned a freeboard not less than that based on Table 42.20–15(a)(1) provided that the vessel meets the flooding standard in § 42.20–6.

(b) A vessel that meets the requirements in 33 CFR 157.21, or 46 CFR 153.20, 153.21, 153.22 or 154.210 is considered by the Coast Guard as meeting the flooding standard referenced in paragraph (a) of this section.

§ 42.20–5 Freeboard assignment: Type "B" vessels.

(a) Each Type "B" vessel is assigned a freeboard from Table 42.20–15(b)(1) that is increased or decreased by the provisions of this section.

(b) Each Type "B" vessel that has a hatchway in position 1, must have the freeboard assigned in accordance with paragraph (a) of this section increased by the amount given in Table 42.20–5(b) unless the hatch cover complies with:

(1) Section 42.15–25(d); or

(2) Section 42.15–30.

TABLE 42.20–5(b).—FREEBOARD INCREASE OVER TABULAR FREEBOARD FOR TYPE "B" VESSELS WITH HATCH COVERS NOT COMPLYING WITH § 42.15–25(d) OR § 42.15–30.

[Metric]

Length of ship (meters)	Freeboard increase [1] (millimeters)
[2]108	50
109	52
110	55
111	57
112	59
113	62
114	64
115	68
116	70
117	73
118	76
119	80
120	84
121	87
122	91
123	95
124	99
125	103
126	108
127	112
128	116
129	121
130	126
131	131
132	136
133	142
134	147
135	153
136	159
137	164
138	170
139	175
140	181
141	186
142	191
143	196
144	201
145	206
146	210
147	215
148	219
149	224
150	228

TABLE 42.20-5(b).—FREEBOARD INCREASE OVER TABULAR FREEBOARD FOR TYPE "B" VESSELS WITH HATCH COVERS NOT COMPLYING WITH § 42.15-25(d) OR § 42.15-30.—Continued

[Metric]

Length of ship (meters)	Freeboard increase [1] (millimeters)
151	232
152	236
153	240
154	244
155	247
156	251
157	254
158	258
159	261
160	264
161	267
162	270
163	273
164	275
165	278
166	280
167	283
168	285
169	287
170	290
171	292
172	294
173	297
174	299
175	301
176	304
177	306
178	308
179	311
180	313
181	315
182	318
183	320
184	322
185	325
186	327
187	329
188	332
189	334
190	336
191	339
192	341
193	343
194	346
195	348
196	350
197	353
198	355
199	357
[3]200	358

[1] Freeboards at intermediate lengths of ship shall be obtained by linear interpolation.
[2] 108 and below.
[3] Ships above 200 meters in length are subject to individual determination by the Commandant.

[English]

Length of ship (feet)	Freeboard increase [1] (inches)
[2]350	2.0
360	2.3
370	2.6
380	2.9
390	3.3
400	3.7
410	4.2
420	4.7
430	5.2
440	5.8
450	6.4
460	7.0
470	7.6
480	8.2
490	8.7
500	9.2
510	9.6
520	10.0
530	10.4
540	10.7
550	11.0
560	11.4
570	11.8
580	12.1
590	12.5
600	12.8
610	13.1
620	13.4
630	13.6
640	13.9
650	14.1
[3]660	14.3

[1] Freeboards at intermediate lengths of ship be obtained by linear interpolation.
[2] 350 and below.
[3] Ships above 660 feet in length are subject to individual determination by the Commandant.

(c) A Type "B" vessel that is greater than 100 meters (328 feet) in length may have its freeboard reduced from that required in paragraph (a) of this section under the provisions of paragraphs (d) and (e) of this section provided that—

(1) The measures provided for the protection of the crew are adequate;

(2) The freeing arrangements are adequate; and

(3) The hatchway covers in positions 1 and 2 comply with the provisions of § 42.15–30 and have adequate strength, special care being given to their sealing and securing arrangements.

(d) The freeboards for a Type "B" vessel which comply with paragraph (c) of this section may be reduced up to 60 percent of the total difference between the freeboards in Table 42.20–15(b)(1) and Table 42.20–15(a)(1) provided that the vessel meets the flooding standard in § 42.20–7.

(e) The freeboards for a Type "B" vessel which complies with paragraph (c) of this section may be reduced up to the total difference between the freeboard tables referenced in paragraph (d) of this section provided that the vessel meets the flooding standard in § 42.20–8 and the provisions of § 42.15–80 (a), (b) and (d) as if it were a Type "A" vessel.

§ 42.20–6 Flooding standard; Type "A" vessels.

(a) Design calculations must be submitted that demonstrate that the vessel will remain afloat in the conditions of equilibrium specified in § 42.20–12 assuming the damage specified in § 42.20–11 as applied to the following flooding standards:

(1) If the vessel is over 150 meters (492 feet) in length it must be able to withstand the flooding of any one compartment, except the machinery space.

(2) If the vessel is over 225 meters (738 feet) in length, it must be able to withstand the flooding of any one compartment, treating the machinery space as a floodable compartment.

(b) When doing the calculations required in paragraph (a) of this section, the following permeabilities must be assumed:

(1) 0.95 in all locations except the machinery space.

(2) 0.85 in the machinery space.

§ 42.20–7 Flooding standard: Type "B" vessel, 60 percent reduction.

(a) Design calculations must be submitted that demonstrate that the vessel will remain afloat in the conditions of equilibrium specified in § 42.20–12 assuming the damage specified in § 42.20–11 as applied to the following flooding standards:

(1) If the vessel is 225 meters (738 feet) or less in length, it must be able to withstand the flooding of any one compartment, except the machinery space.

(2) If the vessel is over 225 meters (738 feet) in length, it must be able to withstand the flooding of any one compartment, treating the machinery space as a floodable compartment.

(b) When doing the calculations required in paragraph (a) of this section, the following permeabilities must be assumed:

(1) 0.95 in all locations except the emachinery space.

(2) 0.85 in the machinery space.

§ 42.20–8 Flooding standard: Type "B" vessel, 100 percent reduction.

(a) Design calculations must be submitted that demonstrate that the vessel will remain afloat in the conditions of equilibrium specified in § 42.20–12 assuming the damage specified in § 42.20–11 as applied to the following flooding standards:

(1) If the vessel is 225 meters (738 feet) or less in length, it must be able to withstand the flooding of any two adjacent fore and after compartments excluding the machinery space;

(2) If the vessel is over 225 meters (738 feet) in length, the flooding standard of paragraph (a)(1) of this section must be applied, treating the machinery space, taken alone, as a floodable compartment.

(b) When doing the calculations required in paragraph (a) of this section, the following permeabilities must be assumed:

(1) 0.95 in all locations except the machinery space.

(2) 0.85 in the machinery space.

§ 42.20–9 Initial conditions of loading.

When doing the calculations required in § 42.20–6(a), § 42.20–7(a) and § 42.20–8(a), the initial condition of loading before flooding must be assumed to be as specified in this section:

(a) The vessel is assumed to be loaded to its summer load waterline with no trim.

(b) When calculating the vertical center of gravity, the following assumptions apply:

(1) The cargo is assumed to be homogeneous.

(2) Except as specified in paragraph (b)(3) of this section, all cargo compartments are assumed to be fully loaded. This includes compartments intended to be only partially filled. In the case of liquid cargoes, fully loaded means 98 percent full.

(3) If the vessel is intended to operate at its summer load waterline with empty compartments, these empty compartments are assumed to be empty rather than fully loaded if the resulting height of the vertical center of gravity is not less than the height determined in accordance with paragraph (b)(2) of this section.

(4) Fifty percent of the total capacity of all tanks and spaces fitted to contain consumable liquids or stores must be assumed to be distributed to accomplish the following:

(i) Each tank and space fitted to contain consumable liquids or stores must be assumed either completely empty or completely filled.

(ii) The consumables must be distributed so as to produce the greatest possible height above the keel for the center of gravity.

(5) Weights are calculated using the following values for specific gravities:

Salt water—1.025
Fresh water—1.000
Oil fuel—0.950
Diesel oil—0.900
Lube oil—0.900

§ 42.20–10 Free surface.

When doing the calculations required in § 42.20–6(a), § 42.20–7(a) and § 42.20–8(a), the effect of free surface of the following liquids must be included:

(a) For each type of consumable liquid, the maximum free surface of at least one transverse pair of tanks or a single centerline tank must be included. The tank or combination of tanks must be that resulting in the greatest free surface effect.

(b) For cargo liquids, unless the compartment is assumed to be empty as required by § 42.20–9(b)(3), the free surface of those compartments containing liquids is calculated at an angle of heel of not more than 5 degrees.

§ 42.20–11 Extent of damage.

When doing the calculations required by § 42.20–6(a), § 42.20–7(a) and § 42.20–8(a), the following must be assumed:

(a) The vertical extent of damage in all cases must be assumed to be from the baseline upward without limit.

(b) The transverse extent of damage is assumed to be equal to B/5 or 11.5 meters (37.7 feet), whichever is less. The transverse extent is measured inboard from the side of the ship perpendicularly to the center line at the level of the summer load waterline.

(c) If damage of a lesser extent than that specified in paragraph (a) or (b) of this section results in a more severe condition, the lesser extent must be assumed.

(d) The following assumptions apply to the transverse damage specified in paragraph (b) of this section for a stepped or recessed bulkhead:

(1) A transverse watertight bulkhead that has a step or recess located within the transverse extent of assumed damage may be considered intact if the step or recess is not more than 3.05 meters (10 feet) in length.

(2) If a transverse watertight bulkhead has a step or recess of more than 3.05 meters (10 feet) in length, within the transverse extent of assumed damage, the two compartments adjacent to this bulkhead must be considered as flooded.

(3) If within the transverse extent of damage, a transverse bulkhead has a step or recess more than 3.05 meters (10 feet) in length that coincides with the double bottom tank top or the inner boundary of a wing tank, respectively, all adjacent compartments within the transverse extent of assumed damage must be considered to be flooded simultaneously.

(e) If a wing tank has openings into adjacent compartments, the wing tank and adjacent compartments must be considered as one compartment. This provision applies even where these openings are fitted with closing appliances except:

(1) Valves fitted in bulkheads between tanks which are controlled from above the bulkhead deck.

(2) Secured manhole covers fitted with closely spaced bolts.

(f) Only transverse watertight bulkheads that are spaced apart at least $\frac{1}{3}(L)^{2/3}$ or 14.5 meters $(0.495(L)^{2/3}$ or 47.6 feet), whichever is less, may be considered effective. If transverse bulkheads are closer together, then one or more of these bulkheads must be assumed to be non-existent in order to achieve the minimum spacing between bulkheads.

§ 42.20–12 Conditions of equilibrium.

The following conditions of quilibrium are regarded as satisfactory:

(a) *Downflooding.* The final waterline after flooding, taking into account sinkage, heel, and trim, is below the lower edge of any opening through which progressive flooding can take place. Such openings include air pipes, ventilators, and openings which are closed by means of weathertight doors (even if they comply with § 42.15–10) or covers (even if they comply with § 42.15–30 or § 42.15–45(d)) but may exclude those openings closed by means of:

(1) Manhole covers and flush scuttles which comply with § 42.15–40;

(2) Cargo hatch covers which comply with § 42.09–5(b);

(3) Hinged watertight doors in an approved position which are secured closed while at sea and so logged; and

(4) Remotely operated sliding watertight door, and side scuttles of the non-opening type which comply with § 42.15–65.

(b) *Progressive flooding.* If pipes, ducts, or tunnels are situated within the assumed extent of damage penetration as defined in § 42.20–11 (a) and (b), progressive flooding cannot extend to compartments other than those assumed to be floodable in the calculation for each case of damage.

(c) *Final angle of heel.* The angle of heel due to unsymmetrical flooding does not exceed 15 degrees. If no part of the deck is immersed, an angle of heel of up to 17 degrees may be accepted.

(d) *Metacentric height.* The metacentric height of the damaged vessel, in the upright condition, is positive.

(e) *Residual stability.* Through an angle of 20 degrees beyond its position of equilibrium, the vessel must meet the following conditions:

(1) The righting arm must be positive.

(2) The maximum righting arm must be at least 0.1 meter (4 inches).

(3) The area under the righting arm curve within the 20 degree range must not be less than 0.0175 meter-radians (0.689 inch-radians).

(4) Each submerged opening must be weathertight (e.g. a vent fitted with a ball check valve).

(f) *Intermediate stages of flooding.* The Commandant is satisfied that the stability is sufficient during intermediate stages of flooding.

§ 42.20–13 Vessels without means of propulsion.

(a) A lighter, barge, or other vessel without independent means of propulsion is assigned a freeboard in accordance with the provisions of this subpart as modified by paragraphs (b), (c), and (d) of this section.

(b) A barge that meets the requirements of § 42.09–5(b) may be assigned Type "A" freeboard if the barge does not carry deck cargo.

(c) An unmanned barge is not required to comply with § 42.15–75, § 42.15–80(b), or § 42.20–70.

(d) An unmanned barge that has only small access openings closed by watertight gasketed covers of steel or equivalent material on the freeboard deck, may be assigned a freeboard 25 percent less than that calculated in accordance with this subpart.

6. By revising § 42.20–25 to read as follows:

§ 42.20–25 Correction for block coefficient.

If the block coefficient (Cb) exceeds 0.68, the tabular freeboard specified in § 42.20–15 as modified, if applicable, by §§ 42.20–5 (b) and (d), and 42.20–20(a) must be multiplied by the factor (Cb+0.68)/1.36.

7. By revising § 42.20–75(a)(1) to read as follows:

§ 42.20–75 Minimum freeboard.

(a) *Summer freeboard.* (1) The minimum freeboard in summer must be the freeboard derived from the tables in § 42.20–15 as modified by the corrections in §§ 42.20–3 and 42.20–5, as applicable, and §§ 42.20–20, 42.20–25, 42.20–30, 42.20–35, 42.20–60, 42.20–65 and, if applicable, § 42.20–70.

* * * * *

8. By revising paragraph (a) of § 42.25–20 as follows:

§ § 42.25–20 Computation for freeboard.

(a) The minimum summer freeboards must be computed in accordance with §§ 42.20–5 (a) and (b), 42.20–13, 42.20–15, 42.20–20, 42.20–25, 42.20–30, 42.20–35, 42.20–60, and 42.20–65, except that § 42.20–60 is modified by substituting the percentages in Table 42.25–20(a) for those given in § 42.20–60.

Dated: July 27, 1983.

Clyde T. Lusk, Jr.,

Rear Admiral, U.S. Coast Guard, Chief, Office of Merchant Marine Safety.

[FR Doc. 83–23349 Filed 8–24–83; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[Docket No. 30822–170]

Atlantic Tuna Fisheries

AGENCY: National Oceanic and Atmospheric Administration (NOOA), Commerce.

ACTION: Rule-related notice; closure.

SUMMARY: NOAA issues this notice to close the fishery for giant Atlantic bluefin tuna conducted by vessels permitted in the Harpoon Boat category. Closure of this fishery is necessary because the annual catch quota will be attained by the effective date. Upon closure, vessels permitted in this category will be prohibited from fishing for or retaining any Atlantic bluefin tuna captured in the regulatory area for the remainder of 1983. The action is prescribed by regulations for the fishery.

EFFECTIVE DATE: August 23, 1983.

FOR FURTHER INFORMATION CONTACT: William C. Jerome, Jr., 617–281–3600, extension 325, or David S. Crestin, 617–281–3600, extension 253.

SUPPLEMENTARY INFORMATION: Regulations promulgated under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971–971h) regulating the take of Atlantic bluefin tuna by persons and vessels subject to U.S. jurisdiction were published in the **Federal Register** on June 17, 1983 (48 FR 27745).

Section 285.22(b) of the regulations provides for an annual quota of 60 short tons (st) of giant Atlantic bluefin tuna to be taken by vessels permitted in the Harpoon Boat category in the Regulatory Area. This quota was subsequently increased to 75 st effective August 11, 1983 (48 FR 36823, published August 15, 1983). The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), is authorized under § 285.20(b)(1) to monitor the catch and landing statistics and, on the basis of these statistics, to project a date when the total catch of Atlantic bluefin tuna will equal any quota under § 285.22. The Assistant Administrator, further, is authorized under § 285.20(b)(1) to prohibit the fishing for, or retention of, Atlantic bluefin tuna by the type of vessels subject to the quotas. The Assistant Administrator has determined, based on the reported catch of giant Atlantic bluefin tuna of 67 st, and the recent catch rate, that the annual quota of giant Atlantic bluefin tuna allocated to vessels permitted in the Harpoon Boat category will be attained by the effective date. Fishing for, and retention of, any Atlantic bluefish tuna by these vessels must cease at 0001 EDT on August 23, 1983.

Notice of this action has been mailed to all Atlantic bluefin tuna dealers and vessel owners holding a valid vessel permit for this fishery. This action is taken under the authority of 50 CFR 285.20, and is taken in compliance with Executive Order 12291.

(Atlantic Tunas Convention Act of 1975, 16 U.S.C. 971–971h)

Dated: August 22, 1983.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 83–23399 Filed 8–22–83; 5:06 pm]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 48, No. 166
Thursday, August 25, 1983

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 ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM79-76-205; Louisiana—2 Addition II]

High-Cost Gas Produced From Tight Formations; Louisiana

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (Supp V. 1982), to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions which present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas which may receive an incentive price (18 CFR 271.703 (1982)). This rule established procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This Notice of Proposed Rulemaking by the Director of the Office of Pipeline and Producer Regulation contains the recommendation of the State of Louisiana Office of Conservation that the Haynesville Formation, Reservior B be designated as a tight formation under § 271.703(d).

DATE: Comments on the proposed rule are due on October 6, 1983; Public hearing: No public hearing is scheduled in this docket as yet. Written requests for a public hearing are due on September 6, 1983.

ADDRESS: Comments and requests for hearing must be filed with the Office of the Secretary, 825 North Capitol Street, NE. Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Leslie Lawner, (202) 357–8511, or Walter W. Lawson, (202) 357–8556.

Issued: August 22, 1983.

I. Background

On May 25, 1983, the State of Louisiana Office of Conservation (Louisiana) submitted to the Commission a recommendation, in accordance with § 271.703 of the Commission's regulations (18 CFR § 271.703 (1982)), that the Haynesville Formation, Reservoir B, in Claiborne Parish, Louisiana be designated as a tight formation in the Commission's regulations. On April 29, 1981 and January 28, 1982, the Commission issued Order Nos. 141 and 207, respectively, in Docket No. RM79–76 (Louisiana—2) in which the Commission designated portions of the Haynesville Formation in Bossier Parish as a tight formation under § 271.703 of the regulations. Pursuant to § 271.703(c)(4) of the regulations, this Notice of Proposed Rulemaking is hereby issued to determine whether Louisiana's recommendation that the Haynesville Formation, Reservoir B be designated a tight formation should be adopted. Louisiana's recommendation and supporting data are on file with the Commission and are available for public inspection.

II. Description of Recommendation

Louisiana recommends that the Haynesville Formation, Reservoir B, underlying parts of the Colquitt Field in northern Claiborne Parish, Louisiana, be designated as a tight formation. The recommended area consists of the south half of the southwest quarter of section 27, the south half of section 28, the south half and south half of the northwest quarter of section 29, the south half and northwest quarter and the south half of the northeast quarter of section 30, and the north half of section 34, Township 23 North, Range 6 West, the west half of section 24, and the north half and southeast quarter of section 25, Township 23 North, Range 7 West. The Haynesville Formation, Reservoir B is defined as that gas and condensate bearing formation occurring between the depths of 9,510 feet and 10,730 feet (electric log measurement) in the Cities Service Company Hatter A No. 1 well located in section 29, Township 23 North, Range 6 West.

III. Discussion of Recommendation

Louisiana claims in its submission that evidence gathered through information and testimony presented at a public hearing in support of this recommendation demonstrates that:

(1) The average *in situ* gas permeability throughout the pay section of the proposed area is not expected to exceed 0.1 millidarcy;

(2) The stabilized production rate, against atmospheric pressure, of wells completed for production from the recommended formation, without stimulation, is not expected to exceed the maximum allowable production rate set out in § 271.703(c)(2)(i)(B); and

(3) No well drilled into the recommended formation is expected to produce more than five (5) barrels of oil per day.

Louisiana further asserts that existing Statewide Order No. 29–B will assure that development of the recommended area will not adversely affect any fresh water aquifers that are or are expected to be used as a domestic or agricultural water supply.

Accordingly, pursuant to the authority delegated to the Director of the Office of Pipeline and Producer Regulation by Commission Order No. 97, [Reg. Preambles 1977–1981] FERC Stat. and Reg ¶ 30,180 (1980), notice is hereby given of the proposal submitted by Louisiana that the Haynesville Formation, Reservoir B as described and delineated in Louisiana recommendation as filed with the Commission, be designated as a tight formation pursuant to § 271.703.

IV. Public Comment Procedures

Interested persons may comment on this proposed rulemaking by submitting written data, views or arguments to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before October 6, 1983. Each person submitting a comment should indicate that the comment is being submitted in Docket No. RM79–76–205 (Louisiana—2 Addition II) and should give reasons including supporting data for any recommendation. Comments should include the name, title, mailing address, and telephone number of one person to whom communications concerning the proposal may be addressed. An original and 14

conformed copies should be filed with the Secretary of the Commission. Written comments will be available for public inspection at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, D.C., during business hours.

Any person wishing to present testimony, views, data, or otherwise participate at a public hearing should notify the Commission in writing of a desire to make an oral presentation and therefore request a public hearing. Such request shall specify the amount of time requested at the hearing. Requests should be filed with the Secretary of the Commission no later than September 6, 1983.

List of Subjects in 18 CFR Part 271

Natural gas, Incentive price, Tight formations.

(Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432)

Accordingly, the Commission proposes to amend the regulations in Part 271, Subchapter H, Chapter I, Title 18, *Code of Federal Regulations,* as set forth below, in the event Louisiana's recommendation is adopted.

Kenneth A. Williams,

Director, Office of Pipeline and Producer Regulation.

PART 271—[AMENDED]

Section 271.703 is amended by revising paragraph (d)(22) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.*

* * * * *

(22) *Haynesville Formation in Louisiana. RM79–76 (Louisiana—2)*—(i) *Arkana Field, Bossier Parish.* (A) *Delineation of formation.* The Haynesville Formation is found in the northern portion of Bossier Parish, Louisiana, on the Arkansas border and consists of the following: Township 23 North, Range 12 West, Section 5 through 8, and 17 through 19; Township 23 North, Range 13 West, Sections 1 through 24; Township 23 North, Range 14 West, Sections 1, 2, 6 through 24 and 27 through 34; and Township 23 North, Range 15 West, Sections 1 through 3, 10 through 15, 22 through 27 and 34 through 36.

(B) *Depth.* The top of the Haynesville Formation is located at a measured depth of 10,360 feet, with the base located at 10,845 feet on the induction electrical log of the Crystal Oil Company Hall No. 1 Well. In the Arkana Field, the Haynesville Formation consists of three members: the upper member varies in thickness from 120 and 220 feet thick; the middle member, the Haynesville Sand, ranges between 120 and 220 feet thick; and the lowest member, the Buckner, is between 200 and 400 feet thick.

(ii) *Colquitt Field, Claiborne Parish*—(A) *Delination of formation.* The Haynesville Formation, Reservoir B is found in the northern portion of Claiborne Parish and consists of the following: the S½ SW¼ Section 27, S½ Section 28, S½ and S½ NW¼ Section 29, NW¼ and S½ and S½ NE¼ Section 30, and N½ Section 34 in Township 23 North, Range 6 West; the W½ Section 24, N½ and SE¼ Section 25 in Township 23 North, Range 7 West.

(B) *Depth.* The Haynesville Formation, Reservoir B in the Colquitt Field is defined as the interval occurring between the measured depths of 9,510 feet and 10,730 feet on the electric log of the Cities Service Company Hatter A No. 1 well.

[FR Doc. 83–23355 Filed 8–24–83; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CCGD1–83–2–R]

Establishment of a Special Anchorage Area in Mattapoisett Harbor; Mattapoisett, Massachusetts

AGENCY: Coast Guard, Department of Transportation.

ACTION: Proposed rule.

SUMMARY: The Coast Guard is proposing to establish a Special Anchorage Area in the east and west sides of Mattapoisett Harbor, Mattapoisett, Massachusetts at the request of the town of Mattapoisett.

This proposal is necessary to insure that mariners are aware that small craft may be moored or anchored in this area and would relieve the anchored craft of the requirement to carry and display anchor lights while utilizing this Special Anchorage.

DATE: Written comments should be submitted on or before October 11, 1983.

ADDRESS: Written comments should be submitted to and are available for examination at the office of the Captain of the Port of Providence, U.S. Coast Guard Marine Safety Office, John O. Pastore Federal Building, Providence, Rhode Island 02903. A Public Hearing is not planned.

FOR FURTHER INFORMATION CONTACT: LTJG Chris Oelschlegel, U.S. Coast Guard Marine Safety Office, John O. Pastore Federal Building, Providence, Rhode Island 02903, (401) 528–4335.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the proposed rulemaking by submitting written views, data or arguments. Each person submitting a comment should include their name and address, identify this notice, the specific section of the proposal to which their comments applies, and give reason for the comment. Persons desiring acknowledgement that their comment has been received should enclose a stamped self-addressed postcard or envelope. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal.

Drafting Information

The principal persons involved in drafting this proposal are LTJG Chris Oelschlegel, U.S. Coast Guard Marine Safety Office, Providence, Rhode Island and LT William O'Leary, Project Attorney, Commander (dl), First Coast Guard District, 150 Causeway Street, Boston, Massachusetts.

Discussion of Proposed Regulation

The Coast Guard, at the request of the town of Mattapoisett, Massachusetts is proposing to amend the Anchorage Regulations by establishing a Special Anchorage Area in Mattapoisett Harbor, Mattapoisett, Massachusetts. This anchorage area will be for the use of the general public. The number of small commercial shellfishing and pleasure craft utilizing Mattapoisett Harbor warrants the establishment of this Special Anchorage Area. In Special Anchorage Areas, vessels of not more than 65 feet in length, when at anchor, are not required to carry or display anchor lights. The shoreline is bounded by town property controlled by the Mattapoisett Harbor Development Committee and the remainder is privately owned. A Town Meeting was held on 03 February 1983 exclusively to discuss the proposed Special Anchorage. No adverse comments were received.

The designation of this special anchorage area will have no significant impact on the quality of the human environment. This action is consistent to the maximum extent practicable with the Massachusetts Coastal Zone Management Plan. Environmental information can be obtained from Mr. P. V. Kaselis, Environmental Specialist, First Coast Guard District, 150 Causeway Street, Boston, MA 02114.

Economic Assessment and Certification

This proposed regulation has been reviewed under the provisions of Executive Order 12291 and has been determined not to be a major rule. In addition, this proposed regulation is considered to be nonsignificant in accordance with the guidelines set out in the Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5 of 5–22–80). An economic evaluation has not been conducted since, for the reasons discussed above, its impact is expected to be minimal. In accordance with Section 605(b) of the Regulatory Flexibility Act (94 Stat. 1164), it is certified that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 110

Anchorage regulations.

Proposed Regulations

PART 110—[AMENDED]

In consideration of the foregoing, it is proposed that Part 110 of Title 33 Code of Federal Regulations be amended to provide two adjacent Special Anchorage Areas by adding § 110.45a to read as follows:

§ 110.45a Mattapoisett Harbor, Mattapoisett, MA

(a) Area No. 1 beginning at a point on the shore at latitude 41°39′23″ N, longitude 70°48′50″ W; thence 138.5°T to latitude 41°38′45″ N., longitude 70°48′02″ W., thence 031°T to latitude 41°39′02″ N, longitude 70°47′48″ W, thence along the shore to the point of beginning.

(b) Area No. 2 beginning at a point on the shore at latitude 41°39′24″ N, longitude 70°49′02″ W; thence 142.5°T to latitude 41°38′10″ N, longitude 70°47′45″ W; thence 219°T to latitude 41°37′54″ N, longitude 70°48′02″ W; thence along the shore to the point of beginning.

Note.—Administration of the Special Anchorage Area is exercised by the Harbormaster, Town of Mattapoisett pursuant to a local ordinance. The Town of Mattapoisett will install and maintain suitable navigational aids to mark the perimeter of the Anchorage area.

(33 U.S.C. 2030, 2035, and 2071; 49 CFR 1.46, 33 CFR 1.05–1(q))

Dated: August 8, 1983.

R. A. Bauman,

Rear Admiral, U.S. Coast Guard, Commander First Coast Guard District.

[FR Doc. 83–23351 Filed 8–24–83; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 117

[CGD3 82–023]

Drawbridge Operation Regulations; Great Channel, New Jersey

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the County of Cape May, New Jersey, the Coast Guard is considering a change to the regulations governing the Stone Harbor Boulevard drawgbridge at Stone Harbor, New Jersey by requiring that advance notice of opening be given during October through March between the hours of 10 p.m. and 6 a.m. This proposal is being made because of a steady decrease in requests for openings of the draw during this period. This action should relieve the bridge owner of the burden of having a person constantly available to open the draw during this period, and should still provide for the reasonable needs of navigation.

DATE: Comments must be received on or before October 11, 1983.

ADDRESS: Comments should be submitted to and are available for examination from 9 a.m. to 3 p.m., Monday through Friday, except holidays, at the office of the Commander (oan-br), Third Coast Guard District, Bldg. 135A, Governors Island, NY 10004. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: William C. Heming, Bridge Administrator, Third Coast Guard District, (212) 668–7994.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, comments, data or arguments. Persons submitting comments should include their name and address, identify the bridge, and give reasons for concurrence with or for any recommended change in the proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Third Coast Guard District, will evaluate all communications received and will determine a final course of action on this proposal. The proposed regulations may be changed in light of comments received.

Drafting Information

The drafters of this notice are Richard A. Gomez, project manager, and LCDR Frank E. Couper, project attorney.

Discussion of the Proposed Regulations

The Stone Harbor Boulevard drawbridge provides access across Great Channel for vehicular traffic travelling to and from Stone Harbor. This drawbridge provides a vertical clearance of 11 feet above mean high water while in the closed position. From 1977 to 1981, there was an average of five openings from October 1 through March 31 between 10 p.m. and 6 a.m. It is proposed to amend the existing special regulations to require eight hours notice during this time and also include the provision that the draw be required to open as soon as possible at all times for a public vessel or a vessel in distress.

The Commander, Third Coast Guard District issued temporary, special regulations by Public Notice 3–485 (30 November 1982) for evaluation purposes. These temporary regulations required eight hours notice to open between 10 p.m. and 6 a.m., from 1 December 1982 through 31 March 1983 except for passage of a public vessel of the U.S. or for a vessel with tow. No responses were received to this Public Notice and no problems were identified during this evaluation period. No economic evaluation has been prepared because of minimal economic impact owning to the relative infrequency of vessel transits during this period.

Economic Assessment and Certification

These proposed regulations have been reviewed under the provisions of Executive Order 12291 and have been determined not to be a major rule. In addition, these proposed regulations are considered to be nonsignificant in accordance with guidelines set out in the Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5 of 5–22–80). As explained above, an economic evaluation has not been conducted since its impact is expected to be minimal. In accordance with section 605(b) of the Regulatory Flexibility Act (5 U.S.C 605(b)), it is certified that these rules, if promulgated, would not have a significant economic impact on a substantial number of small entities because none are in the vicinity and none are expected to be impacted as a result of this rule.

Lists of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations

by revising § 117.220(r) to read as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

§ 117.220 New Jersey Intracoastal Waterway and tributaries; bridges.

* * * * *

(r) Stone Harbor Boulevard Bridge across Great Channel, mile 102.0 at Stone Harbor. The draw shall open on signal except as provided below:

(1) From October 1 through March 31 between 10 p.m. and 6 a.m., the draw need only open for waiting vessels if at least eight hours notice is given.

(2) From Memorial Day through Labor Day, 8 a.m. to 6 p.m., on Saturday, Sunday, and holidays, the draw need only open for waiting vessels on the hour, 20 minutes after the hour, and 20 minutes before the hour.

(3) The draw shall be opened at all times as soon as possible for a vessel with a tow, a public vessel of the United States, or a vessel in distress.

* * * * *

(33 U.S.C. 499; 49 U.S.C. 1655(g)(2); 49 CFR 1.46(c)(5); 33 CFR 1.05–1(g)(3))

Dated: August 8, 1983.

W. E. Caldwell,

Vice Admiral, U.S. Coast Guard, Commander, Third Coast Guard District.

[FR Doc. 83–23350 Filed 8–24–83; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 117

[OGD3 82–036]

Drawbridge Operation Regulations; Passaic River, New Jersey

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the joint request of the counties of Bergen, Hudson, and Essex, New Jersey, the Coast Guard is considering a change to the regulations governing the Jackson Street, Bridge Street, Clay Street and Avondale bridges across the Passaic River at various locations. It is proposed that a request for an opening be given prior to 2:30 a.m. for openings between 3:00 a.m. and 8:30 a.m., and that notice be given prior to 2:30 p.m. for openings between 4:30 p.m. and 7:00 p.m. This proposal is being made because of the minimal number of openings requested during the proposed, effective hours and because of the overall decrease in bridge openings since 1976. This action should relieve the bridge owners of the burden of having a person constantly available to open the draw and should still provide for the reasonable needs of navigation.

DATE: Comments must be received on or before October 11, 1983.

ADDRESS: Comments should be submitted to and are available for examination from 9:00 a.m. to 3:00 p.m., Monday through Friday, except holidays, at the office of the Commander (oan.br), Third Coast Guard District, Bldg. 135A, Governors Island, NY 10004. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: William C. Heming, Bridge Administrator, Third Coast Guard District, (212) 668–7994.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their name and address, identify the bridge, and give reasons for concurrence with or for any recommended change in the proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Third Coast Guard District, will evaluate all communications received and determine a final course of action on this proposal. The proposed regulations may be changed in light of comments received.

Drafting Information

The drafters of this notice are Ernest J. Feemster, project manager, and LCDR Frank E. Couper, project attorney.

Discussion of Proposed Regulations

Essex County operates four movable bridges in conjunction with Bergen and Hudson counties. The operation of the northernmost (of the four), Avondale Bridge is shared with Bergen County, while operation of the Clay, Bridge, and Jackson Street Bridge is shared with Hudson county. The Jackson, Bridge and Clay Street bridges cross the Passaic River from Kearney to Newark while the Avondale bridge crosses between Lyndhurst and Nutley, NJ. The counties are proposing that the bridges open on signal from 8:30 a.m. to 4:30 p.m. and from 7:00 p.m. to 3:00 a.m. An opening between 3 a.m. and 8:30 a.m. would have to be requested prior to 2:30 a.m., and an opening between 4:30 p.m. and 7 p.m. would have to be requested prior to 2:30 p.m.

Bridge openings for marine traffic varied from 400 to 900 yearly (at the bridges) in 1981 and in general have decreased by about 50% since 1976. Special regulations now allow Conrail's Dock bridge and Amtrak's Morristown Line bridge to remain closed during morning and evening commuter hours so in effect, these regulations will do the same. The Dock bridge is downstream of three of the bridges (Avondale, Bridge Street and Clay Street) while the Morristown Line is downstream of two bridges (Avondale and Clay Street).

No draft economic evaluation has been prepared because no disruption of marine shipping operations is anticipated. The Coast Guard has met with Essex, Bergen and Hudson County officials, the New York Towboat and Harbor Carriers Association and with certain Passaic River facility owners and it was generally agreed that no major problems will result if the regulations are issued. The mariners agreed to try to avoid commuter "rush hours" while the counties agreed to grant openings on those occasions when high tide occurs during commuter rush hours. Additionally, a 30-day test period was conducted in early summer with minimal problems being encountered.

Economic Assessment and Certification

These proposed regulations have been reviewed under the provisions of Executive Order 12291 and have been determined not to be a major rule. In addition, these proposed regulations are considered to be nonsignificant in accordance with guidelines set out in the Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5 of 5–22–80). As explained above, an economic evaluation has not been conducted since its impact is expected to be minimal. In accordance with section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), it is certified that these rules, if promulgated, would not have a significant economic impact on a substantial number of small entities because no known entities will be affected.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, by renumbering § 117.200(a)(4)(i), through (viii) as (a)(4)(ii), through (ix) respectively, and adding a new § 117.200(a)(4)(i) to read as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

§ 117.200 Newark Bay, Passaic and Hackensack Rivers, N.J., and their navigable tributaries; bridges.

(a) * * *

(4) * * *

(i) Jackson Street Bridge, mile 4.6, Bridge Street Bridge, mile 5.6 Clay Street Bridge, mile 6.0 at Newark and Kearney, and Avondale Bridge, mile 10.7 at Lyndhurst, all crossing the Passaic River. The draws shall open on signal except that notice must be given prior to 2:30 a.m. for openings between 3:00 a.m. and 8:30 a.m., and notice must be given prior to 2:30 p.m. for openings between 4:30 p.m. and 7:00 p.m. The bridges shall open at all times as soon as possible for a public vessel of the United States.

* * * * *

(33 U.S.C. 499; 49 U.S.C. 1655(g)(2); 49 CFR 1.46(c)(5); 33 CFR 1.05–1(g)(3))

Dated: August 9, 1983.

W. E. Caldwell,

Vice Admiral, U.S. Coast Guard, Commander, Third Coast Guard District.

[FR Doc. 83–23348 Filed 8–24–83; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 117

[CGD 08–83–06]

Drawbridge Operation Regulations; Lavaca River, Texas

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the Missouri Pacific (MOPAC) Railroad and the Texas Department of Highways and Public Transportation (TDHPT), the Coast Guard is considering changing the regulations governing the swing span railroad bridge and the removable span bridge on FM 616 highway, both across the Lavaca River, mile 11.2, near Vanderbilt, Texas. The bridges presently are required to open on signal if at last 48 hours advance notice is given.

The proposed change would require that at least ten days notice be given for opening the bridges.

This proposal is being made because of the absence of requests to open the bridges in recent years. This action is designed to relieve the bridge owners of the burden of maintaining the capability of opening the bridges on 48 hours notice, while still providing for the reasonable needs of navigation.

DATE: Comments must be received on or before October 11, 1983.

ADDRESS: Comments should be mailed or hand delivered to the Eighth Coast Guard District, Bridge Administration Branch, Hale Boggs Federal Building, 500 Camp Street, New Orleans, Louisiana 70130. Comments are available for examination at this address from 9:00 a.m. to 3:00 p.m., Monday through Friday except holidays.

FOR FURTHER INFORMATION CONTACT: Joseph Irico, Chief, Bridge Administration Branch, at the address given above (504) 589–2965.

SUPPLEMENTARY INFORMATION: Interested parties are invited to participate in this proposed rule making by submitting written views, comments, data or arguments. Persons submitting comments should include their name and address, identifying the bridge, and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgement that their comments have been received should enclose a stamped self-addressed post card or envelope.

The Commander, Eighth Coast Guard District, will evaluate all communications received and determine a final course of action on this proposal. The proposed regulation may be changed in the light of comments received.

Drafting Information

The principal persons involved in drafting this proposal are: Joseph Irico, Project Manager, District Operations Division, and Steve Crawford, General Attorney, District Legal Office.

Discussion of the Proposed Regulation

Vessel traffic through the bridges consists of small pleasure boats that pass under the closed spans. the bridges have not been opened to pass navigation since 1972. If this trend continues, the bridges would be candidates for conversion to fixed spans in the near future.

The advance notice for opening the draw would be given by placing a collect call, as follows:

MOPAC bridge—Spring, Texas, (713) 350–7581

TDHPT bridge—Yoakum, Texas, (512) 293–3535

Considering that the bridges have not been opened since 1972 and the provision for the ten days advance notice, the Coast Guard feels that the proposed regulation would relieve the bridge owners of the burden of maintaining the bridges in readiness to open on a 48 hour notice, while still providing for the reasonable needs of navigation.

Economic Assessment and Certification

These proposed regulations have been reviewed under the provisions of Executive Order 12291 and have been determined not to be a major rule. In addition, these proposed regulations are considered to be nonsignificant in accordance with guidelines set out in the Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5 of 5–22–80). An economic evaluation has not been conducted since the impact is expected to be minimal. In accordance with § 605(b) of the Regulatory Flexibility Act (94 Stat. 1164), it is also certified that this rule, if promulgated, would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

PART 117—DRAWBRIDGE OPERATION REGULATIONS

In consideration of the foregoing, the Coast Guard proposes to amend § 117.245, Part 117, Title 33 Code of Federal Regulations, as follows:

§ 117.245 [Amended]

Revise § 117.245(j)(38) to read:

* * * * *

(j) * * *

(38) Lavaca River, TX; The draws of the Missouri Pacific Railroad bridge and the Texas FM 616 highway bridge, mile 11.2 both at Vanderbilt, shall open on signal if at least 10 days notice is given.

(33 U.S.C. 499, 49 U.S.C. 1655(g)(2); 49 CFR 1.46(c)(5), 33 CFR 1.05–1(g)(3))

Dated: August 12, 1983.

J. M. Fournier,

Captain, U.S. Coast Guard, Acting Commander, Eighth Coast Guard District.

[FR Doc. 83–23360 Filed 8–24–83; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 117

[CGD5–83–05]

Drawbridge Operation Regulations; Eastern Branch, Elizabeth River, Norfolk, Virginia

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the Norfolk and Western Railway Company, the Coast Guard is considering a change to the regulations governing the railroad drawbridge across the Eastern Branch of

the Elizabeth River, mile 2.7, at Norfolk, Virginia, by requiring that advance notice of opening be given between 10 p.m. and 6 a.m. This proposal is being made because of the small number of requests for opening the draw at these times. This action should relieve the bridge owner of the burden of having a person constantly available to open the draw and still provide for the reasonable needs of navigation.

DATE: Comments must be received on or before October 11, 1983.

ADDRESS: Comments should be submitted to and are available for examination from 8 a.m. to 4:30 p.m., Monday through Friday, except holidays, at the office of Commander (oan), Fifth Coast Guard District, Federal Building, 431 Crawford Street, Portsmouth, Virginia 23705. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: W. A. Pratt, Bridge Specialist, Aids to Navigation Branch, Fifth Coast Guard District, Federal Building, 431 Crawford Street, Portsmouth, Virginia 23705, (804) 398-6227.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their name and address, identify this proposed rule by Docket Number or bridge, and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgement that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The rule may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held of written requests are received and it is determined that an opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafter of this notice is W. A. Pratt, Project Officer.

Discussion of Proposed Rule

Because of minimal night time draw openings, the Norfolk and Western Railway Company has requested that the drawbridge regulations governing the operation of its swingspan across the Eastern Branch of the Elizabeth River at mile 2.7 be changed to require advance notice between the hours of 10 p.m. and 6 a.m. Currently the bridge opens on signal and requires the constant presence of a drawtender. The proposed regulation would require that an advance notice of at least three hours be given for the opening of the bridge between 10:00 p.m. and 6:00 a.m. on a daily basis. At all other times the bridge would open on signal.

The Norfolk and Western Railway Company has provided a review of bridge openings which indicates that the proposed rule would affect approximately 13% of the yearly traffic. Records for the period April 1, 1981 through March 31, 1982 indicate that 40 openings out of a total 306 were made during the hours which would require advance notice. The months of heaviest use are those from May through September. The change in regulations will not significantly affect water traffic but will relieve the bridge owner of the responsibility of providing constant operator attendance at the bridge.

There are no known businesses that will be significantly impacted by the proposed change. The proposed hours of operator attendance include those hours of daylight when the majority of vessels transit the Eastern Branch of the Elizabeth River. Those vessels navigating the Eastern Branch at other times may comply with the advance notice requirement without undue hardship.

Economic Assessment and Certification

This proposed regulation has been reviewed under the provision of Executive Order 12291 and has been determined not to be major rule. In addition, the proposed regulation is considered to be nonsignificiant in accordance with guidelines set forth in the Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5 of 5-22-80). An economic evaluation of the proposal has not been conducted because the expected economic impact is so minimal as to not warrant the evaluation. In accordance with Section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), it is also certified that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulation

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations by adding a new paragraph (24-a) to § 117.245(f) to read as follows:

§ 117.245 Navigable waters discharging into the Atlantic Ocean south of and including Chesapeake Bay and into the Gulf of Mexico, except the Mississippi River and its tributaries and outlets; bridges where constant attendance of drawtenders is not required.

* * * * *

(f) * * *

(24-a) Elizabeth River, Eastern Branch, Va.; Norfolk and Western Railway Company Bridge at Norfolk. At least 3 hours advance notice required between 10:00 p.m. and 6:00 a.m.

* * * * *

(33 U.S.C. 499; 49 U.S.C. 1655(g)(2); 49 CFR 1.46(c)(5); 33 CFR 1.05-1(g)(3))

Dated: August 8, 1983.

John D. Costello,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 83-23347 Filed 8-24-83; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 460 and 462

Medicare Program; Utilization and Quality Control Peer Review Organization (PRO) Area Designations and Definitions of Eligible Organizations

Correction

In FR Doc. 83-22196 beginning on page 36970 in the issue of Monday, August 15, 1983, make the following corrections:

1. On page 36970, the third column, the last line, "SRO" should read "PSRO".

2. On page 36972, the middle column, the eleventh line, the word "process" should read "access".

3. On page 36974, the first column, the part heading should read:

PART 460—AREA DESIGNATIONS

4. On the same page, the same column, "**§ 460.11 Definitions**" Should read "**§ 460.1 Definitions**".

BILLING CODE 1505-01-M

Notices

Federal Register
Vol. 48, No. 166
Thursday, August 25, 1983

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

Revision of Notices of Intent To Prepare Environmental Impact Statements for the Forest Land and Resource Management Plans for the Shoshone, Bighorn, and Medicine Bow National Forests in Wyoming; Rocky Mountain Region

The Rocky Mountain Region, Forest Service, Department of Agriculture, is preparing environmental impact statements on the Land and Resource Management Plans for three National Forests in Wyoming: Shoshone, Bighorn, and Medicine Bow which includes the Thunder Basin National Grassland. The scope of the issues to be analyzed in depth for these Forests is revised to include further evaluation of roadless areas previously inventoried and analyzed in the second roadless area review and evaluation (RARE II). The **Federal Register** citation in which the original and/or the revised notices of intent appear are as follows:

Shoshone: Vol. 45, No. 222, November 14, 1980.
Bighorn: Vol. 44, No. 97, May 17, 1979; revision, Vol. 45, No. 222, November 14, 1980.
Medicine Bow: Vol. 45, No. 30, February 12, 1980; revision, Vol. 45, No. 222, November 14, 1980.

On February 1, the Secretary of Agriculture determined that further evaluation of RARE II roadless areas is necessary to respond to a recent court ruling (State of California vs. Bergland) that the environmental impact statement on which the January 4, 1979, Record of Decision on RARE II was based did not adequately meet the National Environmental Policy Act requirements.

The reevaluation will be done during each Forest's land and resource management planning process. It will include analysis and evaluation of roadless areas on which recommendations were made in the RARE II Record of Decision.

Title 36, Code of Federal Regulations, Part 219 (36 CFR Part 219) sets out the overall requirements for the Forest Land and Resource Management Planning process. Section 219.14 of this Part is being revised because the direction is now incompatible with the court ruling discussed above. A proposed revision was published in the **Federal Register**, Vol. 48, No. 75, April 18, 1983.

It is not the intent of the Rocky Mountain Region of the Forest Service to make land use or resource commitments until the revised rule is final. However, respect for the time limitations imposed by Congress for completing the National Forest Land and Resource Management Plans require that public participation in this aspect of planning be started now. It is important to facilitate early data collection and preliminary analysis.

Federal, State and local agencies, special interest groups, organizations, and individuals are invited to participate in the reevlauation of roadless areas. Information on each roadless area and the potential for wilderness or nonwilderness uses will be considered now in order to determine the scope and degree of the more detailed evaluation and analysis necessary complete the Forest planning process.

The Supervisors of the Shoshone, Bighorn, and Medicine Bow National Forests will solicit information from the public through various public particiaption activities that will be conducted by the individual Forests. On October 5, 1983, two public meetings involving all three Forests will be held at the public library, 307 East Second, Casper, Wyoming. An afternoon meeting will be held from 3 to 5 p.m.; an evening session will be held from 7 to 9 p.m. Interested citizens may contact the individual Forest Supervisor's Offices for information pertaining to specific roadless areas.

All other conditions of the orginial notices of intent remain the same with the exception of the estimated completion dates for the Forest Plans and Final Environmental Impact Statements. The revised dates follow:

Shoshone: Proposed Forest Plan and Draft Environmental Impact Statement, March, 1984.
Final Forest Plan and Final Environmental Impact Statement, September 1984.
Bighorn: Proposed Forest Plan and Draft Environmental Impact Statement, March 1984.
Final Forest Plan and Final Environmental Impact Statement, September 1984.
Medicine Bow: Proposed Forest Plan and Draft Environmental Impact Statement, June 1984.
Final Forest Plan and Final Environmental Impact Statement, December 1984.

Questions and comments on this notice of intent or requests for information on the scheduled scoping activities can be directed to the following:

Forest Supervisor, Shoshone National Forest, 2525 West Yellowstone Highway, Box 961, Cody, Wyoming 82414, Telephone: (307) 527-6241.
Forest Supervisor, Bighorn National Forest, 1969 S. Sheridan Ave., Box 2046, Sheridan, Wyoming 82801, Telephone: (307) 672-0751.
Forest Supervisor, Medicine Bow National Forest, 605 Skyline Drive, Laramie, Wyoming 82070 Telephone: (307) 745-8971.

To be considered in the draft environmental impact statement process comments must be received by the individual Forest Supervisors by October 30, 1983.

Craig W. Rupp,

Regional Forester, Rocky Mountain Region.

[FR Doc. 83-23338 Filed 8-24-83; 8:45 am]
BILLING CODE 3410-11-M

Land and Resource Management Plan; Sierra National Forest, Fresno County, California; Intent To Reevaluate Roadless Areas

The Department of Agriculture, Forest Service issued a national environmental impact statement in January 1979. This environmental impact statement documented the results of a review of 62 million acres of roadless and undeveloped areas within the 190 million acre National Forest system. The purpose of the roadless area review and evaluation (RARE II) was to determine which areas were suitable for wilderness and which would be used for other purposes.

In the Pacific Southwest Region RARE II dealt with over 6 million acres located in California. About 983,000 acres were recommended for wilderness; 2,643,000 acres were recommended for further planning; and 2,395,000 acres were recommended for nonwilderness.

In 1979 the State of California challenged the adequacy of the National RARE II Environmental Impact Statement as the basis for decisions to manage 46 areas in California for other than wilderness. In October 1982, the United States Court of Appeals for the Ninth Circuit affirmed a lower court decision that the RARE II Environmental Impact Statement was inadequate. Although the decision applied specifically to only the 46 roadless areas in California, it sets binding precedent in any Federal District Court in the Ninth Circuit.

Because of the October 1982 court decision, National Forest roadless areas studied for wilderness potential during RARE II will be reevaluated. This Notice is being issued because, contrary to earlier regulations (issues 9/30/82), a proposed revision to 36 CFR 219.17 (issued 4/18/83) will allow further evaluation of RARE II wilderness and nonwilderness areas during the Forest planning process.

The reevaluation of the areas on the Sierra National Forest will be done as part of the Forest's land and resource management plan.

During the reevaluation process, current management and protection policies and activities in the roadless areas will be continued. Wilderness values will be protected in areas recommended in RARE II for wilderness, and management for other uses will continue in areas recommended for nonwilderness.

On the Sierra National Forest, three roadless areas containing 67,432 acres were recommended for wilderness and four roadless areas of 53,000 acres were recommended for nonwilderness. These areas will now be reevaluated. They include:

	Name	Gross acres	Net NF acres
A5047	San Joaquin	42,270	42,270
A5198	Kings River	5,332	5,332
05240	Ferguson Ridge	6,100	6,000
05241	Devil Gulch	30,300	29,900
05243	Shutey	7,700	7,700
05245	Woodchuck	19,830	19,730
05246	Sycamore Spring	8,900	8,900

Detailed information on the roadless areas and the reevaluation process will be distributed to individuals on the Forest mailing list and to other individuals and organizations requesting a copy. In addition, there will be an open house held September 27, 1983, in Fresno, California, at Fashion Fair Community Hall from 7 p.m. to 10 p.m. to further explain, discuss, and gather information about the roadless areas and the reevaluation process.

For further information about the proposed reevaluation, contact John Kruse, Planning Officer, Sierra National Forest, 1130 O Street, Fresno, California 93721, or call (209) 487–5170.

Dated: August 18, 1983.

Dale E. Hosler,

Acting Deputy Forest Supervisor, Sierra National Forest.

[FR Doc. 83–23363 Filed 8–24–83; 8:45 am]

BILLING CODE 3410–11–M

Payette National Forest; Thunder Mountain (Sunnyside) Mining Project, Valley County, Idaho; Intent To Prepare an Environmental Impact Statement

AGENCY: Forest Service.

ACTION: Notice of Intent to Prepare an EIS.

SUMMARY: Coeur D'Alene Mines Corporation filed a Notice of Intent to operate a 10 to 20 year mining project at Sunnyside on Thunder Mountain, Valley County, Idaho, on April 6, 1983. The proposal covers 140 acres of patented and 55 acres of National Forest System land in sections 20, 21, 28, 29, 30, 31, 32, and 33, T18N and 19N, R10E and 11E, Boise Meridian—nonwilderness lands in the Thunder Mountain Mining District exclusion within the River of No Return Wilderness, Big Creek Ranger District, Payette National Forest. A third party Memorandum of Understanding provides for James M. Montgomery, Consulting Engineers, Inc., to conduct environmental studies and prepare the EIS under leadership of the Payette National Forest.

The EIS will address open pit mining of an estimated 2.5 million tons of ore reserves with approximately 7.5 million tons of overburden/waste rock. Processing alternatives include heap leach/agglomeration, modified vat leach, vat leach or agitation leach (all cyanidation processes), a full grind system with carbon and pulp, and gravity/flotation. Alternatives will also address mining methods, overburden disposal sites, mining seasons, ore transportation options, facilities and their locations, access, and reclamation.

The draft EIS is scheduled for completion by January 31, 1984. The final is scheduled for April 30, 1984, with a decision by the Responsible Official, Payette National Forest Supervisor Ken Weyers, by June 30, 1984. Approval would mean that mining would commence late 1984 or spring 1985.

Initial scoping meetings are scheduled for the following times and places:

September 20, 7:30 pm, Community Hall, Yellow Pine, Idaho,

September 22, 7:30 pm, Shore Lodge, McCall, Idaho, and

September 27, 7:30 pm, Red Lion Riverside, Boise, Idaho.

For further information contact Earl Dodds, Big Creek District Ranger, at 208–634–2255.

Dated: August 17, 1983.

Kenneth D. Weyers,

Forest Supervisor.

[FR Doc. 83–23392 Filed 8–24–83; 8:45 am]

BILLING CODE 3410–11–M

Revised Notice of Intent for Land and Resource Management Plan and Roadless Area Reevaluation; Manti-LaSal National Forest, Utah and Colorado

This Notice revises a previously issued Notice of Intent published in the **Federal Register** dated June 20, 1980, page 41685.

This Notice is being issued because 36 CFR 219.17 is being revised to allow the reevaluation of roadless areas during the Forest planning process. Public participation in the reevaluation permits data collection and analysis activities to proceed pending release of the final regulations.

The results of the reevaluation of roadless areas will be included in the Environmental Impact Statement and Manti-LaSal National Forest Land and Resource Management Plan.

The first steps involving initial public participation, inventory, and analysis of the management situation have been completed. The scoping for the roadless area reevaluation portion of the land management planning process will be initiated by explaining the roadless area reevaluation to all individuals interested and wanting to become involved in the planning process for the Forest. Significant issues relating to reevaluation will be identified and included with those issues already identified for the Forest.

Detailed information on the roadless areas and reevaluation processes will be available for individuals and organizations requesting the information. In addition, there will be open-house meetings held during the period of October 3 to October 14, 1983, at 150 South Main, Ephraim, Utah; 50 South State Street, Ferron, Utah; 10 North Carbon Avenue, Price, Utah; 446 South Main Street, Moab, Utah; and 185 North, 1st East, Monticello, Utah, to further explain, discuss, and gather information about the roadless areas and reevaluation process. The scheduled meeting and times will be

published in the local newspapers prior to the October dates.

The Manti-LaSal National Forest Plan will select from a range of alternatives which will include at least:

(1) The "no-action" alternative, which represents continuation of present levels of activity.

(2) One or more alternatives which represent levels of activity that will result in elimination of all backlogs of needed treatment for restoration of renewable resources and ensure that a major portion of planning intensive multiple-use and sustained-yield management procedures are operating on an environmentally sound basis.

(3) One or more alternatives formulated to resolve the identified major public issues and management concerns, including roadless areas.

The Draft Environmental Impact Statement and proposed Land and Resource Management Plan for the Manti-LaSal National Forest are scheduled for filing with the Environmental Protection Agency and draft review by October 1984. The final documents are scheduled for filing with the Environmental Protection Agency in March 1985.

During the reevaluation process, current management and protection policies and activities in the roadless areas may be continued. Wilderness values will be protected in the areas recommended in RARE II for Wilderness, and management for other uses may continue in areas recommended for non-Wilderness.

J. S. Tixier, Regional Forester, Intermountain Region, USDA Forest Service, is the responsible official for the Forest Management Plan and Environmental Impact Statement. Reed C. Christensen, Forest Supervisor, is responsible for preparation of the Forest Plan and Environmental Impact Statement.

Written comments, suggestions, and/or requests for information during this process should be sent to Lee Foster, Forest Planner, Manti-LaSal National Forest, 599 West Price River Drive, Price, Utah, 84501, phone 801–637–2817.

Dated: August 18, 1983.

R. E. Greffenius,

Deputy Regional Forester.

[FR Doc. 83–23391 Filed 8–24–83; 8:45 am]

BILLING CODE 3410–11–M

Northern Region Forest Plans; Northern Region, National Forests in Idaho, Montana, North Dakota, South Dakota; Intent To Prepare Environmental Impact Statements, Supplements, or Revisions

In 1979 the State of California challenged the adequacy of the National RARE II Environmental Impact Statement as the basis for decisions to manage 46 areas in California for other than wilderness. In October 1982, the Untied States Court of Appeals for the Ninth Circuit affirmed a lower court decision that the RARE II Environmental Impact Statement was inadequate. Although the decision applied specifically to only the 46 roadless areas in California, it sets binding precedent in any Federal District Court in the Ninth Circuit.

Because of the October 1982 court decision, National Forest roadless areas in the Northern Region studies for wilderness potential during RARE II will be re-evaluated.

Northern Region National Forests in Montana, Idaho, North Dakota and South Dakota, depending on the situation of the individual National Forests, will prepare a draft environmental impact statement, a revised draft environmental impact statement or a supplement to an existing draft environmental impact statement for Forests' Land and Resource Management Plans that include a re-evaluation of roadless areas. The re-evaluation analysis is expected to take from 8 to 14 months and draft environmental impact statements or supplements will be available after that date. Final environmental impact statements are expected in 1985.

Public issues will be identified and the environmental disclosure documents will display alternatives responsive to these public issues.

This Notice is being issued because, contrary to earlier regulations (issued 9/30/82), a proposed revision to 36 CFR 219.17 (issued 4/18/83) will allow further evaluation of RARE II wilderness and non-wilderness areas during the Forest planning process. We are beginning public participation, data collection, and analysis pending the final rule.

Detailed information on the roadless areas and public involvement in the re-evaluation process will be forthcoming from individual National Forests in northern Idaho, Montana and North Dakota.

The responsible official is Tom Coston, Regional Forester of the Northern Region. For further information on this subject, contact Vern Fleisher, Planning, Programing and Budgeting, Northern Region, Federal Building, Missoula, Montana, Area Code 406–329–3676.

Beryl Johnson,

Acting Regional Forester.

August 18, 1983.

[FR Doc. 83–23377 Filed 8–24–83; 8:45 am]

BILLING CODE 3410–11–M

Soil Conservation Service

Pearl Street Recreation Development RC&D Measure, Connecticut; Finding of No Significant Impact

AGENCY: Soil Conservation Service, Agriculture.

ACTION: Notice of a finding of no significant impact.

FOR FURTHER INFORMATION CONTACT: Philip H. Christensen, State Conservationist, Soil Conservation Service, Rt. 44 Mansfield Professional Park, Storrs, Connecticut 06268, telephone (203) 429–9361.

Notice: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an Environmental Impact Statement is not being prepared for the Pearl Street Recreation Development RC&D Measure, New Haven County, Connecticut.

The Environmental Assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Philip H. Christensen, State Conservationist, has determined the preparation and review of an Environmental Impact Statement are not needed for this project.

The measure concerns development of public water-based recreation measures along Lake Lillinonah. The planned works include development of an access road, beach and swimming docks, boat docks, nature center and trail system, parking areas, maintenance building, water supply, sanitary facilities, and septic system.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency. The basic data developed during the Environmental

Assessment are on file and may be reviewed by contacting Philip H. Christensen. The Environmental Assessment has been sent to various federal, state, and local agencies and interested parties. A limited number of copies of the Environmental Assessment are available to fill single copy requests at the above address.

Implementation of the proposal will not be initiated until 30 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular A-95 regarding state and local clearinghouse review of federal and federally assisted programs and projects is applicable)

Edward H. Sautter,

Acting State Conservationist.

[FR Doc. 83-23366 Filed 8-24-82 8:45 am]

BILLING CODE 3410-16-M

Little Whitestick-Cranberry Creeks Watershed, West Virginia; Availability of a Record of Decision

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of availability of record of decision.

SUMMARY: Rollin N. Swank, responsible Federal official for projects administered under the provisions of Pub. L. 83-566, 16 U.S.C. 1001-1008, in the State of West Virginia, is hereby providing notification that a record of decision to proceed with the installation of the Little Whitestick-Cranberry Creeks Watershed project is available. Single copies of this record of decision may be obtained from Rollin N. Swank at the address shown below.

FOR FURTHER INFORMATION CONTACT: Rollin N. Swank, State Conservationist, Soil Conservation Service, 75 High Street, Room 301, Morgantown, West Virginia, 26505, telephone (304) 291-4151.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention. Office of Management and Budget Circular A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: August 17, 1983.

Rollin N. Swank,

State Conservationist.

[FR Doc. 83-23336 Filed 8-24-83; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping Investigation; Acrylic Film, Strips and Sheets, at Least 0.030 Inch in Thickness From Taiwan

AGENCY: International Trade Administration, Commerce.

ACTION: Initiation of antidumping investigation.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating an antidumping investigation to determine whether acrylic film, strips and sheets, at least 0.030 inch in thickness (acrylic sheet) from Taiwan are being, or are likely to be, sold in the United States at less than value. We are notifyng the United States International Trade Commission (ITC) of this action so that it may determine whether imports of this merchandise are materially injuring, or threatening to materially injure, a United States industry. If the investigation proceeds normally, the ITC will make its preliminary determination on or before September 12, 1983 and we will make ours on or before January 4, 1984.

EFFECTIVE DATE: August 25, 1983.

FOR FURTHER INFORMATION CONTACT: Stuart Keitz, Office of Investigations, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230, telephone (202) 377-1769.

SUPPLEMENTARY INFORMATION: On July 28, 1983, we received a petition in proper form from E.I. du Pont de Nemours and Company.

In compliance with the filing requirements of section 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleges that imports of the subject merchandise from Taiwan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (19 U.S.C. 1673) (the Act), and that these imports are materially injuring, or are threatening to materially injure, a United States industry. The allegation of sales at less than fair value of the merchandise under investigation from Taiwan is supported by comparisons of the United States price with foreign market value of the merchandise using information obtained from industry sources in the United States and Taiwan.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping investigation and whether it contains information reasonably available to the petitioners supporting the allegations. We have examined the petition filed by a domestic manufacturer of acrylic sheet on behalf of the United States industry, and we have found that it meets the requirements of section 732(b) of the Act. Therefore, we are initiating an antidumping investigation to determine whether acrylic sheet from Taiwan is being, or is likely to be, sold at less than fair value in the United States. If our investigation proceeds normally we will make our preliminary determination by January 4, 1984.

Scope of Investigation

The merchandise covered by this investigation is acrylic film, strips and sheets, at least 0.030 inch thick. It consists of polymerized methyl methalcrylate monomer which is formed into film, strips or sheets by cell casting, continuous casting or extrusion. Acrylic sheet may have a flat or patterned surface and may be transparent or opaque, clear or colored. It is generally used as a glazing material and in lighting fixtures, laminated structures and other fabricated items. It is currently classified under item numbers 771.4100 and 771.4500 of the Tariff Schedules of the United States Annotated (1983) (TSUSA).

Notification to the ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the written consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine within 45 days of the date the petition was received whether there is a reasonable indication that imports of acrylic film, strips and sheets, at least 0.030 inch in thickness from Taiwan are materially injuring, or are likely to materially injure a United States industry. If its determination is

negative, this investigation will terminate; otherwise it will proceed according to the statutory procedures.

Dated: August 17, 1983.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 83-23396 Filed 8-24-83; 8:45 am]

BILLING CODE 3510-25-M

Initiation of Countervailing Duty Investigation; Shop Towels of Cotton From Pakistan

AGENCY: International Trade Administration, Commerce.

ACTION: Initiation of Countervailing Duty Investigation.

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, manufacturers, or exporters in Pakistan of shop towels of cotton, as described in the "Scope of the Investigation" section below, receive benefits which constitute subsidies within the meaning of the countervailing duty law. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of shop towels of cotton are materially injuring, or threatening to materially injure, a U.S. industry. If our investigation proceeds normally, we will make our preliminary determination on or before October 24, 1983.

EFFECTIVE DATE: August 25, 1983.

FOR FURTHER INFORMATION CONTACT: Rick Herring, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230, (202) 377-3963.

SUPPLEMENTARY INFORMATION:

Petition

On July 29, 1983, we received a petition from counsel for Milliken and Company, on behalf of the U.S. industry producing shop towels of cotton. In compliance with the filing requirements of section 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that producers, manufacturers, or exporters in Pakistan of shop towels of cotton receive subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), and that imports of this merchandise are materially injuring, or threatening to materially injure a U.S. industry.

Pakistan is a "country under the Agreement" within the meaning of section 701(b) of the Act. Title VII of the Act, therefore, applies to this investigation, and an injury determination is required.

Initiation of Investigation

Under section 702(c) of the Act, we must determine, within 20 days after a petition is filed, whether a petition sets forth the allegations necessary for the initiation of a countervailing duty investigation and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on shop towels of cotton and found, with one exception, that it meets these requirements. This exception is detailed in the "Allegation of Subsidies" section of this notice.

Therefore, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Pakistan of shop towels of cotton, as listed in the "Scope of Investigation" section of this notice, receive subsidies. If our investigation proceeds normally, we will make our preliminary determination by October 24, 1983.

Scope of the Investigation

The product covered by this investigation is shop towels of cotton. The merchandise is currently classified under item number 366.2740 of the *Tariff Schedules of the United States Annotated* (TSUSA).

Allegation of Subsidies

The petition alleges that producers, manufacturers, or exporters in Pakistan of shop towels of cotton receive the following benefits that constitute subsidies: cash rebates on exports, income tax reductions, preferential financing through government involvement, rebates on import duties, and preferential export insurance.

At this time we are not including in our investigation petitioner's allegation concerning investment tax credits for purchasing and installing new production machinery. The petitioner has neither alleged nor provided any information that such credits are available only to exporters or to a "specific enterprise or industry, or group of enterprises or industries." Therefore, the petitioner has failed to allege the elements necessary to find that the investment tax credit in question constitutes either an export or domestic subsidy.

Notification of ITC

Section 702(d) of the Act requires us to notify the ITC of this action and to provide it with the information used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the written consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by September 12, 1983, whether there is a reasonable indication that imports of shop towels of cotton from Pakistan are materially injuring, or threatening to materially injure, a U.S. industry. If its determination is negative, this investigation will terminate; otherwise, it will continue according to the statutory procedures.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

August 18,1983.

[FR Doc. 83-23395 Filed 8-24-83; 8:45 am]

BILLING CODE 3510-25-M

National Bureau of Standards

National Voluntary Laboratory Accreditation Program

AGENCY: National Bureau of Standards, Commerce.

ACTION: Announcement of laboratory accreditation actions for July 1983.

The National Bureau of Standards announces the following laboratory accreditation actions for July 1983.

The laboratory named below has been newly accredited for testing solid fuel room hearters (Stove LAP) under the National Voluntary Laboratory Accreditation Program (NVLAP). Also listed are the test methods for which the laboratory has been accredited under that program.

Solid Fuel Room Heaters

PACIFIC INSPECTION AND RESEARCH LABORATORY, INC.

Attn: Ronald J. Weisel, 4076 148th Avenue, North East, Redmond, WA 98052. Phone: (206) 881-7668

NVLAP code	Short title	Section of UL 737 5th edition (Mar. 1, 1982)	Section of UL 1482 1st edition (Aug. 9 1979) with revision pages through Aug. 31, 1981
	Physical/Fire Test Group		
04/F01	Test Installation	8	8
04/F02	Temperature Measurement	9	9
04/F03	Smoke Spillage (visual observation).		11
04/F04	Radiant Fire Test	11	12, 12A
04/F05	Coal Fire Test		11A
04/F06	Brand Fire Test	12	13, 13A
04/F07	Flash Fire Test	13	14
04/F08	Strength Tests	15	15
04/F09	Stability Test	16	16
04/F10	Glazing Test	14	17
	Mobile Home Test Group		
04/M01	Test Installation	17	18
04/M02	Toxic Gas	17	18
04/M03	Drop Test	17	18
	Electrical Test Group		
04/E01	Test Voltages	33	35
04/E02	Temperature Measurements, Electrical Components.	34	36
04/E03	Input Test	35	37
04/E04	Temperature Test, Electrical Components.	36	38
04/E05	Leakage Current	38	40
04/E06	Dielectric Withstand	37	39
04/E07	Locked Rotor (Stalled Motor) Temperature.	39	41
04/E08	Power Cord Strain Relief	40	25.4

The laboratories named below which were previously accredited for acoustical testing services (Acoustics LAP) have now been accredited to perform the following additional test methods under that program.

INTEST LABORATORIES, INC.

Attn: Donald Valsvik, 2820 Anthony Lane South, Minneapolis, MN 55418. Phone: (612) 781-2603

NVLAP code	Designation	Short title
08/P11	ANSI S1.31-80 (direct method only).	Sound Power Levels Broad-Band Noise Sources in Reverberation Rooms (direct method only) (100 to 5000 Hz).

JIM WALTER RESEARCH CORPORATION

Attn: Alan P. Conroy, 10301 Ninth Street North, St. Petersburg, FL 33702. Phone: (813) 576-4171

NVLAP code	Designation	Short title
08/E21	AMA-1-II-67	Ceiling Sound Transmission Test by Two-Room Method.

The following two laboratories voluntarily terminated their accreditation under the Freshly Mixed Field Concrete Laboratory Accreditation Program:

Harding-Lawson, Reno, NV
Union Rock and Materials Corp., Phoenix, AZ

FOR FURTHER INFORMATION CONTACT: Mr. John W. Locke, Manager, Laboratory Accreditation, TECH B141, National Bureau of Standards, Washington, D.C. 20234, (301) 921-3431.

Dated: August 19, 1983.

Ernest Ambler,

Director, National Bureau of Standards.

[FR Doc. 83-23293 Filed 8-24-83; 8:45 am]

BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

Caribbean Fishery Management Council; Change in Meeting Date

AGENCY: National Oceanic and Atmospheric Administration Commerce.

ACTION: Notice.

SUMMARY: The public meeting date for the Caribbean Fishery Management Council, as published in the **Federal Register**, August 15, 1983 (48 FR 36871), has been changed as follows:

From

Tuesday, September 13, 1983, at approximately 2 p.m., adjourning at approximately 5 p.m., reconvening on Wednesday, September 14, 1983, at approximately 9 a.m., adjourning at approximately noon.

To

Tuesday, September 20, 1983, at approximately 2 p.m., adjourning at approximately 5 p.m., reconvening on Wednesday, September 21, 1983, at approximately 9 a.m., adjourning at approximately noon. All other information remains unchanged.

Further information: Caribbean Fishery Management Council, Suite 1108, Banco de Ponce Building, Hato Rey, Puerto Rico 00918, Telephone: (809) 753-4926.

Dated: August 22, 1983.

Ann D. Terbush,

Acting Chief, Operations Coordination Group, National Marine Fisheries Service.

[FR Doc. 83-23401 Filed 8-24-83; 8:45 am]

BILLING CODE 3510-22-M

New England Fishery Management Council; Public Meeting With a Partially Closed Session

AGENCY: National Oceanic and Atmospheric Administration; Commerce.

ACTION: Notice.

SUMMARY: The New England Fishery Management Council, established by Section 302 of the Magnuson Fishery Conservation and Management Act (Public Law 94-265, as amended), will hold a public meeting with a partially closed session, as follows.

Public Meeting—discuss reports of the lobster, herring and groundfish oversight committees; discuss the report of the large pelagics oversight committee on the swordfish plan; report on the Mid-Atlantic Council meeting concerning surf clams; discuss the report of the foreign fishing committee on joint ventures, as well as discuss other fishery management and administrative matters.

Partially closed session—discuss United States/Canadian boundary arbitration. Only those Council members and selected staff having security clearances will be allowed to attend this closed session.

DATES: The open session of the public meeting will convene on Tuesday, September 20, 1983, at approximately 1:30 p.m., and will adjourn on Wednesday, September 21, 1983, at approximately 5 p.m. The closed session of the meeting will convene on Tuesday, September 20, 1983, at approximately 10 a.m., and will adjourn at noon. The meeting may be lengthened or shortened depending upon progress on the agenda, or agenda items may be rearranged.

ADDRESS: The meeting will take place at the Ocean Gate Motor Inn, Southport, Maine.

FOR FURTHER INFORMATION CONTACT: New England Fishery Management Council, Suntaug Office Park, Five Broadway (Route One), Saugus, Massachusetts 01906, Telephone: (617-231-0422).

Dated: August 22, 1983.

Ann D. Terbush,

Acting Chief, Operations Coordination Group, National Marine Fisheries Service.

[FR Doc. 83-23402 Filed 8-24-83; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammal Permit Applications; Seoul Grand Park Zoo

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant:

a. Name: Seoul Grand Park Zoo (P327).

b. Address: 55 Makgae-Ree. Gwachon-Myun Sheehung-Gun, Kyunggee-Do, Korea 171–11.

2. Type of Permit: Public Display

3. Name and Number of Animals:

California Sealions (*Zalophus californianus*), 6.

Harbor Seals (*Phoca vitulina*), 6.

4. Type of Take: Rehabilitated Beached/Stranded animals for captive maintenance.

5. Location of Activity: Take animals from an approved rehabilitation facility.

6. Period of Activity: 1 year.

The arrangements and facilities for transporting and maintaining the marine mammals requested in the above described application have been inspected by a licensed veterinarian, who has certified that such arrangements and facilities are adequate to provide for the well-being of the marine mammals involved.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

As a request for a permit to take living marine mammals to be maintained in areas outside the jurisdiction of the United States, this application has been submitted in accordance with National Marine Fisheries Service policy concerning such applications (40 FR 11619, March 12, 1975). In this regard, no application will be considered unless:

(a) It is submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, through the appropriate agency of the foreign government;

(b) It includes:

i. a certification from such appropriate government agency verifying the information set forth in the application;

ii. a certification from such government agency that the laws and regulations of the government involved permit enforcement of the terms of the conditions of the permit, and that the government will enforce such terms;

iii. a statement that the government concerned will afford comity to a National Marine Fisheries Service decision to amend, suspend or revoke a permit.

In accordance with the above cited policy, the certification and statements of the Mayor of Seoul City, Seoul, Korea, have been found appropriate and sufficient to allow consideration of this permit application.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.;

Regional Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731; and

Regional Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way, NE., BIN C15700, Seattle, Washington 988115.

Dated: August 18, 1983.

Richard B. Roe,

Acting Director. Conservation, National Marine Fisheries Service.

[FR Doc. 83–23393 Filed 8–24–83; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Changing T.S.U.S.A. Coverage for Certain Cotton Textile Products Produced or Manufactured in the Philippines

August 23, 1983.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA) under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on August 29, 1983. For further information contact Carl Ruths, International Trade Specialist, (202) 377–4212.

Background

A CITA directive dated December 22, 1982 (47 FR 57986) established levels of restraint for certain specified categories of cotton, wool and man-made fiber textile products, including man-made fiber gloves and mittens in Category 631, produced or manufactured in the Philippines, which may be entered into the United States for consumption or withdrawn from warehouse for consumption, during the twelve-month period which began on January 1, 1983.

Effective on August 29, 1983, this directive is being amended to exclude T.S.U.S.A. numbers 704.8520, 704.8550, and 704.9000 from the level of restraint of 1,700,267 dozen pairs established for Category 631. Henceforth, these three T.S.U.S.A. numbers will constitute a consultation level at 200,000 dozen pairs under an amendment to the Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement of November 24, 1982 between the Governments of the United States and the Republic of the Philippines. Charges to Category 631 (all T.S.U.S.A. numbers except 704.8520, 704.8550, and 704.9000) will be reduced to account for imports in the three T.S.U.S.A. numbers which are being deleted.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175) and May 3, 1983 (48 FR 19924).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

August 23, 1983.

Committee for the Implementation of Textile Agreements

Commissioner of Customs, Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of December 22, 1982 from the Chairman of the Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool and man-made fiber textile products produced or manufactured in the Philippines.

Effective on August 29, 1983, you are directed to delete T.S.U.S.A. numbers 704.8520, 704.8550, and 704.9000 from the coverage of the overall ceiling of 1,700,267 dozen pairs established for Category 631, produced or manufactured in the Philippines and exported during the twelve-month period which began on January 1, 1983. The limit of 200,000 dozen pairs previously established for these three T.S.U.S.A. numbers is not being changed.

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. 533.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 83–23485 Filed 8–24–83; 8:45 am]

BILLING CODE 3510–25–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Cancellation of Notice of Intent To Prepare a Draft EIS for the Dry Creek Dam and Channel Improvements

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

ACTION: Cancellation of Notice of Intent to Prepare a DEIS.

SUMMARY: This Notice advises the public that the San Francisco District, U.S. Army Corps of Engineers has determined that an EIS for the implementation of consultation recommendations on the Lake Sonoma Master Plan for the Dry Creek Dam and Channel Improvements, Sonoma County, California is not necessary.

The Upper Dry Creek drainage basin provides critical habitat for the American Peregrine Falcon. As indicated in the Biological Opinion of FWS rendered on May 29, 1979, the Draft Warm Springs Dam and Lake Sonoma Recreation Master Plan for the project would have affected the continued existence of the falcon and its critical habitat.

On June 3, 1980, the Corps of Engineers published a Notice of Intent to Prepare an EIS based on discussions held on July 6, 1979, August 21, 1979 and November 5, 1979 with FWS.

As a result of continuing consultation with FWS, it was determined that administrative actions other than those furnished in the May 29, 1979 biological opinion to address the concerns of the falcon without having a significant effect upon the quality of the environment could be developed. Therefore, no EIS is required. If land acquisition or interest in lands is pursued at a later date to address the endangered falcons, preparation of an EIS will be initiated.

FOR FURTHER INFORMATION CONTACT: Les Tong, Environmental Branch Coordinator, U.S. Army Corps of Engineers, San Francisco District, 211 Main Street, San Francisco, California 94105, (415) 974–0439.

John O. Roach II,

Army Liaison Officer with the Federal Register.

[FR Doc. 83–23325 Filed 8–24–83; 8:45 am]

BILLING CODE 3710–FS–M

Gavin's Point Dam Pool Raise Study, Yankton, South Dakota; Intent To Prepare a Draft Environmental Impact Statement

AGENCY: U.S. Army Corps of Engineers, Omaha District.

ACTION: Notice of Intent to Prepare a DEIS.

SUMMARY: 1. The potential Federal action is to recommend to Congress that the Corps of Engineers be authorized to raise the normal operating pool level of Lewis and Clark Lake to provide additional hydropower and possibly additional flood control, recreation, and fish and wildlife benefits.

2. Reasonable structural alternatives to the additional baseload hydropower that would be generated from Gavin's Point are limited to coal- or nuclear-fueled baseload power plants. Nonstructural alternatives to reduce demand include load management and conservation measures.

3. To date, public involvement concerning the proposed project has incuded coordination with Federal, State and local agencies, including citizen's groups and individuals. Coordination meetings have been held with State and Federal fish and wildlife agencies. A public information meeting was held in the area on 28 April 1983. Potential significant impacts identified thus far include loss of wetlands, loss of terrestrial habitat, loss of approximately 5 miles of free-flowing Missouri River, impacts to fisheries in Lewis and Clark Lake, possible short-term water quality effects, possible loss of farmland, possible displacement of local landowners, erosion, adverse effects on recreation (waterfowl hunting), socioeconomic impacts (land acquisition), possible downstream impacts, and the potential adverse impact on the bald eagle and American peregrine falcon. Beneficial impacts include availability of baseload power, increase in recreation opportunities, possible reduced dredging requirements at marinas, extending the expected life of the lake, improving depth of water at local water supply intakes, a possible beneficial effect on fisheries, and a possible creation of different wetland habitats. The project will comply with the requirements of the Historic Preservation Act, the Endangered Species Act, Section 404 of the 1977 Clean Water Act, Executive Order 11988 on Flood Plains and Executive Order 11990 on Wetlands.

4. A scoping meeting for the DEIS will be held on 31 August 1983 at the Visitor Center, Lewis and Clark Lake, Yankton, South Dakota, at 7:00 p.m. The participation of the public and all interested Governmental agencies is invited.

5. The Omaha District estimates that the DEIS will be released for public review in April 1984.

ADDRESS: Questions about the proposed action, DEIS, or scoping meeting should be directed to Richard Gorton, Chief, Environmental Analysis Branch, Omaha District, Corps of Engineers, 6014 U.S. Post Office and Courthouse, Omaha, Nebraska 68102. Phone: (402) 221–4598.

John O. Roach II,

DA Liaison Officer with the Federal Register.

[FR Doc. 83–23326 Filed 8–24–83; 8:45 am]

BILLING CODE 3710–62–M

Intent To Prepare a Draft Environmental Impact Statement on Proposed Federal Navigation Improvement at Port Canaveral, Florida

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

ACTION: Notice of intent to prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY: 1. The considered project consists of providing an access channel and basin as part of the Federally authorized Navigation Project for deep draft ships at Canaveral Harbor. Some of the dredged material would be used as fill to provide upland areas for port facility development. The remainder of the material not suitable for this purpose would be disposed of in an upland site and/or an EPA-designated interim ocean disposal site.

2. The following alternatives will be considered:

(a) Project depths from 23 to 31 feet.

(b) Two basin configurations.

(c) Two disposal sites.

(d) No action.

3. (a) Coordination to date has involved site inspections and meetings with the U.S. Fish and Wildlife Service and the National Park Service. A public meeting is tentatively planned at the end of 1983. Comments on alternatives and environmental concerns are invited from any interested parties.

(b) Significant issues to be analyzed in depth in the DEIS are preliminarily as follows:

1. Impact of channel and harbor enlargement on local wildlife resources.

2. Impacts on manatees from increased ship traffic.

3. Effects of ocean disposal of dredged material.

(c) Consultation with appropriate Federal and State agencies is required

under provisions of the Endangered Species Act, Section 404b of the Clean Water Act, and the National Historic Preservation Act.

4. A scoping meeting is not contemplated.

5. The DEIS is expected to be available for review in the fourth quarter of FY 1983.

ADDRESS: Questions about the proposed action and DEIS may be referred to Dr. Gerald L. Atmar; Chief, Environmental Studies Section; U.S. Army Corps of Engineers; P.O. Box 4970; Jacksonville, Florida 32232, telephone (904) 791–2615.

John O. Roach II,

Army Liaison Officer with the Federal Register.

[FR Doc. 83–23324 Filed 8–24–83; 8:45 am]

BILLING CODE 3710–AJ–M

Intent To Prepare a Draft Supplemental Environmental Impact Statement for the Ouachita-Black Rivers Navigation Project, Arkansas and Louisiana

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

ACTION: Notice of Intent to Prepare a Draft Environmental Impact Statement (DEIS) on Channel Realignment.

SUMMARY:

1. *Description of Action:* The project objective is to complete the channel realignment features of the navigation project which extends from the mouth of Black River in Louisiana to mile 351 of the Ouachita River in Arkansas. The selected plan consists of 2 bendway cutoffs and 2 bend widenings in Louisiana and 8 bendway cutoffs and 12 bend widenings in Arkansas.

2. *Alternatives:* No action or no realignment and five structural alternatives providing for various tow configurations.

3. *Description of Scoping Process:*

a. *Public involvement.* Public meetings were held in Monroe, Louisiana, and El Dorado, Arkansas, on 31 August 1981 and 1 September 1981, respectively. The purpose of the meetings was to present the results of the initial review of channel realignment features. Public workshops were held in the respective cities prior to the meetings to provide local interests an opportunity to discuss the study on a personal basis in an informal meeting.

b. *Issues analyzed in the EIS.* Impacts of channel realignment on water quality, aquatic ecosystem, terrestrial ecosystem, endangered species, and cultural resources will be analyzed in the EIS.

c. *Assignments for input into the EIS.* No specific assignments other than Corps of Engineers as lead agency.

d. *Environmental review and consultation requirement.* Review by Federal, state, and local agencies and interested groups and individuals will be achieved.

4. *Scoping Meeting Scheduled:* No public scoping meeting is planned.

5. *Date DEIS Will Be Available to Public:* October 1983.

ADDRESS: Questions about DEIS can be answered by: Mr. Gene Parks, U.S. Army Corps of Engineers, Vicksburg District, Environmental Analysis Branch, P.O. Box 60, Vicksburg, Mississippi 39180, Telephone: FTS 542–5438, Commercial: (601) 634–5438.

John O. Roach II,

DA Liaison Officer with the Federal Register.

[FR Doc. 83–23323 Filed 8–24–83; 8:45 am]

BILLING CODE 3710–GX–M

Department of the Navy

Chief of Naval Operations, Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Task Force on Conventional Strike Warfare will meet on September 21–22, 1983, from 8:30 a.m. to 5 p.m. each day, at 2000 North Beauregard Street, Alexandria, Virginia. All sessions will be closed to the public.

The entire agenda for the meeting will consist of discussions of key issues related to the development of more effective and widely dispersed strike capabilities in the fleet and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact Commander R. Robinson Harris, Executive Secretary of the CNO Executive Panel Advisory Committee, 2000 North Beauregard Street, Room 568, Alexandria, Virginia 22311. Phone (202) 694–8422.

Dated: August 22, 1983.

F. N. Ottie,

Lieutenant Commander, JAGC, U.S. Navy. Alternate Federal Register, Liaison Officer.

[FR Doc. 83–23289 Filed 8–24–83; 8:45 am]

BILLING CODE 3810–AE–M

Chief of Naval Operations, Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Task Force on Arctic Warfare will meet on September 28–29, 1983, from 9 a.m. to 5 p.m. each day, at 2000 North Beauregard Street, Alexandria, Virginia. All sessions will be closed to the public.

The entire agenda for the meeting will consist of discussions of key issues related to meeting the Soviet naval threat from the Arctic region and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact Commander R. Robinson Harris, Executive Secretary of the CNO Executive Panel Advisory Committee, 2000 North Beauregard Street, Room 568, Alexandria, Virginia 22311. Phone (202) 694–8422.

Dated: August 22, 1983.

F. N. Ottie,

Lieutenant Commander, JAGC, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 83–23288 Filed 8–24–83; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

List of Accrediting and State Approval Agencies; Special Review Procedure

AGENCY: Department of Education.

ACTION: Notice.

SUMMARY: The Secretary lists nationally recognized accrediting agencies and State approval agencies that the National Advisory Committee on

Accreditation and Institutional Eligibility recommends to the Secretary under a special review procedure. The list of agencies to which the Advisory Committee has applied this procedure is composed of (1) agencies that were awarded the full four-year recognition period in their last review and (2) agencies that have submitted interim reports.

DATE: Comments on these analyses must be received no later than September 30, 1983.

ADDRESS: Comments may be submitted to Richard J. Rowe, Director, Eligibility and Agency Evaluation Staff, Office of Postsecondary Education, 400 Maryland Avenue, SW. (Room 3030, ROB-3), U.S. Department of Education, Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Richard J. Rowe, Telephone: (202) 245-9873.

SUPPLEMENTARY INFORMATION: This document is intended to advise the public that the National Advisory Committee on Accreditation and Institutional Eligibility, in making recommendations to the Secretary regarding his responsibility for listing accrediting agencies and State approval agencies as required by 20 U.S.C. 1141(a), 20 U.S.C. 1094(b)(3) and other statutes, is following a special review procedure regarding some agencies.

Usually the Advisory Committee reviews in detail each report and petition and each staff analysis and hears oral presentations from the petitioning agencies and interested third parties before formulating the recommendations to the Secretary regarding the accrediting or State approval agencies.

The special procedure for reviewing agency petitions and interim reports will reduce the depth of review by the Advisory Committee of agencies that were awarded the full four-year recognition period in their last review, and of agencies which have submitted interim reports. The Advisory Committee will use both staff analyses and public comment before submitting final recommendations to the Secretary regarding the list of these agencies as required under 34 CFR Part 603.

This notice provides the names of the agencies being reviewed under this special procedure. The Department's Eligibility and Agency Evaluation Staff has prepared analyses of the petitions and reports of these agencies according to the criteria in 34 CFR 603.6, and 34 CFR 603.23 and has prepared recommendations on them.

The public is offered an opportunity to comment on these analyses before the Advisory Committee makes final recommendations to the Secretary.

The reports and petitions of the following agencies are being reviewed:

Petitions for Recognition as Nationally Recognized Accrediting Agencies and Associations

A. Petitions for Continuation of Recognition

Committee on Allied Health Education and Accreditation, American Medical Association (as the coordinating agency for allied health education).

Proposed Recommendation: Continue recognition for a period of four years.

Review committees that cooperate with the Committee on Allied Health Education and Accreditation of the American Medical Association:

American Society of Cytology, Cytotechnology Program Review Committee.

Proposed Recommendation: Continue recognition for a period of four years with a report in one year on criteria (a)(3)(i) (clear procedures), (b)(3)(iv) (opportunity to comment on written report), and (d)(2) (provides against conflict of interests).

American Association of Medical Assistants Endowment, Curriculum Review Board (for accreditation of one and two-year medical assistants programs).

Proposed Recommendation: Continue recognition for a period of four years.

National Accrediting Agency for Clinical Laboratory Sciences (for accreditation of educational programs for the medical technologist, medical laboratory technician (certificate and associate degree, and histologic technician/technologist).

Proposed Recommendation: Continue recognition for a period of four years.

American Medical Record Association, Council on Education (for accreditation of programs for the medical record administrator and medical record technician).

Proposed Recommendation: Continue recognition for a period of four years with an interim report in one year addressing progress toward compliance with criteria (a)(2)(i), (a)(2)(ii), (a)(2)(iii), (a)(2)(iv), and (a)(2)(v).

Joint Review Committee on Educational Programs in Nuclear Medicine Technology (for accreditation of programs for the nuclear medicine technologist).

Proposed Recommendation: Continue recognition for a period of four years with an interim report in one year on criterion (a)(3)(iii)(B).

American Occupational Therapy Association, Accreditation Committee (for accreditation of professional programs).

Proposed Recommendation: Continue recognition for a period of four years.

Joint Review Committee for Educational Programs for the Physician's Assistant (for accreditation of programs for the respiratory therapist and respiratory therapy technician).

Proposed Recommendation: Continue recognition for a period of four years.

B. Interim Reports

Accrediting Bureau of Health Education Schools.

Proposed Recommendation: Accept the report.

American Association of Bible Colleges.

Proposed Recommendation: Accept the report.

National Architectural Accrediting Board.

Proposed Recommendation: Accept the report.

New England Association of Schools and Colleges.

Proposed Recommendation: Receive the report and enjoin the agency to direct special attention toward improving compliance with criteria (a)(3)(i), (b)(2)(ii)(B), and (b)(5) of the Criteria for Recognition before its next full review by the Secretary.

INVITATION TO COMMENT: A copy of the analysis of any of the reports and petitions submitted by the agencies listed in this Notice may be obtained from Richard J. Rowe.

Dated: August 11, 1983.

Edward M. Elmendorf,

Assistant Secretary for Postsecondary Education.

[FR Doc. 83-23306 Filed 8-24-83; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[Docket No. ERA-FC-83-021; OFP Case No. 66015-9239-20-24]

Exemption Petition; Power Systems Engineering, Inc.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Acceptance of Petition for Exemption and Availability of Certification by Power Systems Engineering, Inc.

SUMMARY: On August 15, 1983, Power Systems Engineering, Inc. (Power Systems), Houston, Texas, filed a

petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent cogeneration exemption for an electric powerplant from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 *et seq.*) ("FUA" or "the Act"). Title II of FUA prohibits both the use of petroleum and natural gas as a primary energy source in any new powerplant and the construction of any such facility without the capability to use an alternate fuel as a primary energy source. Final rules setting forth criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA were published in the **Federal Register** at 46 FR 59872 (December 7, 1981). Final rules governing the cogeneration exemption were revised on June 25, 1982 (47 FR 29209 (July 6, 1982)).

Power Systems seeks an exemption for a proposed 450 megawatt (net) powerplant consisting of five self contained, 73 megawatt combustion gas turbines; five unfired, topping cycle heat recovery steam generators producing 378,400 lbs./hr. of process steam each; and one condensing steam turbine producing 95 megawatts of electric power. The cogeneration facility will: (1) Produce both high pressure and low pressure process steam which will be purchased by ARCO Chemical Company; and (2) produce electric power for sale to Houston Lighting & Power Company (HLPC). The sale of virtually all of the net annual electric power produced by the cogenerator the HLPC makes the cogeneration facility an electric powerplant pursuant to the definitions contained in 10 CFR 500.2. The five combustion gas turbines are the only fuel-consuming equipment in the facility and will use natural gas as the primary fuel, with propane as an emergency stand-by fuel.

ERA has determined that the petition appears to include sufficient evidence to support an ERA determination on the exemption request and it is therefore accepted pursuant to 10 CFR 501.3. A review of the petition is provided in the Supplementary Information section below.

As provided for in sections 701 (c) and (d) of FUA and 10 CFR 501.31 and 501.33, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification as well as other documents and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room 1E-190, Washington, D.C. 20585, Monday through Friday, 8:00 a.m. to 4:00 p.m.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the period for public comment and hearing, unless ERA extends such period. Notice of any such extension, together with a statement of reasons therefor, would be published in the **Federal Register.**

DATES: Written comments are due on or before October 11, 1983. A request for a public hearing must be made within this same 45-day period.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing shall be submitted to: Case Control Unit, Office of Fuels Programs, Room GA-093, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585.

Docket No. ERA-FC-83-021 should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

Anthony Wayne, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue SW., Room GA-073C, Washington, D.C. 20585, Phone (202) 252-1730.

Marya Rowan, Office of the General Counsel, Department of Energy, Forrestal Building, Room 6B-222, 1000 Independence Avenue SW., Washington, D.C. 20585, Phone (202) 252-2967.

SUPPLEMENTARY INFORMATION: Power Systems plans to install a cogeneration facility, which it will own and operate, in Channelview, Harris County, Texas, adjacent to the ARCO Chemical Company's Lyondell Plant (ARCO). The Lyondell Cogeneration Project will (1) produce both high pressure and low pressure process steam for sale to ARCO for use in the plant's chemical process units, and (2) generate electric power to sell to HLPC. The proposed system will consist of five General Electric PG7111(E), 73 megawatt combustion gas turbines; five unfired, topping cycle heat recovery steam generators producing 378,400 lbs./hr. of steam each; and one condensing steam turbine. Under normal design conditions, the Lyondell facility will produce 450 megawatts (net) of electric power and 950,000 pounds per hour of process steam, and will produce up to 850,000 pounds per hour of process steam during planned or emergency shutdown of any two of the five gas turbines. The five combustion gas turbines, which will be the only fuel-consuming equipment in the facility, will use natural gas as the primary fuel, with propane as an emergency stand-by fuel.

Power Systems expects to sell all of the net annual electric power from the turbine generators to HLPC. The sale of in excess of 50 percent of the facility's net annual electric power generation causes it to be classified as an electric powerplant under FUA (10 CFR 500.2). It is therefore subject to the Title II construction and fuel use prohibitions contained in the Act.

Section 212(c) of the Act and 10 CFR 503.37 provide for a permanent cogeneration exemption from the prohibitions of Title II of FUA. In accordance with the requirements of § 503.37(a)(1), Power Systems has certified to ERA that:

1. The oil or gas to be consumed by the cogeneration facility will be less than that which would otherwise be consumed in the absence of the cogeneration facility, where the calculation of savings is in accordance with 10 CFR 503.37(b); and

2. The use of a mixture of petroleum or natural gas and an alternate fuel in the cogeneration facility, for which an exemption under 10 CFR 503.38 would be available, would not be economically or technically feasible.

In accordance with the evidentiary requirements of § 503.37(c) (and in addition to the certifications discussed above), Power Systems has also included as part of its petition:

1. Exhibits containing the basis for the certifications described above; and

2. An environmental impact analysis, as required under 10 CFR 503.13.

In processing this exemption request, ERA will comply with the requirements of the National Environmental Policy Act of 1969 (NEPA); the Council on Environmental Quality's implementing regulations, 40 CFR 1500 *et seq.*; and DOE's guidelines implementing those regulations published at 45 FR 20694, March 28, 1980. NEPA compliance may involve the preparation of (1) an Environmental Impact Statement (EIS); (2) an Environmental Assessment; or (3) a memorandum to the file finding that the grant of the requested exemption would not be considered a major Federal action significantly affecting the quality of the environment. If an EIS is determined to be required, ERA will publish a Notice of Intent to prepare an EIS in the **Federal Register** as soon as practicable. No final action will be taken on the exemption petition until ERA's NEPA compliance has been completed.

The acceptance of the petition by ERA does not constitute a determination that Power Systems is entitled to the exemption requested. That determination will be based on the entire record of this proceeding, including any comments received during the public comment period provided for in this notice.

Issued in Washington, D.C. on August 19, 1983.

Robert L. Davies,

Deputy Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 83-23285 Filed 8-24-83; 8:45 am]

BILLING CODE 6450-01-M

Proposed Remedial Order to Energy Exchange Company, Inc.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Proposed Remedial Order to Energy Exchange Company, Inc.

SUMMARY: Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA), of the Department of Energy (DOE) gives notice that a Proposed Remedial Order (PRO) was issued on August 5, 1983, to Energy Exchange Company, Inc. (Enexco) located at 2000 Oak Street, Bakersfield, California 93302. Any aggrieved person may file a Notice of Objection to the Proposed Remedial Order in accordance with 10 CFR 205.193 on or before the fifteenth day after the publication of this Notice, or on the first federal workday thereafter.

In this Proposed Remedial Order, ERA sets forth proposed findings of fact and conclusions of law concerning sales of crude oil and fuel oil by Enexco in the state of California during the period April, 1976 through December, 1977. Selected transactions in 1978 are also included in the PRO. Energy Exchange Company, Inc. is alleged to have received $2,260,649.00 in violation of the price rules applicable to resales of crude oil set forth in 10 CFR Part 212, Subparts F and L.

Requests for copies of the Proposed Remedial Order, with confidential information deleted, should be directed to: Raymond G. Gong, Chief Counsel, Economic Regulatory Administration, U.S. Department of Energy, 333 Market Street, Sixth Floor, San Francisco, CA 94105.

Aggrieved persons may object to this Proposed Remedial Order by filing a Notice of Objection to the Proposed Remedial Order. This notice must comply with the requirements of 10 CFR 205.193. To be considered, a Notice of Objection must be filed with: Office of Hearings and Appeals, Department of Energy, 12th & Pennsylvania Avenue, NW., Washington, D.C. 20461.

The notice must be filed in duplicate, by 4:30 p.m. EDT on or before the fifteenth day after publication of this Notice, or the first federal workday thereafter. In addition, a copy of the Notice of Objection must, on the same day as filed, be served on Energy Exchange Company, Inc. and on each of the following persons pursuant to 10 CFR 205.193(c):

Raymond G. Gong, Chief Counsel, San Francisco Office, Economic Regulatory Administration, U.S. Department of Energy, 333 Market Street, Sixth Floor, San Francisco, CA 94105.

Theodore A. Miles, Assistant General Counsel for Administrative Litigation, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585.

No data or information which is confidential should be included in any Notice of Objection.

Issued in San Francisco, California on the fifth day of August, 1983.

Raymond G. Gong,

Chief Counsel, Economic Regulatory Administration, San Francisco Office.

[FR Doc. 83-23284 Filed 8-24-83; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

Agency Forms Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of submission of request for clearance to the Office of Management and Budget.

SUMMARY: Under provisions of the Paperwork Reduction Act (44 U.S.C. Ch. 35), Department of Energy (DOE) notices of proposed collections under review will be published in the **Federal Register** on the Thursday of the week following their submission to the Office of Management and Budget (OMB). Following this notice is a list of the DOE proposals sent to OMB for approval since Thursday, August 18, 1983. The listing does not contain information collection requirements contained in regulations which are to be submitted under 3504(h) of the Paperwork Reduction Act.

Each entry contains the following information and is listed by the DOE Sponsoring office: (1) The form number; (2) Form title; (3) Type of request, e.g., new, revision, or extension; (4) Frequency of collection; (5) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (6) Type of respondent; (7) An estimate of the number of respondents; (8) Annual respondent burden, i.e., an estimate of the total number of hours needed to fill out the form; and (9) A brief abstract describing the proposed collection.

DATES: Last Notice published Thursday, August 18, 1983.

FOR FURTHER INFORMATION CONTACT:

John Gross, Director, Forms Clearance and Burden Control Division, Energy Information Administration, M.S. 1H-023, Forrestal Building, 1000 Independence Ave., NW., Washington, DC 20585, (202) 252-2308

Jefferson B. Hill, Department of Energy Desk Officer, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395-7340

Vartkes Broussalian, Federal Energy Regulatory Commission Desk Officer, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395-3087

SUPPLEMENTARY INFORMATION: Copies of proposed collections and supporting documents may be obtained from Mr. Gross. Comments and questions about the items on this list should be directed to the OMB reviewer; as shown in "For Further Information Contact." If you anticipate commenting on a form, but find that time to prepare these comments will prevent you from submitting comments promptly, you should advise the OMB reviewer of your intent as early as possible.

Issued in Washington, D.C., August 22, 1983.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

DOE FORMS UNDER REVIEW BY OMB

Form No.	Form title	Type of request	Response frequency	Response obligation	Respondent description	Estimated number of respondents	Annual respondent burden	Abstract
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
BPA-705-A-C..	BPA/Utility solar water heating workshops pilot program.	Extension.....	On occasion.....	Required to obtain or retain a benefit.	Individuals and utilities....	440	173	This pilot program will test the effectiveness of utility-sponsored workshops as a method for increasing the use of solar water heaters. BPA will determine the cost-effectiveness of owner-built/installed solar water heating systems and compare these systems with contractor-installed systems.
EIA-191.....	Underground gas storage report.	Extension.....	Monthly April-November; twice a month December-March.	Mandatory.....	Companies that operate storage fields in the US..	49	2,352	The EIA-191 requests data on all underground natural gas storage facilities operated by companies not subject to FERC jurisdiction. These data are merged with data received on the essentially identical FPC-8, which is collected by EIA from operators subject to FERC jurisdiction, and are published in a number of EIA reports.
EIA-451A-H.....	Residential energy consumption survey.	Revision.....	Biennial.....	Voluntary for A-D; mandatory for E-H.	Households, rental agents and energy suppliers.	5,503	9,342	The Residential Energy Consumption Survey tracks the energy consumption patterns of the residential sector. The survey results are published by the Energy Information Administration.
NE-827-A-C....	Clinch River breeder reactor plant project socioeconomic monitoring program.	New.....	On occasion.....	Voluntary.....	Individuals.....	2,800	233	The data will be used to evaluate the significance of socioeconomic effects resulting from construction of the Clinch River Breeder Reactor Plant and to provide analyses of project-related effects to the U.S. Nuclear Regulatory Commission, State of Tennessee, City of Oak Ridge, and appropriate planning agencies.

[FR Doc. 83-23286 Filed 8-24-83; 8:45 am]
BILLING CODE 6450-01

FEDERAL DEPOSIT INSURANCE CORPORATION

Statement of Policy and Criteria on Assistance to Operating Insured Banks Which Are in Danger of Failing

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Statement of Policy.

SUMMARY: This statement of policy represents the opinion of the Board of Directors of the Federal Deposit Insurance Corporation ("FDIC") as to the applicability of certain criteria and conditions in determining whether financial assistance may be provided to prevent the closing of an insured bank, other than a mutual savings bank, under section 13(c) of the Federal Deposit Insurance Act, as amended (12 U.S.C. 1823(c)).

EFFECTIVE DATE: August 25, 1983. (OMB No. 3064-0071.)

FOR FURTHER INFORMATION CONTACT: Stanley J. Poling, Associate Director, Division of Bank Supervision, Room 5018D, (202-389-4431), Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION: Section 13(c) of the Federal Deposit Insurance Act as amended by the Garn-St Germain Depository Institutions Act of 1982 (12 U.S.C. 1823(c)), in pertinent part grants the FDIC broad authority (i) to provide assistance under section 13(c)(1) to an insured bank in danger of closing; and (ii) to provide assistance under section 13(c)(2) with regard to an insured bank in danger of failing to facilitate a merger or consolidation, a purchase of assets and assumption of liabilities, or the acquisition of the stock of such bank, and to provide assistance to a company which controls or will control such bank. The Board of Directors of the FDIC is adopting this statement of policy in order to provide general guidance to interested persons in structuring a request for assistance.

As the Regulatory Flexibility Act of 1980 (Pub. L. No. 96-354) does not apply to general statements of policy, no regulatory flexibility analysis is required. The policy statement does not impose new recordkeeping or reporting requirements. It does provide guidance as to the information to be included in requests for assistance. Although a minimal number of requests are expected annually, it is possible that ten or more requests could be made to the FDIC, thus making the information collection requirements established in the policy statement subject to the Paperwork Reduction Act of 1980 (Pub. L. No. 96-511). The Office of Management and Budget ("OMB") has reviewed and approved the information collection requirements of the policy statement (OMB control number 3064-0071). As statements of policy and interpretative rules are not subject to sections 4 (b) through (d) of the Administrative Procedure Act, as amended (5 U.S.C. 553(b)-(d)), this statement of policy may be issued in final form without opportunity for public comment and may be made immediately effective upon its publication in the **Federal Register.**

FDIC Statement of Policy and Criteria on Assistance to Operating Insured Banks Which Are in Danger of Failing

The Board of Directors of the Federal Deposit Insurance Corporation has statutory authority to provide assistance to prevent the closing of an insured bank in its sole discretion and on such terms and conditions as the Board may prescribe. Such assistance may be granted (i) to an insured bank in danger of closing under section 13(c)(1) of the Federal Deposit Insurance Act, (ii) to facilitate a merger of an insured bank in danger of closing under section 13(c)(2), or (iii) to a company which controls or will control an insured bank in danger of closing under section 13(c)(2) when the Board determines the amount of the assistance to be granted is less than the cost that would be incurred in the liquidation of the insured bank, or when the Board determines that the continued operation of the insured bank is

essential to provide adequate banking services to its community.

The Board, as a matter of policy, generally will not approve any proposal requesting assistance to prevent the closing of an insured bank, other than a mutual savings bank, unless:

(1) The financial impact on executive management, directors, shareholders and subordinated debt holders is comparable to what would have occurred if the bank had actually closed.

(2) Recoveries from nonbook sources such as charged-off assets or claims against officers, directors, bonding companies and the like accrue first to the FDIC to the extent of any losses it will sustain in connection with the proposal. The FDIC should be "last in and first out" in any open bank proposal.

(3) The proposal clearly and unquestionably represents the least costly alternative available to the FDIC, taking into account the maximum "premium" the FDIC could expect to receive in a closed bank auction.

(4) The proposal features sufficient tangible capitalization and otherwise reasonably assures the future viability of the bank.

Criteria

The following criteria expand on the general principles set forth above:

(1) Former shareholders should not receive financial remuneration for their stock, either in the form of continuing value for existing shares or payments in cash or new securities, except where the proposal assures the FDIC of full payment, at present value, of all assistance granted before any benefit is realized by former shareholders.

(2) Holders of subordinated debt should not receive principal or interest payments or other monetary benefit until such time as any FDIC assistance has been repaid in full at present value.

(3) All bank directors, officers serving in a policymaking role, and other officers as may be designated by the FDIC should submit their written resignations unless their continued association with the bank has been previously approved by the FDIC. Such persons may not later reassociate themselves with the bank without the prior consent of FDIC.

(4) All claims against bonding companies, accountants, attorneys, directors, or other such claims should be assigned to the FDIC, which will pursue such claims on its own initiative. Any recoveries under such claims shall go first to the FDIC until it is repaid, at present value, for the amount of any assistance granted; excess recoveries shall accrue to the benefit of the bank's former shareholders or subordinated creditors. To the extend that FDIC cannot, by law, pursue such claims on its own initiative, benefit from such claims shall be assigned to FDIC.

(5) Recoveries from charged-off assets, either prior to or subsequent to the granting of assistance, should accrue first to the FDIC to the extent of the present value of any assistance granted. To the extent that the collection of charged-off assets is not directed by the FDIC, the proposal shall contain adequate incentives to assure that collection efforts are actively pursued by the bank.

Other Information

Any proposal requesting assistance to prevent the closing of an insured bank should be addressed to the appropriate FDIC Regional Office and should contain the following information:

(1) The amount, terms, and conditions of the assistance requested from the FDIC as well as details of the financial support to be provided to the bank by its directors, shareholders, and/or others. This information must be structured in such a way as to permit the FDIC to estimate as accurately as possible the costs it will incur and the costs which it will avoid as a result of the proposal.

(2) Evidence that the bank or resulting institution (if a merger or consolidation is involved) will have available the managerial and financial resources to reasonably assure that it will be a viable institution in the future.

A copy of any proposal requesting assistance should be provided to the bank's chartering authority and, if approvals under the Bank Holding Company Act are required, to the appropriate Federal Reserve bank.

By Order of the Board of Directors.

Dated: June 13, 1983.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson

Executive Secretary.

[FR Doc. 83-23354 Filed 8-24-83; 8:45 am]

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FEDERAL MARITIME COMMISSION

[Docket No. 82-54]

Space Charter and Cargo Revenue Pooling Agreements in the United States/Japan Trades; Investigation and Conditional Approval; Agreements Pendente Lite

This proceeding was instituted by an Order of Investigation and Hearing served on November 19, 1982. That Order was issued in response to *Sea-Land Service, Inc. v. United States*, 683 F.2d 491 (D.C. Cir. 1982), which remanded a previous Commission order conditionally approving pursuant to section 15 of the Shipping Act, 1916, 46 U.S.C. 814, a series of space charter and revenue pooling agreements among Japanese-flag lines in the Unites States/Japan trades.[1] The Court of Appeals directed the Commission to conduct further evidentiary hearings on certain issues raised by U.S.-flag carriers which had protested the agreements.

The parties have engaged in extensive discovery and are currently preparing for oral hearings. However, on April 21, 1983, the Japanese-flag lines (hereinafter "Proponents") filed amendments to the agreements under investiagtion, which would extend the term of the agreements for five years beyond their common expiration date of August 22, 1983.[2] No other change in the agreements is proposed. Proponents did not submit memoranda or other material justifying the extension of their agreements, see 46 CFR 522.5, but instead requested that the amendments be made part of this proceeding.

Notice of the filing of the amendments appeared in the **Federal Register** on May 3, 1983. 48 FR 19,935–36. Extensive protests were filed on May 23, 1983 by American President Lines, Ltd. (APL) and Sea-Land Service, Inc. (Sea-Land), which were protestants against the original agreements and are parties to this proceeding. APL and Sea-Land agreed with Proponents that the amendments should be made part of this pending investigation. They devoted the remainder of their filings to the question of whether the agreements should be given *pendente lite* approval beyond August 22, 1983, even though Proponents had not sought any such approval in their April 21 filings. Both carriers opposed any *pendente lite* approval for the revenue pooling agreements (Nos. 10116 and 10274), and stated that they would accept such approval for the space charter agreements (Nos. 9718, 9731, 9835 and 9975) only if strict capacity limitations were placed upon the various parties to those agreements. A third protestant, Lykes Bros. Steamship Co., Inc. (Lykes), filed brief comments stating its agreement that the amendments should be made part of this proceeding, and reserving its right to be heard on the question of *pendente lite* approval of the agreements.

[1] The parties to these agreements are Japan Line, Ltd., Kawasaki Kisen Kaisha (K Line), Mitsui O.S.K. Lines, Ltd. (Mitsui), Nippon Yusen Kaisha (NYK), Showa Shipping Co., Ltd. (Showa) and Yamashita-Shinnihon Steamship Co., Ltd. (Y-S Line).

[2] The modifications have been assigned FMC Nos. 9718-9, 9731-9, 9835-6, 9975-8, 10116-5 and 10274-2.

On June 8, 1983, Proponents responded to the protests. They referred to Sea-Land's and APL's discussions of *pendente lite* approval as "purely anticipatory assertions . . . obviously premature . . . [which] should either be rejected or held in abeyance pending proponents' filing of a timely application for *pendente lite* relief."

On July 1, 1983, Proponents filed a "Petition for Pendente Lite Relief," in which they asked for permission to operate under their respective space charter and revenue pooling agreements during the pendency of Docket No. 82–54. Proponents' primary evidence in support of their Petition was an affidavit executed jointly by K. Kawamura, an official of NYK Line, and by S. Hirano, and official of Y–S Line (Kawamura-Hirano Affidavit).[3] They also submitted affidavits by officials of the ports of Portland, Oakland, and New York-New Jersey, and copies of statutes and previous policy statements of the Government of Japan concerning the Agreements.

Replies in opposition to the Petition were timely filed by Sea-Land, APL and Lykes. APL and Sea-Land repeated their earlier contentions that the pooling agreements should not be given *pendente lite* approval and that the space charter agreements should be given such approval only if strict limitations were placed upon the amount of vessel capacity which could be put into service by Proponents. Both carriers submitted extensive arguments of counsel and excerpts from discovery data and testimony developed during this proceeding. Lykes asserted that any *pendente lite* approval should be limited to six months.

A statement in support of the Petition was submitted by the Ministry of Transport of the Government of Japan (MOT). That agency cited its policies of achieving efficient employment of capital and preventing destructive competition among Japanese-flag lines. MOT stated that any disruption of Proponents' arrangements under the agreements would have a severe impact on those policies, and that all the agreements should therefore be continued without curtailment or restrictions.

Discussion

There is no dispute among the parties that the modifications to the agreements extending them for another five years should be included within Docket No. 82–54. The Order of Investigation will be amended accordingly. The scope of the hearing will be the same as originally directed, and the issues specified in the Order apply equally to the extensions.

The issue of *pendente lite* approval presents more difficulty. As Proponents point out, under *United States Lines, Inc. v. FMC*, 584 F.2d 519, 536–37 (D.C. Cir. 1978), the Commission enjoys some flexibility in structuring section 15 proceedings, and this flexibility is particularly important when the issue is whether *pendente lite* approval should be granted. But that decision provides little support for Proponents' contention that the legal standard for granting *pendente lite* approval is similarly flexible. On the contrary, the court stated therein that "[t]here must be adequate consideration and justification for Commission approval of an agreement restricting competition even for the brief period of five months, let alone the longer period until final hearings are completed." *Id.* at 530. In a companion case, the court held that, in considering an application for *pendente lite* approval, the Commission must address the standards of section 15, including antitrust considerations as expressed in the public interest standard. *United States Lines, Inc. v. FMC*, 584 F.2d 543 (D.C. Cir. 1978). The term "*pendente lite approval*" should not be allowed to obscure the fact that such action by this agency under section 15 grants the agreement concerned an exemption from application of the antitrust laws; for this reason, it is possible that even interim approval would have a serious impact upon those adversely affected by anticompetitive features in an agreement. *See National Air Carrier Association v. CAB*, 436 F.2d 185, 191 (D.C. Cir. 1970). Although findings of fact in support of *pendente lite* approval cannot and need not be made with the same degree of detail and finality as those required for permanent section 15 approval, *United States Lines, Inc. v. FMC, supra*, 584 F.2d at 546, the Commission still must make "an affirmative finding that the additional period of implementation meets the requirements of [s]ection 15." Docket No. 80–59, *Time for Filing and Commenting on Certain Agreements*, —— F.M.C. ——, 20 S.R.R. 967, 968 (1981). "[W]hat is called for is a careful balancing of the gravity and duration of the harm likely to be inflicted upon the protesting parties against the benefits flowing from approval for the short period." *National Air Carrier Association, supra*, 436 F.2d at 191.

The Commission's own standards for *pendente lite* approval are quite rigorous. The Commission has stated that such approval is appropriate "[w]here the Commission is presented with an emergency, and an agreement designed to remedy that emergency." Docket No. 75–56, *Canadian-American Working Arrangement, et al.*, 16 S.R.R. 733, 739 (1976). To support the "extraordinary action" of such interim approval, the Commission must "have before it substantial evidence demonstrating the nature and scope of the emergency and that the agreement proffered is necessary to remedy the emergency." *Id.; see also Time for Filing and Commenting on Certain Agreements, supra*, 20 S.R.R. at 968. Applying this strict standard, the Commission in *Canadian-American* denied *pendente lite* approval on the ground that the protests raised material issues of fact and the proponents had "failed to establish the existence of an emergency condition necessitating the approval of these agreements during the pendency of the investigation and hearing." 16 S.R.R. at 750. The impending expiration of an existing agreement cannot, by itself, be considered an emergency sufficient to justify a grant of interim approval. *United States Lines, Inc. v. FMC, supra*, 584 F.2d at 545. This is particularly true when the parties give the Commission little time to consider their application for such approval by failing to file the application sufficiently in advance of the expiration. *Pennsylvania Gas and Water Co. v. FPC*, 427 F.2d 568 (D.C. Cir. 1970). On the other hand, where a genuine emergency "or other overriding public interest consideration," *Canadian-American, supra*, 16 S.R.R. at 751, has been shown to exist, the Commission has granted *pendente lite* approval with conditions designed to minimize antcompetitive impact and protect the public interest until a full investigation could be completed. Docket No. 80–45, *Agreement Nos. 10386, et al.—Cargo Revenue Pooling/ Equal Access Agreements in the United States/Argentine Trades*, 20 S.R.R. 83, 87–89 (1980).

The circumstances under which Proponents' Petition comes before the Commission do not justify a departure from these standards. The Commission's January 1981 order conditionally approving these agreements until August 22, 1983 [4] was remanded by the Court of Appeals because the Court found that the protestants had not been afforded an adequate hearing. *Sea-Land Service, Inc. v. FMC, supra*. Due to the time consumed by the appellate litigation and the subsequent proceedings in this

[3] NYK is a party to all the Agreements except No. 9718; Y–S is a party to all the Agreements except No. 9731.

[4] Reported at 20 S.R.R. 776.

Docket, the agreements have been in effect for their entire term on what accounts to a *pendente lite* basis. Given the Court's concern in *Sea-Land* that section 15's requirement of approval *after* notice and hearing not be circumvented, *see* 683 F.2d at 503, this new application for *pendente lite* approval must be scrutinized very closely. Further approval can be justified only by strong showings of specific proof by Proponents. *See also Seatrain International, S.A. v. FMC,* 584 F.2d 546, 550 (D.C. Cir. 1978), where the court stated that "where, as here, we are faced with the fourth successive 18-month extension of ratemaking authority, any argument for more lenient treatment of anticompetitive effects because of the temporary nature of authority necessarily must be open to serious question."

The Commission is also mindful that *pendente lite* approval of these agreements will extend for a considerable period of time. The range of issues in this proceeding is extensive and involves complex questions of fact and law. Oral hearings before the presiding Administrative Law Judge are scheduled to commence in October. It will be many more months before an Initial Decision can be issued, exceptions and replies filed, and the Commission's own decision issued. Thus any *pendente lite* approval will have a substantial and long-lasting impact on the trades and the protestants.

To the extent that considerations of equity are relevant here, they do not favor Proponets. It was clear from the beginning that Docket No. 82-54, which was instituted in November 1982, would not be completed before the August 22 expiration of the agreements.[5] Nevertheless, Proponents waited until April 21, 1983 to file the extensions and until July 1 to file their request for *pendente lite* approval.[6] In the interim, as discussed above, they termed Sea-Land's and APL's concerns regarding *pendente lite* approval as "anticipatory" and "premature." This chronology prevented further hearings on the issue of *pendente lite* approval before the August 22 deadline. Such hearings might well have been useful in resolving the disputes between the parties.[7] In the absense of such hearings and to the extent Proponents' delays have limited the record and thereby affect the Commission's ability to make the affirmative findings necessary to support full *pendente lite* approval, that circumstance must redound to the detriment of Proponents rather than protestants. It is Proponents who bear the burden of justifying any interim approval. *See Pennsylvania Gas and Water Co. v. FPC, supra,* 427 F. 2d at 575-76.

These guidelines govern our disposition of this Petition. We turn to first the two revenue pooling agreements, Nos. 10116 and 10274. The Commission has long recognized that pooling agreements are "the ultimate in anticompetitive combinations." *Inter-American Freight Conference,* 14 F.M.C. 58, 72 (1970); *see generally Mediterranean Pools Investigation,* 9 F.M.C. 264, 287-91 (1966). Such agreements "must be considered a *per se* violation of section 1 of the Sherman Antitrust Act * * * and [are] *prima facie* subject to disapproval under the public interest standard of Shipping Act section 15 * * * ." *Agreement No. 10056—Pooling, Sailing and Equal Access to Cargo in the Argentina/U.S. Pacific Coast Trade,* 20 F.M.C. 255, 257 (1977). Revenue pools have a direct and quantifiable anticompetitive effect on carriers that are not part of such arrangements. Although pools historically have operated in trades which are overtonnaged because they help prevent rebating and other malpractices, *see* discussion in *Inter-American Freight Conference, supra,* 14 F.M.C. at 72, they can also act as impediments to elimination of overtonnaging because they permit relatively weal or inefficient carriers to remain in a trade by sharing in revenue generated by their stronger pool partners. As discussed in more detail *infra,* information has been brought before the Commission indicating that Proponents may be experiencing markedly low utilization rates. This raises the question whether the cure represented by the pools has become worse than the disease of malpractices. In such circumstances, Proponents bear an especially heavy burden of justifying the *pendente lite* approval of the agreements with detailed evidence of actual need.

Proponents' case does not meet this standard. The Kawamura-Hirano Affidavit, which is broad and conclusory throughout, becomes unacceptably so in the paragraphs devoted to the pooling agreements. Proponents have come forward with only theoretical justifications applicable generally to the concept of revenue pooling, rather than with specific evidence supporting continuation of their particular agreements. It is settled law that the Commission cannot approve, even temporarily, anticompetitive agreements on the basis of testimony such as that they render Proponents more "willing" to carry low-rated cargo and that they often result "in introduction of or experimentation with techniques and methods of moving or handling cargo which might otherwise go untried." (Kawamura-Hirano Affidavit, ¶¶ 31, 61). *Canadian-American, supra,* 16 S.R.R. at 749, 745; *In re: Marseilles North Atlantic U.S.A. Freight Conference Agreement No. 5660-21* (Order of Conditional Disapproval), 18 S.R.R. 890, 895 (1978); *Modification of . . . (Agreement No. 2846-51),* 21 S.R.R. 1545, 1569 (1983) ("[m]ere conclusory affidavits are not sufficient to support a grant of Section 15 authority"). Proponents may subsequently adduce evidence sufficient to justify permanent approval of the pooling agreements. At this juncture, however, they have not justified interim approval. Accordingly, approval of Agreements Nos. 10116 and 10274 will be continued only until October 31, 1983 to allow Proponents to settle their accounts. Such limited approval is necessary to permit an orderly transition from the agreements and should cause no harm to the protestants.

With respect to the four space charter agreements, it must first be noted that the primary purpose of such agreements is, as MOT states, to make the deployment of vessel space as efficient as possible by keeping utilization rates high and avoiding the introduction of

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[5] On December 20, 1982, Sea-Land and APL explicitly raised this question in a "Petition for Reconsideration and/or Clarification" of the Order of Investigation. Among other things, the petition requested that the Commission issue a supplemental order providing that these hearings will apply to "the continuance of existing and/or modifications of the agreements presently at issue." On February 1, 1983, the Commission denied the Petition, stating that it "had no control over the fact that those Agreements will expire on August 22, 1983, nor can it control what the [parties] may do concerning any extensions of the Agreements. If and when such extensions are filed, the Commission will consider the relationship of them to the current investigation * * *." Order Denying Petition for Reconsideration and/or Clarification, 21 S.R.R. 1550, 1552, (1983).

[6] 46 CFR 521.2 provides that an application for an extension of an approved agreement "should" be filed 120 days before its scheduled termination date, and section 521.3 warns that failure to meet the 120-day deadline "could result in the approved agreement terminating prior to Commission action on the filed agreement." Although Proponents met the technical requirements of the rule by filing the extensions [without supporting statements] on April 21, their failure to file for *pendente lite* approval until July 1—only 92 days before the expiration date—is inconsistent with the spirit of the rule.

[7] For example, in its reply to the Petition, Sea-Land suggested that oral argument might be helpful, particularly with respect to the weight or significance which should be given to undisputed facts. In addition, Proponents requested in their Petition leave to file a rebuttal to any opposition, seeking a waiver of the proscription in the Commission's rules against replies to replies, 46 CFR 502.74. This request was denied by the Commission.

unneeded capacity. This, in turn, minimizes the rate wars and malpractices which are associated with overtonnaged trades. Proponents assert that this purpose has been achieved and also claim that the Agreements have provided other benefits, including frequent and regular service, reduced port and terminal congestion, reduced fuel consumption and reduced shipper inventory (Kawamura-Hirano Affidavit, ¶¶ 10, 16, 18, 22). While these are valid benefits of space charter agreements, approval of such agreements, whether *pendente lite* or permanent, turns largely on the issue of overtonnaging.

The information presently before the Commission raises serious questions as to whether these agreements, as presently structured, have provided this central public benefit. APL and Sea-Land assert, and Proponents do not deny, that Proponents have recently embarked on a program to increase greatly the capacity of the ships operated under their agreements. APL states that by the end of 1984, at least ten of the eighteen ships operated under Agreements Nos. 9718, 9731 and 9835 (which operate in the Pacific trades) will have been replaced, resulting in a 32% increase in total container capacity. Such an increase would not be disturbing in itself if there was sufficient cargo to absorb it, *i.e.*, if the increase was needed. However, APL and Sea-Land cite data developed during discovery indicating that this increase is being planned and carried out in the face of severe declines in Proponents' utilization rates, which in the case of the two Japan-California agreements are summarized as follows:

	1st-half 1981 (percent)	2nd-half 1982 (percent)
Agreement No. 9718 Eastbound	83.5	67.5
Agreement No. 9718 Westbound	77.6	57.1
Agreement No. 9731 Eastbound	75.5	69.4
Agreement No. 9731 Westbound	63.5	54.2

Sea-Land also states that the capacity increases cannot be justified in terms of growth in the Japan-West Coast trade, citing testimony prepared by one of its witnesses that this trade will grow at compound annual rates of only 3.3 percent eastbound and 4.1 percent westbound in the period of 1982–1988.

It must be emphasized that the data and testimony cited by Sea-Land and APL have not yet been received into evidence or evaluated by the Administrative Law Judge, and we do not pass upon their ultimate probative value here. However, at a minimum they cast substantial doubt on the generalized assertions made by Propoents in support of the space charter agreements, of which the following are representative:

> The benefits over [sic] lowering the possibility of overtonnaging are numerous. It is fundamental that overtonnaging directly affects the level of rates and service stability. The steady level of service under the agreements is an important factor in assessing the effects of our services on overtonnaging in the trade. By making frequent and regular service possible, the agreements have positively served to limit the tonnage which would have been otherwise deployed.
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> * * * * *
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> The agreements have led to efficient deployment of vessels and use of resources, and are directly responsible for reducing necessary capital expenditures to a minimum. Such expenditures are not limited to reducing the number of vessels operated by the parties, but also include minimizing commitments to inventory and equipment requirements because of the regularity of service they have made possible. Reducing the level of required capital expenditures frees up more resources for improving service and developing innovations which will benefit all aspects of the shipping public. (Kawamura-Hirano Affidavit, ¶¶ 13, 20).

Such broad and conclusory testimony goes to the alleged benefits from continuation of, and the alleged harm from suspension of, Proponents' cooperative arrangements as a whole. They do not directly address the issue raised by Sea-Land and APL concerning *pendente lite* approval of these Agreements, *i.e.*, Proponents' ongoing program of capacity increases. Proponents have not attempted to adduce specific facts bearing on the need for these increases, other than to claim that their new vessels are required to replace an aging fleet and will provide, due to their large size, better and more cost efficient service to the shipping public (*id.*, ¶¶ 48, 49).

Two additional fundamental points must be made. The anticompetitive impact of the agreements, considered by themselves, on Proponents' competitors (including Sea-Land and APL) does not rank with that of a conference rate-fixing agreement or a revenue pooling agreement. *See Agreements Nos. 10186, et al.*, —— F.M.C. ——, 21 S.R.R. 1443, 1451 (1982). A space charter agreement is an arrangement whereby the parties limit the amount of service (measured in vessel capacity and sailings) they will provide. In contrast to pooling agreements, the impact on competitors is indirect, in that the parties in theory realize greater efficiencies of service and higher profits than if they operated completely independent of each other. Although in this case the impact of these agreements takes on added weight by the fact that they are coordinated among each other and are tied into two pooling agreements, the absence of direct harm to competitors is a relevant factor to be considered. *Id.*

Second, these agreements represent the arrangement by which Proponents have served the U.S./Japan trades for many years.[8] Proponents' contention that expiration of the agreements would be severely disruptive to their operations and to the shipping public is therefore credible. While a prior approval under section 15, no matter how long ago granted, may not be converted into a vested right of continued approval, *Agreements Nos. 8200, et al. between the Pacific Westbound Conference and the Far East Conference*, 21 F.M.C. 959, 962 (1970), the Commission may take into account the long-standing nature of agreements such as these. *See United States Lines, Inc. v. FMC, supra*, 584 F.2d at 546. We must also be cognizant of the desires of the Government of Japan that these agreements not be terminated. The Commission has noted the affidavits from port officials to the effect that their operations could be harmed if Proponents were no longer permitted to coordinate their sailings under the agreements. Finally, there is the question as to what Proponents would do if the agreements were to expire. Although a definite answer is never possible in situations such as this, Proponents state that all of them would remain in the trades individually. (Kawamura-Hirano) Affidavit, ¶ 37). If that occurred, the number of vessels in service might well increase, thus worsening overtonnaging and port congestion. *See Agreements Nos. 10186, supra*, 21 S.R.R. at 1449, 1451–52.

In sum, the information placed before us by Sea-Land and APL has sharpened the Commission's concern that the four space charter agreements, as they are presently structured, may not be performing their basic function of preventing overtonnaging. However, expiration of these agreements, representing as they do Proponents' basic operating authority, poses an unacceptable risk of further disruption and commercial harm in trades which may already be experiencing severe difficulties. Until the record in this case is fully developed and the Commission has sufficient information before it to determine precisely how Proponents' services should be structured, it is

[8] Agreement No. 9718 was initially approved on July 3, 1968; Agreement No. 9731 on August 31, 1968; Agreement No. 9835 on April 17, 1970; and Agreement No. 9975 on August 16, 1972.

prudent to permit Proponents to continue to charter space from each other. Under these circumstances, the impending expiration of Proponents' space charter authority is an overriding public interest consideration of sufficient magnitude to justify *pendente lite* approval under the Canadian-American standard.

This approval is not, however, without restriction. Some background discussion is necessary. The parties to Agreements Nos. 9718, 9731, 9835 and 9973 have been limited since January 1981 in the amount of container space, measured in twenty-foot equivalent units (TEU's), which they may cross-charter among themselves. The limits vary from agreement to agreement. See 20 S.R.R. at 785. On December 14, 1981, the Commission ordered an investigation (Docket No. 81-74) of Agreement No. 9718-8, in which the four parties to that Agreement (Japan Line, K-Line, Mitsui and Y-S Line) proposed to raise the total amount of container capacity which they may cross-charter on an annual basis among themselves under the Agreement of 8,512 TEU's to 10,011 TEU's.[9] In that order, the Commission clarified the nature of the existing 8,512-TEU limitation as follows:

> The limitation only applies to TEU's, not to vessels, and only to TEU's which are subject to [the Agreement]. The Commission has no desire to interfere with management's judgment as how best to provide that capacity. This means that Proponents are free to introduce vessels of any TEU capacity into the trade provided that they do not place more TEU's under the coverage of the Agreement than is permitted.
>
> The substitution of vessels does not, in this instance, require Commission approval or amendment of existing agreements. Proponents may immediately introduce one or both of the new vessels into the trade and operate them pursuant to the Agreement so long as existing capacity limitations are not violated.

In its November 19, 1982 Order of Investigation instituting Docket No. 82-54, the Commission discontinued Docket No. 81-74 and included in this Docket the issues under investigation therein. The record developed in Docket No. 81-74 was made part of the record in the new proceeding.

On December 10, 1982, Sea-Land and APL filed a joint Petition for Reconsideration and/or Clarification of the Order of Investigation.[10] They characterized the Commission's statements of December 14, 1981 set forth above as an "authorization" to the parties to Agreement No. 9718 to operate individually any capacity they choose. They further claimed that the Order of Investigation gave "interim approval" to the other six agreements included within Docket No. 82-54, and they expressed concern that such "interim approval" may constitute *"sub silentio* authorization" to all the Japanese lines to introduce new capacity into the trades on an individual basis. They asked the Commission

> . . . to clarify this circumstance by ordering that the Japanese carriers may not increase capacity in the trades subject to these agreements—however that capacity may be used—by the introduction of additional or larger vessels.

On February 1, 1983, the Commission issued an Order denying Sea-Land and APL's Petition. That Order said in relevant part (footnotes omitted):

> The Commission's statements in the Order of Investigation in Docket No. 81-74 did not "authorize" the four signatories to Agreement No. 9718-8 to do anything; rather, they constitute a recognition of the limits of the Commission's powers under section 15. Those powers apply only to certain joint activities involving at least two persons subject to the Shipping Act (46 U.S.C. 814). Because the Commission cannot use section 15 to place capacity limits upon or otherwise control the business activities of an individual carrier, it likewise cannot control through that statute what parties to an agreement do *individually* outside the limits of that agreement. The Commission simply stated the obvious: that cargo space which is not the subject of interparty cooperative chartering falls outside the perimeters of these Agreements, and can be used by the individual lines for their own account as would space deployed by any other individual vessel owner. In short, the Commission has no power to do what Sea-Land and APL ask.
>
> However, Petitioners do raise a valid point in suggesting that one of the allegations of need for the subject agreements—the prevention of overtonnaging in the U.S./Japan trades—is eroded by the addition of capacity by individual members of the agreements. To that extent, the Commission intends to consider the operation of such additional vessel capacity in its ultimate disposition of this proceeding. 21 S.R.R. 1550, 1553.

In opposing the Japanese lines' Petition for *pendente lite* relief, Sea-Land and APL again address the need for controlling vessel capacity as well as space subject to chartering. Essentially, they argue that the Commission's 1981 capacity limitations have not restrained Proponents from adding large amounts of new capacity to already overtonnaged trades; that the Commission's interpretations of those limitations unrealistically assumed that the portion of the new vessels reserved for the vessel owners could be operated independently of the space charter agreements; that in light of the serious overtonnaging in the Japan trades, *pendente lite* approval of the space charter agreements must be conditioned upon effective capacity limitations that cover actual vessels as well as container space; and that the Commission has the power to place such restrictions on Proponents. They suggest that total capacity be limited to the amounts of container space described in the Commission's January 1981 order.

The information presently before the Commission justifies the imposition of an overall capacity restriction pending completion of this investigation. The continued addition of large and possibly unneeded capacity during an extended period of further *pendente lite* effectiveness of the agreements would be seriously deterimental to the public interest. However, given that this information is not conclusive or complete,[11] limiting Proponents' capacity to that in place in January 1981 is unwarranted. We do not share APL's and Sea-Land's confidence that the vessel redeployment and operational changes which such a limit would require could be accomplished without disruption to U.S. ocean commerce. The better course is to preserve the *status quo.* Accordingly, Proponents will be required to freeze at current levels the total vessel capacities deployed in the trades served by them under each of their space charter agreements. Proponents will also be required to continue to abide by the charter limits currently applicable to the individual agreements. So conditioned, *pendente lite* approval of the space charter agreements represents a reasonable balancing of the various interests at stake and meets the requirements of section 15.

It must be emphasized that the Commission is not disavowing its above-quoted interpretation of the limits of its authority to control capacity operated under space charter agreements. That interpretation is correct as a principle of law and as applied to the facts before the Commission when it was made. We are not asserting statutory authority to limit the vessel capacity of any line operating

[9] Proponents do not seek *pendente lite* approval of Agreement No. 9718-8 in their Petition now before the Commission.

[10] See note 5, *supra.*

[11] The most recent utilization results cited by Sea-Land and APL are as of the end of 1982. Since then, any overtonnaging in the Japan trades may have been alleviated or will be by the close of the proceeding. At present, however, the Commission can act only on the facts of record.

independently of its competitors. However, one of the issues under investigation in Docket No. 82-54 is whether the Japanese lines constitute a joint service or joint services in some or all of the trades they serve (and should therefore be limited to one vote in the conferences to which they belong). In other words, the current proceeding may develop evidence that Agreeements Nos. 9718, 9731, 9835 and 9973 are actually joint service agreements, rather than true space charter arrangements. In that event, the Commission would be well within its powers if it wished to limit the vessels deployed under such agreements. *E.g., Agreement No. 9902-3, et al. (Modification of Euro-Pacific Joint Service,* 21 F.M.C. 911, *reconsideration granted in part,* 21 F.M.C. 994 (1979). It should be noted that in justifying their position that the owners' container space is not truly independent of the space chartered to the other parties, Sea-Land and APL contend that Proponents apparently pool revenues generated by the owners' space, that Proponents coordinate sailings and jointly establish itineraries for such space, and that a party cannot introduce a new agreement vessel (and hence cannot introduce such space) without the consent of the other parties. Although the accuracy and significance of these allegations cannot be conclusively determined now, they are certainly relevant to joint service issue.

In addition, as also quoted above, the Commission has expressed its concern that the addition of significant new capacity by individual members of the space charter agreements may contradict the primary rationale for approval of such agreements, i.e., prevention of overtonnaging. It is therefore consistent for the Commission to condition extension of those agreements on measures necessary to ensure that no further exacerbation of any present overtonnaging takes place. Imposition of such restrictions does not signify that the Commission has found that the agreements are contrary to section 15 without the restrictions, but only that the Commission is unwilling to approve the agreements *pendente lite* absent the restrictions. *See In re Hapag-Lloyd, et al.,* 17 S.R.R. 319, 325 (1977). Proponents are required to accept the capacity limitations as a *quid pro quo* for *pendente lite* approval of their space charter agreements. The Commission has not reached any final conclusions on the legal and factual issues presently under investigation.

Assuming the conditions described in this Order are met, it is the Commission's intention to avoid any lapse in the operation of the space charter agreements. Thus the ordering paragraphs below permit the *pendente lite* approval to take effect on August 22. Failure by Proponents to comply with the conditions within 60 days, *i.e.,* by October 21, 1983, will result in the approval becoming null and void effective October 22.

Therefore, it is ordered, that the Order of Investigation served on November 19, 1982 be amended to include Agreements Nos. 9718-9, 9731-9, 9835-6, 9975-8, 10116-5 and 10274-2, as submitted; [1,2]

It is further ordered, that Agreements Nos. 9718-9, 9731-9, 9835-6 and 9975-8 are approved *pendente lite* effective August 22, 1983 on condition that Proponents continue to abide by the limits stated in the Commission's January 16, 1981 Order of Conditional Approval on the amounts of container space which can be cross-chartered under each agreement;

It is further ordered, that Agreements Nos. 9718-9, 9731-9, 9835-6 and 9975-8 are approved *pendente lite* effective August 22, 1983 on the additional condition that Proponents continue to submit to the Commission semi-annual reports in the format stated in the January 16, 1981 Order;

It is further ordered, that Agreements Nos. 9718-9, 9731-9, 9835-6 and 9975-8 are approved *pendente lite* effective August 22, 1983 on the additional condition that, within 60 days from the date of this Order, they are each amended to reflect their parties' agreement to limit the total liner container vessel capacities deployed in each trade to which each agreement applies to the total capacities deployed in each trade as of the date of this Order;

It is further ordered, that Agreements Nos. 9718-9, 9731-9, 9835-6 and 9975-8 are approved *pendente lite* effective August 22, 1983 on the additional condition that their parties submit to the Commission, within 60 days from the date of this Order, reports in the attached format indicating total vessel capacity operated under each agreement as of the date of this Order;

It is further ordered, that if Agreements Nos. 9718-9, 9731-9, 9835-6 and 9975-8 are not amended as required by the fourth ordering paragraph above, or if their parties fail to submit the reports required by the fifth ordering paragraph above, within the times prescribed, the approval granted herein shall become null and void on the 61st day following the date of this Order; and

It is further ordered, that Agreements Nos. 10116-5 and 10274-2 are approved through October 31, 1983.

By the Commission.

Francis C. Hurney,

Secretary.

[1,2] Agreement No. 9718-8 also remains part of this investigation.

AGREEMENT NO. 9718, AS AMENDED

[Levels of capacity as of Aug. 22, 1983]

	Vessel name (a)	Owner (b)	Flag (c)	Capacity (TEU's) (d)
Japan Line [1]				
"K" Line [1]				
Mitsui O.S.K. Line [1]				
Y.S. Co., Ltd. [1]				
Total				

[1] For vessels owned and operated by these carriers in the trade covered by this agreement.

AGREEMENT NO. 9731, AS AMENDED

[Levels of capacity as of Aug. 22, 1983]

	Vessel name (a)	Owner (b)	Flag (c)	Capacity (TEU's) (d)
NYK Line [1]				
Showa Line [1]				
Total				

[1] For vessels owned and operated by these carriers in the trade covered by this agreement.

AGREEMENT NO. 9835, AS AMENDED

[Levels of capacity as of Aug. 22, 1983]

	Vessel name (a)	Owner (b)	Flag (c)	Capacity (TEU's) (d)
Japan Line [1]				
"K" Line [1]				
Mitsui O.S.K. Line [1]				
NYK Line [1]				
Showa Line [1]				
Total				

[1] For vessels owned and operated by these carriers in the trade covered by this agreement.

AGREEMENT NO. 9975, AS AMENDED

[Levels of capacity as of Aug. 22, 1983]

	Vessel name (a)	Owner (b)	Flag (c)	Capacity (TEU's) (d)
Japan Line [1]				
"K" Line [1]				
Y.S. Co., Ltd. [1]				
Mitsui O.S.K. Line [1]				
NYK Line [1]				
Total				

[1] For vessels owned and operated by these carriers in the trade covered by this agreement.

[FR Doc. 83-23280 Filed 8-24-83; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Bancshares of West Memphis, Inc.; Formation of Bank Holding Company

Bancshares of West Memphis, Inc., West Memphis, Arkansas, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 per cent or more of the voting shares of Bank of West Memphis, West Memphis, Arkansas. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Bancshares of West Memphis, Inc., West Memphis, Arkansas, has also applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to engage directly in the activity of real estate appraisal. These activities would be performed from offices in West Memphis, Arkansas, and the geographic areas to be served are Crittenden, St. Francis, and Cross Counties, Arkansas. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views 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.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of St. Louis.

Any views or requests for hearing should be submitted in writing and received by the Reserve Bank not later than September 19, 1983.

Board of Governors of the Federal Reserve System, August 19, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-23277 Filed 8-24-83; 8:45 am]

BILLING CODE 6210-01-M

First Community Bancshares, Inc., et al.; Formation of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become bank holding companies by acquiring voting shares or assets of a bank. 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 may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated for that application. With respect to each application, interested persons may express their views in writing to the address indicated for that application. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President), 701 East Byrd Street, Richmond, Virginia 23261:

1. *First Community Bancshares, Inc.,* Princeton, West Virginia; to acquire 100 percent of the voting shares or assets of Adrian Buckhannon Bank, Buckhannon, West Virginia. Comments on this application must be received not later than September 19, 1983.

2. *One Valley Bancorp of West Virginia, Inc.,* to acquire 100 percent of the voting shares or assets of One Valley National Bank of Kanawha City, Charleston, West Virginia. Comments on this application must be received not later than September 19, 1983.

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President), 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Midwest Financial Group, Inc.,* Peoria, Illinois; to acquire 100 percent of the voting shares or assets of Corn Belt Bank, Bloomington, Illinois. Comments on this application must be received not later than September 19, 1983.

C. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President), 925 Grand Avenue, Kansas City, Missouri 64198:

1. *State Exchange Bancshares, Inc.,* Yates Center, Kansas; to acquire 24.9 percent of the voting shares or assets of Montgomery County Bancshares, Inc., Elk City, Kansas, proposed owner of The First National Bank of Elk City, Elk City, Kansas. Comments on this application must be received not later than September 19, 1983.

D. **Board of Governors of the Federal Reserve System** (William W. Wiles, Secretary), Washington, D.C. 20551:

1. *Ellis Banking Corporation,* Bradenton, Florida; to acquire 100 percent of the voting shares or assets of Jacksonville National Bank, Jacksonville, Florida. This application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank of Atlanta. Comments on this application must be received not later than September 19, 1983.

2. *Falcon Bancorporation, Inc.,* Childress, Texas; to acquire 80 percent or more of the voting shares or assets of The First National Bank of Memphis, Memphis, Texas. This application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank of Dallas. Comments on this application must be received not later than September 19, 1983.

3. *First Bancshares Corporation of Illinois,* Alton, Illinois; to acquire 100 percent of the voting shares or assets of Airport National Bank, Bethalto, Illinois. This application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank of St. Louis. Comments on this application must be received not later than September 19, 1983.

Board of Governors of the Federal Reserve System, August 19, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-23276 Filed 8-24-83; 8:45 am]

BILLING CODE 6210-01-M

Comercia, Inc.; Acquisition of Bank Shares by Bank Holding Company

The company listed in this notice has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire voting shares or assets of a bank. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated for the application. With respect to this application, interested persons may express their views in writing to the

address indicated for this application. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. **Board of Governors of the Federal Reserve System,** (William W. Wiles, Secretary) Washington, D.C. 20551:

1. *Comerica, Incorporated,* Detroit, Michigan; to acquire 77 percent of the voting shares or assets of Bank of the Commonwealth, Detroit, Michigan. This application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank of Chicago. Comments on this application must be received not later than September 3, 1983.

Board of Governors of the Federal Reserve System, August 22, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-23295 Filed 8-24-83; 8:45 am]

BILLING CODE 6210-01-M

Commonwealth State Bank; Formation of Bank Holding Company

The company listed in this notice has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring voting shares or assets of a bank. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated for the application. With respect to the application, interested persons may express their views in writing to the address indicated for the application. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. **Board of Governors of the Federal Reserve System,** (William W. Wiles, Secretary) Washington, D.C. 20551:

1. *Commonwealth State Bank,* Detroit, Michigan; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of the Commonwealth, Detroit, Michigan. This application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank of Chicago. Comments on this application must be received not later than September 3, 1983.

Board of Governors of the Federal Reserve System, August 22, 1983.

James McAfee,

Associated Secretary of the Board.

[FR Doc. 83-23296 Filed 8-24-83; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

NIOSH Symposium on the Toxic Effects of Glycol Ethers

Correction

In FR Doc. 83-21654, appearing on page 36199, in the issue of Tuesday, August 9, 1983, in the heading "Clycol" should read "Glycol", in the second column, in the seventh line "to the" should read "on the".

BILLING CODE 1505-01-M

Cooperative Agreements; Preventive Health Services Acquired Immunodeficiency Syndrome (AIDS) Surveillance and Associated Epidemiologic Investigations; Availability of Funds for Fiscal Year 1983

Correction

In FR Doc 83-23038, beginning on page 38091, in the issue of Monday, August 22, 1983, make the following corrections:

1. On page 38091, in the third column, the first complete paragraph starting with "Eligible" and ending with "either:" should be removed and replaced with the following paragraph:

"Eligible applicants for this program are the official public health agencies of State and local governments, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Trust Territory of the Pacific Islands, the Northern Mariana Islands, and American Samoa, which have either:"

2. Also on page 38091, in the third column, after the paragraph starting "B." and before the paragraph starting "Applicants", insert the following paragraph:

"Eligible State and local health agencies are strongly encouraged to coordinate their request for assistance, ideally in a single application, to ensure the most efficient use of State/local/Federal resources."

3. On page 38092, in the first column, under "*A. Purpose*" in the third line "Urban Areas" should read "Areas"; in the same column in the paragraph starting "a. Design", in the fifth line "geographical" should read "geographic".

4. Also on page 38092, in the second column, in the sixth complete paragraph, the second and third lines should read "an estimated $400,000 will be available to fund approximately four to eight cooperative".

5. In the eleventh complete paragraph in the same column, in the first line "proposes" should read "proposed".

6. On page 38092, in the third column, in the sixth paragraph, in the sixth line "Foom" should read "Room".

BILLING CODE 1505-01-M

Food and Drug Administration

[Docket No. 82N-0383; DESI 11735]

Sterazolidin Capsules; Withdrawal of Approval of New Drug Application

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of the new drug application for Sterazolidin Capsules, containing phenylbutazone, prednisone, aluminum hydroxide gel, and magnesium trisilicate. The basis of the withdrawal is that this combination product lacks substantial evidence of effectiveness and is not shown to be safe for its labeled indications. The drug product has been used in the treatment of inflammatory disorders, but it is no longer marketed.

EFFECTIVE DATE: September 26, 1983.

ADDRESS: Requests for an opinion of the applicability of this notice to a specific product should be identified with the reference number DESI 11735 and directed to the Division of Drug Labeling Compliance (HFN-310), National Center for Drugs and Biologics, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: John H. Hazard, Jr., National Center for Drugs and Biologics (HFN-8), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3650.

SUPPLEMENTARY INFORMATION: In a notice of opportunity for hearing published in the **Federal Register** of March 1, 1973 (38 FR 5494; formerly Docket No. FDC-D-565), FDA proposed to withdraw approval of the following new drug application based on a lack of substantial evidence that the combination drug is effective and

because the drug is not shown to be safe. In response to the notice, Geigy Pharmaceuticals requested a hearing, but later withdrew the request, stating that although marketing of the product has been discontinued, the firm adheres to its position that the safety and effectiveness of the product are established and that any contrary agency findings are without factual basis. Approval of the following new drug application is now being withdrawn.

NDA 11-735; Sterazolidin Capsules containing phenylbutazone, prednisone, aluminum hydroxide gel, and magnesium trisilicate (homatropine methylbromide was included in the product's original formulation but was later deleted); Geigy Pharmaceuticals, Division of Ciba-Geigy Corp., Ardsley, NY 10502.

In addition to the holder of the new drug application specifically named above, this notice applies to any person who manufactures or distributes a drug product that is not the subject of an approved new drug application and that is identical to the drug product named above. It may also be applicable, under 21 CFR 310.6, to a related or similar drug product that is not the subject of an approved new drug application. However, this notice does not apply to either the single-entity ingredients phnylbutazone or prednisone that were evaluated as safe and effective (see 45 FR 62552 and 42 FR 11888, respectively). Neither does it cover aluminum hydroxide gel or magnesium trisilicate when these are used in over-the-counter antacid products that comply with 21 CFR Part 331.

It is the responsibility of every drug manufacturer or distributor to review this notice to determine whether it covers any drug product that the person manufacture or distributes. Any person may request an opinion of the applicability of this notice to a specific drug product by writing to the Division of Drug Labeling Compliance (address given above).

The Director of the National Center for Drugs and Biologics, under the Federal Food, Drug, and Cosmetic Act (sec. 505, 52 Stat. 1052-1053 as amended (21 U.S.C. 355)) and under the authority delegated to him (21 CFR 5.82), finds that, on the basis of new information before him with respect to the product, evaluated together with the evidence available to him when the application was approved, there is a lack of substantial evidence that the combination drug product will have the effect it purports or is represented to have, and the combination drug is not shown to be safe, under the conditions of use prescribed, recommended, or suggested in its labeling. Therefore, pursuant to the foregoing finding, approval of NDA 11-735 providing for the drug product named above and all amendments and supplements thereto is withdrawn effective September 26, 1983.

Shipment in interstate commerce of the above product or of any identical, related, or similar product that is not the subject of an approved new drug application will then be unlawful.

Dated: August 17, 1983.

Harry M. Meyer,

Director, National Center for Drugs and Biologics.

[FR Doc. 83-23283 Filed 8-24-83; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Medicare Program; Utilization and Quality Control Peer Review Organization (PRO) Area Designations

Correction

In FR Doc. 83-22197 beginning on page 36976 in the issue of Monday, August 15, 1983, make the following correction: On page 36976, the third column, the twelfth line, the word "date" should read "data".

BILLING CODE 1505-01-M

National Institutes of Health

National Advisory Neurological and Communicative Disorders and Stroke Council and the Planning Subcommittee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Advisory Neurological and Communicative Disorders and Stroke Council, October 6 and 7, 1983, at 9:00 a.m. in Building 31-C, Conference Room 10, National Institutes of Health, Bethesda, Maryland 20205. In addition, a meeting of the Planning Subcommittee of the above Council will be held in October 5, 1983, at 1:00 p.m. to approximately 5:00 p.m. in Building 31, Room 8A28, National Institutes of Health, Bethesda, Maryland 20205.

The meeting of the full Council will be open to the public from 9:00 a.m. until approximately 1 p.m. on October 6 to discuss administration, management and special orders. The meeting of the Planning Subcommittee will be open from 1:00 p.m. to approximately 3:00 on October 5 to discuss program planning and program accomplishments. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in Sections 552b(c)(4), and 552b(c)(6) of Title 5, U.S. Code and Section 10(d) of Pub. L. 92-463, the Advisory Council meeting will be closed to the public on October 6 from approximately 1 p.m. until adjournment on October 7 for the review, discussion and evaluation of Research Grant applications, and applications for Teacher-Investigator Awards, Research Career Development Awards, and Institutional National Research Service Awards. The meeting of the Planning Subcommittee will be closed from approximately 3:00 p.m. to adjournment on October 5 also for the review, discussion and evaluation of individual grant applications. These applications and the discussion could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. John C. Dalton, Executive Secretary, Federal Building, Room 1016, Bethesda, Maryland 20205, telephone (301) 496-9248, will furnish substantive program information, summaries of the meeting and rosters of members.

Dated: August 11, 1983.

(Catalog of Federal Domestic Assistance Program No. 13.854, Biological Basis Research and No. 13.853, Clinical Basis Research, National Institutes of Health)

Betty J. Beveridge,

National Institutes of Health Committee Management Officer.

[FR Doc. 83-23317 Filed 8-24-83; 8:45 am]

BILLING CODE 4140-01-M

National Advisory Research Resources Council; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Advisory Research Resources Council, Division of Research Resources (DRR), October 13-14, 1983, Conference Room 6, Building 31, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20205.

The meeting will be open to the public on October 13 from 9:30 a.m. to recess for the following: Opening remarks by the Director, DRR, consideration of the minutes of the June 13-14, 1983 meeting, Council discussion of the report of the Director, DRR, a Biotechnology Resources Program presentation, a report of the Council planning subcommittee, a presentation on "Protection for Human Research Subjects and Laboratory Animal

Concerns," by a member of the NIH staff, a discussion of new business, and individual Council Program Work Group sessions as follows: Animal Resources Program Work Group, Room 2A52, Bldg. 31; Biomedical Research Support Program Work Group, Room 8A28; Bldg. 31; Biotechnology Resources Program Work Group, Room 9A51, Bldg. 31; General Clinical Research Centers Program Work Group, Room 4B23, Bldg. 31; and Minority Biomedical Research Support Program Work Group, Conference Room 6. The meeting will be open on October 14 from 9:00 a.m. to approximately 10:00 a.m. for a discussion of Program Work Group reports. Attendance by the public will be limited to space available.

In accordance with provisions set forth in Sections 552(c)(4) and 552b(c)(6) Title 5, U.S. Code and Section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on October 14 from approximately 10:15 a.m. to adjournment for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. James Augustine, Information Officer, Division of Research Resources, Room 5B10, Building 31, National Institutes of Health, Bethesda, MD 20205, (301) 496–5545, will provide summaries of the meeting and rosters of the Council members. Dr. James F. O'Donnell, Deputy Director, Division of Research Resources, Room 5B03, Building 31, National Institutes of Health, Bethesda, MD 20205, (301) 496–6023, will furnish substantive program information and will receive any comments pertaining to this announcement.

Dated: August 11, 1983.

(Catalog of Federal Domestic Assistance Program Nos. 13.306, Laboratory Animal Sciences and Primate Research; 13.333, Clinical Research; 13.337, Biomedical Research Support; 13.371, Biotechnology Resources; 13.375, Minority Biomedical Research Support, National Institutes of Health)

Betty J. Beveridge,

National Institutes of Health Committee Management Officer.

[FR Doc. 83–23318 Filed 8–24–83; 8:45 am]

BILLING CODE 4140–01–M

Minority Biomedical Research Support Subcommittee of the General Research Support Review Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Minority Biomedical Research Support Subcommittee of the General Research Support Review Committee, Division of Research Resources, November 17–18, 1983 at the National Institutes of Health. The meeting will be held in Conference Room 9, Building 31, 9000 Rockville Pike, Bethesda, Maryland 20205.

This meeting will be open to the public from 9:00 a.m. to approximately 1:30 p.m. on November 17, 1983, to discuss policy matters relating to the Minority Biomedical Research Support Program. Attendance by the public will be limited to space available.

In accordance with provisions set forth in Sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on November 17, 1983, from approximately 1:30 p.m. to 5:00 p.m. and on November 18, 1983, from 8:30 a.m. to adjournment for the review, discussion and evaluation of individual grant applications submitted to the Minority Biomedical Research Support Program. These applications and discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. James Augustine, Information Officer, Division of Research Resources, National Institutes of Health, Building 31, Room 5B10, Bethesda, Maryland 20205, telephone (301) 496–5545, will provide summaries of meeting and rosters of committee members. Dr. Sidney A. McNairy, Executive Secretary of the Minority Biomedical Research Support Subcommittee of the General Research Support Review Committee, Building 31, Room 5B–09, Bethesda, Maryland 20205, telephone (301) 496–4390 will furnish substantive program information.

Dated: August 11, 1983.

(Catalog of Federal Domestic Assistance Programs No. 13,375, Minority Biomedical Research Support Program, National Institutes of Health)

Betty J. Beveridge,

National Institutes of Health Committee Management Officer.

[FR Doc. 83–23319 Filed 8–24–83; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Study Section Meetings

Pursuant to Pub. L. 92–463, notice is hereby given of the meetings of the following study sections for September through November 1983, and the individuals from whom summaries of meetings and rosters of committee members may be obtained.

These meetings will be open to the public to discuss administrative details relating to study section business for approximately one hour at the beginning of the first session of the first day of the meeting. Attendance by the public will be limited to space available. These meetings will be closed thereafter in accordance with the provisions set forth in Sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Pub. L. 92–463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Grants Inquiries Office, Division of Research Grants, Westwood Building, National Institutes of Health, Bethesda, Maryland 20205, telephone 301–496–7441 will furnish summaries of the meetings and rosters of committee members. Substantive program information may be obtained from each executive secretary whose name, room number, and telephone number are listed below each study section. Since it is necessary to schedule study section meetings months in advance, it is suggested that anyone planning to attend a meeting contact the executive secretary to confirm the exact date, time and location. All times are A.M. unless otherwise specified.

Study section	September-November 1983 meetings	Time	Location
Allergy and Immunology: Dr. Eugene Zimmerman, Rm. 320, Tel. 301-496-7380	Oct. 20-22	8:30	Holiday Inn, Georgetown, DC.
Bacteriology and Mycology-1: Dr. Milton Gordon, Rm. 304, Tel. 301-496-7340	Oct. 19-21	8:30	Holiday Inn, Chevy Chase, MD.
Bacteriology and Mycology-2: Dr. William Branche, Jr., Rm. 306, Tel. 301-496-7681	do	8:30	Holiday Inn, Georgetown, DC.
Behavioral Medicine: Dr. Joan Rittenhouse, Rm. 232, Tel. 301-496-7109	Oct. 18-21	9:00	Do.
Biochemical Endocrinology: Dr. Norman Gold, Rm. 226, Tel. 301-496-7430	Oct. 26-29	8:30	Room 6, Bldg. 31C, Bethesda, MD.
Biochemistry-1: Dr. Adolphus P. Toliver, Rm. 318A, Tel. 301-496-7516	Oct. 19-22	9:00	Georgetown Hotel, Washington, DC.
Biochemistry-2: Dr. Alex Liacouras, Rm. 318A, Tel. 301-496-7516	Oct. 13-15	8:30	Westpark Hotel, Rosslyn, VA.
Bio-Organic and Natural: Products Chemistry, Dr. Michael Rogers, Rm. A-27, Tel. 301-496-7107	Oct. 20-22	9:00	Holiday Inn, Bethesda, MD.
Biophysical Chemistry: Dr. John B. Wolff, Rm. 236B, Tel. 301-496-7070	Nov. 3-5	8:30	Linden Hill Hotel, Bethesda, MD.
Bio-Psychology: Dr. A. Keith Murray, Rm. 220, Tel. 301-496-7058	Oct. 3-6	9:00	Ramada Inn, Bethesda, MD.
Cardiovascular and Pulmonary: Dr. Anthony C. Chung, Rm. 2A-04, Tel. 301-496-7316	Oct. 26-28	8:30	Linden Hill Hotel, Bethesda, MD.
Cardiovascular and Renal, Dr. Rosemary Morris, Rm. 321, Tel. 301-496-7901	Oct. 24-26	8:30	Westpark Hotel, Rosslyn, VA.
Cellular Biology and Physiology: Dr. Gerald Greenhouse, Rm. 336, Tel. 301-496-7396	Nov. 2-4	8:30	Room A, Landow Bldg., Bethesda, MD.
Chemical Pathology: Dr. Edmund Copeland, Rm. 353, Tel. 301-496-7078	Oct. 17-19	8:00	Holiday Inn, Bethesda, MD.
Diagnostic Radiology: Dr. Catherine Wingate, Rm. 219B, Tel. 301-496-7650	Oct. 31-Nov. 2	8:30	Holiday Inn, Georgetown, DC.
Endocrinology: Mr. Morris M. Graff, Rm. 333, Tel. 301-496-7346	Sept. 26-28	3:00 p.m.	Do.
Epidemiology and Disease: Control-1, Dr. Michael Alavanja, Rm. 203C, Tel. 301-496-7246	Oct. 18-20	8:30	Wellington Hotel, Washington, DC.
Epidemiology and Disease: Control-2, Dr. Ann Schluederberg, Rm. 203B, Tel. 301-496-7246	Oct. 18-20	8:30	Do.
Experimental Cardiovascular: Sciences, Dr. Richard Peabody, Rm. 234, Tel. 301-496-7940	Oct. 18-20	8:00	Marriott Hotel, Bethesda, MD.
Experimental Immunology: Dr. David Lavrin, Rm. 222B, Tel. 301-496-7238	Oct. 26-28	9:00	Holiday Inn, Georgetown, DC.
Experimental Therapeutics: Dr. Ira Kline, Rm. 319A, Tel. 301-496-7839	Oct. 19-22	8:30	Holiday Inn, Bethesda, MD.
Experimental Virology: Dr. Eugene Zebovitz, Rm. 206, Tel. 301-496-7474	Oct. 17-19	8:30	Room 3, Bldg. 31A, Bethesda, MD.
General Medicine A: Dr. Harold Davidson, Rm. 354A, Tel. 301-496-7797	Nov. 7-9	8:30	Room 10, Bldg. 31C, Bethesda, MD.
General Medicine B: Dr. Antonia Novello, Rm. 322, Tel. 301-496-7730	Oct. 11-12	8:30	Holiday Inn, Georgetown, DC.
Genetics: Dr. David Remondini, Rm. 349, Tel. 301-496-7271	Oct. 20-22	9:00	Room 4, Bldg. 31A, Bethesda, MD.
Hearing Research: Dr. Joseph Kimm, Rm. 225, Tel. 301-496-7494	Oct. 19-21	8:30	Holiday Inn, Georgetown, DC.
Hematology-1: Dr. Clark Lum, Rm. 355A, Tel. 301-496-7508	Oct. 6-8	8:00	Do.
Hematology-2: Dr. Mischa Friedman, Rm. 355B, Tel. 301-496-7508	Oct. 19-21	8:00	Holiday Inn, Chevy Chase, MD.
Human Development and Aging-1: Dr. Teresa Levitin, Rm. 303, Tel. 301-496-7025	Nov. 2-4	9:00	Georgetown Hotel, Washington, DC.
Human Development and Aging-2: Dr. Samuel Rawlings, Rm. 305, Tel. 301-496-7640	Oct. 12-14	9:00	Embassy Square Hotel, Washington DC.
Human Embryology and Development: Dr. Arthur Hoversland, Rm. 221, Tel. 301-496-7597	Oct. 18-21	8:00	Westpark Hotel, Rosslyn, VA.
Immunobiology: Dr. William Stylos, Rm. 222A, Tel. 301-496-7780	Oct. 12-14	8:30	Linden Hill Hotel, Bethesda, MD.
Immunological Sciences: Dr. Lottie Kornfeld, Rm. 233A, Tel. 301-496-7179	Oct. 26-28	8:30	Room 2, Bldg. 31A, Bethesda, MD.
Mammalian Genetics: Dr. Jerry Roberts, Rm. 349, Tel. 301-496-7271	Oct. 20-22	8:30	Room 3, Bldg. 31A, Bethesda, MD.
Medicinal Chemistry: Dr. Ronald Dubois, Rm. A-27, Tel. 301-496-7107	Oct. 12-15	9:00	Holiday Inn, Georgetown, DC.
Metabolism: Dr. Robert Leonard, Rm. 339A, Tel. 301-496-7091	Nov. 3-5	8:30	Room 6, Bldg. 31C, Bethesda, MD.
Metallobiochemistry: Dr. Marjam Behar, Rm. 310, Tel. 301-496-7733	Oct. 13-15	9:00	Georgetown Hotel, Washington, DC.
Microbial Physiology and Genetics-1: Dr. Martin Slater, Rm. 238, Tel. 301-496-7183	Oct. 26-28	9:00	Linden Hill Hotel, Bethesda, MD.
Microbial Physiology and Genetics-2: Dr. Gerald Liddel, Rm. 357, Tel. 301-496-7130	Oct. 26-28	8:30	Marriott Hotel, Tyson's Corner, VA.
Molecular and Cellular Biophysics: Dr. Patricia Straat, Rm. 236A, Tel. 301-496-7060	Oct. 29-31	8:30	Holiday Inn, Bethesda, MD.
Molecular Biology: Dr. Donald Disque, Rm. 328, Tel. 301-496-7830	Oct. 13-15	8:30	Holiday Inn, Georgetown, DC.
Molecular Cytology: Dr. Ramesh Nayak, Rm. 233B, Tel. 301-496-7149	Oct. 6-8	8:30	Room 7, Bldg. 31C, Bethesda, MD.
Neurological Sciences: Dr. Edwin Bartos, Rm. 439B, Tel. 301-496-7280	Oct. 27-29	8:30	Holiday Inn, Georgetown, DC.
Neurology A: Dr. Catherine Woodbury, Rm. 326, Tel. 301-496-7095	Oct. 12-15	8:30	Wellington Hotel, Washington, DC.
Neurology B-1: Dr. Willard McFarland, Rm. 2A03, Tel. 301-496-7422	Nov. 1-4	8:30	Do.
Neurology B-2: Dr. Herman Teitelbaum, Rm. 2A05, Tel. 301-496-7422	Oct. 18-21	8:30	Ramada Inn, Bethesda, MD.
Nutrition: Dr. John Schubert, Rm. 204, Tel. 301-496-7178	Nov. 2-4	8:30	Room 7, Bldg. 31C, Bethesda, MD.
Oral Biology and Medicine: Dr. Thomas M. Tarpley, Jr., Rm. 325, Tel. 301-496-7818	Oct. 18-21	8:30	Linden Hill Hotel, Bethesda, MD.
Orthopedics and Musculoskeletal: M. Ileen Stewart, Rm. 350, Tel. 301-496-7581	Nov. 3-5	8:30	Room 10, Bldg. 31C, Bethesda, MD.
Pathobiochemistry: Dr. Clarice Gaylord, Rm. A-26, Tel. 301-496-7820	Oct. 26-29	8:30	Room 7, Bldg. 31C, Bethesda, MD.
Pathology A: Dr. Robert M. Conant, Rm. 337, Tel. 301-496-7305	Oct. 19-22	8:00	Holiday Inn, Chevy Chase, MD.
Pathology B: Dr. Martin Padarathsingh: Rm. 352, Tel. 301-496-7244	Oct. 19-21	8:00	Sheraton University Center, Durham, NC.
Pharmacology: Dr. Joseph Kaiser, Rm. 206, Tel. 301-496-7408	Oct. 25-27	8:30	Holiday Inn, Bethesda, MD.
Physical Biochemistry: Dr. Jeanne Ketley, Rm. 218B, Tel. 301-496-7120	Oct. 19-21	9:00	Do.
Physiological Chemistry: Dr. Harry Brodie, Rm. 339B, Tel. 301-496-7837	Oct. 26-28	8:30	Ramada Inn, Bethesda, MD.
Physiology: Dr. Martin Frank, Rm. 209, Tel. 301-496-7878	Oct. 12-15	9:00	Holiday Inn, Georgetown, DC.
Radiation: Dr. Asher Hyatt, Rm. 219A, Tel. 301-496-7073	Oct. 31-Nov. 2	8:30	Room 9, Bldg. 31C, Bethesda, MD.
Reproductive Biology: Dr. Dharam Dhindsa, Rm. 307, Tel. 301-496-7318	Oct. 11-14	8:30	Ramada Inn, Bethesda, MD.
Respiratory and Applied Physiology: Dr. Nathan Watzman, Rm. 218A, Tel. 301-496-7320	Oct. 17-19	8:30	Linden Hill Hotel, Bethesda, MD.
Sensory Disorders and Language: Dr. Michael Halasz, Rm. 225, Tel. 301-496-7550	Oct. 19-21	8:30	Wellington Hotel, Washington, DC.
Social Sciences and Population: Ms. Carol Campbell, Rm. 210, Tel. 301-496-7906	Oct. 20-22	8:30	Embassy Square Hotel, Washington, DC.
Surgery and Bioengineering: Dr. Paul F. Parakkal, Rm. 303A, Tel. 301-496-7506	Oct. 11-12	8:00	Wellington Hotel, Washington, DC.
Surgery, Anesthesiology and Trauma: Dr. Keith Kraner, Rm. 319B, Tel. 301-496-7771	Oct. 27-28	8:00	Westpark Hotel, Rosslyn, VA.
Toxicology: Ms. Faye J. Calhoun, Rm. 205, Tel. 301-496-7570	Oct. 19-21	8:30	Sheraton University Center, Durham, NC.
Tropical Medicine and Parasitology: Dr. Betty June Myers, Rm. 110, Tel. 301-496-7846	Oct. 24-26	8:30	Room 4, Bldg. 31A, Bethesda, MD.
Virology: Dr. Claire Winestock, Rm. 309, Tel. 301-496-7605	Oct. 20-22	8:30	Room 9, Bldg. 31C, Bethesda, MD.
Visual Sciences A-1: Dr. Orvil Bolduan, Rm. 207, Tel. 301-496-7000	Oct. 19-21	9:00	Shoreham Hotel, Washington, DC.
Visual Sciences A-2: Dr. Jane Hu, Rm. 439A, Tel. 301-496-7310	do	8:30	Holiday Inn, Georgetown, DC.
Visual Sciences B: Dr. Luigi Giacometti, Rm. 325, Tel. 301-496-7251	Oct. 12-14	9:00	Holiday Inn, Georgetown, DC.

Dated: August 11, 1983.

(Catalog of Federal Domestic Assistance Program Nos. 13.306, 13.333, 13.337, 13.393–13.396, 13.837–13.844, 13.846–13.878, 13.892, 13.893, National Institutes of Health, HHS)

Betty J. Beveridge,

Committee Management Officer, National Institutes of Health.

[FR Doc. 83-23320 Filed 8-24-83; 8:45 am]

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. N-83-1279]

Annual Publication of Privacy Act Systems of Records

AGENCY: Department of Housing and Urban Development.

ACTION: Annual Publication of Privacy Act Systems of Records.

SUMMARY: This notice is published to meet the requirements of 5 U.S.C. 552a(e)(4). It serves as the annual publication providing a description of the existence and character of the Department's systems of records.

EFFECTIVE DATE: This notice shall become effective August 25, 1983.

FOR FURTHER INFORMATION CONTACT: Arthur L. Stokes, Departmental Privacy Act Officer, (202) 755-5320. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The Office of the Federal Register most recently published a compilation of Department of Housing and Urban Development (HUD) systems of records at Privacy Act Issuances, 1981 compilation, Volume II, pages 58-85. This compilation can be viewed at depository libraries and Federal Information Centers throughout the country. The Department of Housing and Urban Development last published the full text of all its systems of records at 46 FR 54878 (November 4, 1981). The November 4, 1981 publication brought together all HUD systems of records published to become effective through October 5, 1981. A subsequent notice published at 47 FR 34322 (August 6, 1982) brought together all notices of new, amended and deleted systems of records published to become effective between October 5, 1981, and July 31, 1982. This notice incorporates the material published at 46 FR 54878 and 47 FR 34322 by reference and brings together all notices of new, amended, and deleted systems of records published to become effective between July 31, 1982, and July 31, 1983. Additionally, this notice updates Appendix A of the full text which lists the addresses of HUD's Field Offices. There are a number of routine use disclosures which apply to most HUD systems of records. These routine use disclosures are listed below as "General Statement of Routine Uses."

(5 U.S.C. 552a, 88 Stat. 1896; sec. 7(d) Department of HUD Act (42 U.S.C. 3535(d)).

Issued at Washington, D.C., August 15, 1983.

Judith L. Tardy,

Assistant Secretary for Administration.

1. General Statement of Routine Uses.

Routine Use—Law Enforcement

In the event that a system of records maintained by this Department to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation or order issued pursuant thereto.

Routine Use—Disclosure When Requesting Information

A record from a system of records maintained by this Department may be disclosed as a routine use of a federal, state, or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to a component decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

Routine Use—Disclosure or Requested Information

A record from a system of records maintained by this Department may be disclosed to a federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

Routine Use—Disclosure to OMB

The information contained in a system of records will be disclosed to the Office of Management and Budget in connection with review of private relief legislation as set forth in OMB Circular No. A-19 at any stage of the legislative coordination and clearance process as set forth in that Circular; and for the purpose of evaluating the Department's credit and debt collection activities to further the goal of the President's Management Improvement Council.

Routine Use—Disclosure Pursuant to Congressional Inquiry

Disclosures may be made to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.

2. Table of Contents

HUD/DEPT-15

SYSTEM NAME:

Equal Opportunity Housing Complaints

SYSTEM LOCATION:

Housing discrimination files are located at the office where originated and may also be transferrd to associated area and/or regional offices, or the Headquarters Office. Additionally, closed files from this system may be temporarily located in a HUD contractor's office during a period of program evaluation. For a listing of HUD's offices with addresses see Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals filing housing discrimination complaints. Does not include files on HUD employee complaints regarding their employment. Notices regarding these inquiries under the Privacy Act are published by the U.S. Civil Service Commission.

CATEGORIES OF RECORDS IN THE SYSTEM:

Allegations of housing discrimination; names of complainant and persons or organizations complained about; investigation information; details of discrimination cases; compliance reviews; complaints under Titles VI, VIII and IX; conciliation files; correspondence; affidavits; complaints status reports. In mortgage discrimination cases, records include mortgage applications, credit reports

and verification of income, employment and bank deposits.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title VIII of the Civil Rights Act of 1978, Sec. 810(a); 42 U.S.C 3610(a).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Routine Uses paragraphs in prefatory statement. Other routine uses: To state and local government EO concerned agencies, the U.S. Department of Justice (including the FBI), the U.S. Department of Labor (including the Office of Federal Contract Compliance), U.S. Courts, the Veterans Administration, the Farmers Home Administration, complainants, repondents and attorneys—for investigation, preparing litigation, and monitoring compliance, to HUD contractor—for program evaluation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records kept in lockable desks and file cabinets and magnetic tape/disc/drum.

RETRIEVABILITY:

Usually retrievable by name of complainant and, in some instances, by case file number.

SAFEGUARDS:

Manual records are stored in lockable file cabinets; computer facilities are secured and accessible only by authorized personnel, and all files are stored in a secured area. Technical restraints are employed with regard to accessing the computer and data files.

RETENTION AND DISPOSAL:

HUD handbooks establish procedures for retention and disposition of records. Generally retained for two years, then tranferred to Federal Records Centers for an additional five years.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Fair Housing Enforcement and Section 3 Compliance, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410.

NOTIFICATION PROCEDURE:

For information, assistance, or inquiry about existence of records, contact the Privacy Act Officer at the appropriate location, in accordance with 24 CFR Part 16. A list of all locations is given in Appendix A.

RECORD ACCESS PROCEDURES:

The Department's rules for providing access to records to the individual concerned appear in 24 CFR Part 16. If additional information or assistance is required, contact the Privacy Act Officer at the appropriate location. A list of all locations is given in Appendix A.

CONTESTING RECORD PROCEDURES:

The Department's rules for contesting the contents of records and appealing initial denials, by the individual concerned, appears in 24 CFR Part 16. If additional information or assistance is needed, it may be obtained by contacting: (i) In relation to contesting contents of records, the Privacy Act Officer at the appropriate location. A list of all locations is given in Appendix A; (ii) in relation to appeals of initial denials, the HUD Departmental Privacy Appeals Officer, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410.

RECORD SOURCE CATEGORIES:

Subject and other individuals, Federal and non-federal government agencies, law enforcement agencies, credit bureaus, financial institutions, current and previous employers, corporations or firms, EO counselors and witnesses.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a(k)(2), all investigatory material, including conciliation files, in records contained in this System which meet the criteria of these sub-sections is exempted from the notice, access, and contest requirements (under 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4), (G), (H), and (I), and (f) of the agency regulations in order for the Department's Fair Housing and Equal Opportunity and legal staffs to perform their functions properly.

HUD/DEPT-32

SYSTEM NAME:

Delinquent/Default/Assigned/Temporary Mortgage Assistance Payments (TMAP) Program.

SYSTEM LOCATION:

Headquarters and field offices. For a complete listing of these offices, with addresses, see Appendix A. Office of HUD TMAP contractor will maintain some records on TMAP cases.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Mortgagors with HUD/FHA insured single-family mortgages that are delinquent or in default; mortgagors seeking assistance to prevent foreclosures; and mortgagors whose mortgages are held by HUD.

CATEGORIES OF RECORDS IN THE SYSTEM:

Notices of delinquent mortgages; requests for forebearance or assignment; forebearance or assignment reviews include data on mortgage amount and payments made, employment and income, debts and expenses, reasons for delinquency, recommendations and actions on requests; credit reports; forebearance agreements; deeds of trust; and related correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

See. 114(a), Housing Act of 1959, (Pub. L. 86-372), 12 U.S.C. 1702 et seq.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Routine Uses paragraphs in prefatory statement. Other routine uses: to FHA—for insurance investigations; to IRS and GAO—for investigations; to state banking agencies—to aid in processing mortgagor complaints; to state housing and redevelopment agencies—for follow-up servicing; to mortgagees—to check on the status of cases and referrals of complaints; to counseling agencies—for counseling: to Legal Aid—to assist mortgagors.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Routine Uses paragraphs in prefatory statement. Other routine uses: to FHA—for insurance investigations; to IRS and GAO—for investigations; to state banking agencies—to aid in processing mortgagor complaints; to state housing and redevelopment agencies—for follow-up servicing; to mortgagees—to check on the status of cases and referrals of complaints; to counseling agencies—for counseling: to Legal Aid—to assist mortgagors; to HUD TMAP contractor—for processing TMAP.

STORAGE:

In file folders and on magnetic tapes, drums, and discs.

RETRIEVABILITY:

Name; case file number, property address.

SAFEGUARDS:

Records maintained in desks and lockable file cabinets; access to automated systems is by passwords and code identification cards; access limited to authorized personnel.

RETENTION AND DISPOSAL:

Obsolete records destroyed or shipped to Federal Records Center in compliance with HUD Handbook.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Single Family Servicing Division, HSSI, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410.

NOTIFICATION PROCEDURE:

For information, assistance, or inquiry about existence of records, contact the Privacy Act Officer at the appropriate location, in accordance with 24 CFR Part 16. A list of all locations is given in Appendix A.

RECORD ACCESS PROCEDURES:

The Department's rules for providing access to records to the individual concerned appear in 24 CFR Part 16. If additional information or assistance is required contact the Privacy Act Officer at the appropriate location. A list of all locations is given in Appendix A.

CONTESTING RECORD PROCEDURES:

The Department's rules for contesting the contents of records and appealing initial denials, by the individual concerned, appear in 24 CFR Part 16. If additional information or assistance is needed, it may be obtained by contacting: (i) In relation to contesting contents of records, the Privacy Act Officer at the appropriate location. A list of all locations is given in Appendix A; (ii) in relation to appeals of initial denials, the HUD Departmental Privacy Appeals Officer, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410.

RECORD SOURCE CATEGORIES:

Subject individual; other individuals; current or previous employers; credit bureaus; financial institutions; other corporations or firms; Federal Government agencies; non-federal government (including foreign, state and local) agencies; law enforcement agencies.

HUD/DEPT-37

SYSTEM NAME:

Personnel Travel System.

SYSTEM LOCATION:

All Department offices maintain employee travel records. For a complete listing of offices, with addresses, see Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

HUD personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

All travel records, including vouchers, requests, advances, receipts for requests, orders.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 7(d) of the Department of Housing and Urban Development Act of 1965, Pub. L. 89–174; Budget and Accounting Act of 1950, 31 U.S.C. 66a.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USES AND THE PURPOSES OF SUCH USERS:

See Routine Uses paragraphs in prefatory statement. Other routine uses: to Treasury—for payment of vouchers; vouchers and receipts are available to GAO and GSA for audit purposes and vouchers are verified by private transporters.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

In file folders and on magnetic tape/disc/drum.

RETRIEVABILITY:

Almost always retrievable by name, occasionally by Social Security number.

SAFEGUARDS:

Lockable desks or file cabinets; computer records are maintained in secure areas with access limited to authorized personnel and technical restraints employed with regard to accessing the records.

RETENTION AND DISPOSAL:

Records are active and kept up-to-date. Files purged in accordance with HUD Handbook.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Finance and Accounting, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410.

For Transportation Requests: Director, Office of Administrative Services, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410.

NOTIFICATION PROCEDURE:

For information, assistance, or inquiry about existence of records, contact the Privacy Act Officer at the appropriate location, in accordance with 24 CFR Part 16. A list of all locations is given in Appendix A.

RECORD ACCESS PROCEDURES:

The Department's rules for providing access to records to the individual concerned appeared in 24 CFR Part 16. If additional information or assistance is required, contact the Privacy Act Officer at the appropriate location. A list of all locations is given in Appendix A.

CONTESTING RECORD PROCEDURES:

The Department's rules for contesting the contents of records and appealing initial denials, by the individual concerned, appear in 24 CFR Part 16. If additional information or assistance is needed, it may be obtained by contacting: (i) In relation to contesting contents of record, the Privacy Act Officer at the appropriate location. A list of all locations is given in Appendix A; (ii) in relation to appeals of initial denials, the HUD Departmental Privacy Appeals Officer, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410.

RECORD SOURCE CATEGORIES:

Subject individual and supervisors.

HUD/DEPT-52

SYSTEM NAME:

Privacy Act Requesters.

SYSTEM LOCATION:

Headquarters and field offices. For a complete listing of these offices, with addresses, see Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals inquiring about existence of records about them, and requesting access to and correction of such records under provisions of the Privacy Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal identification of requester, nature of request, and disposition of the request by the Department.

AUTHORITY FOR MAINTENCE OF THE SYSTEM:

Privacy Act of 1974 (5 U.S.C. 552(a)(c)).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Routine Uses paragraphs in prefatory statement. Other routine uses: none.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

In file holders.

RETRIEVABILITY:

Filed by case number and name of individual.

SAFEGUARDS:

Records maintained in locked and lockable file cabinets with access limited to authorized personnel.

RETENTION AND DISPOSAL:

Records are primarily active. Inactive files are normally disposed of after a one-year period.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Information Policies and Systems, AI, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410.

NOTIFICATION PROCEDURE:

For information, assistance, or inquiry about existence of records, contact the Privacy Act Officer at the appropriate location, in accordance with 24 CFR Part 16. A list of all locations is given in Appendix A.

RECORD ACCESS PROCEDURES:

The Department's rules for providing access to records to the individual concerned appear in 24 CFR Part 16. If additional information or assistance is required, contact the Privacy Act Officer at the appropriate location. A list of all locations is given in Appendix A.

CONTESTING RECORD PROCEDURES:

The Department's rules for contesting the contents of records and appealing initial denials by the individual concerned, appear in 24 CFR Part 16. If additional information or assistance is needed, it may be obtained by contacting: (i) In relation to contesting contents or records, the Privacy Act Officer at the appropriate location. A list of all locations is given in Appendix A; (ii) in relation to appeals of intitial denials, the HUD Departmental Privacy Appeals Officer, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410.

RECORD SOURCE CATEGORIES:

Subject individuals.

HUD/DEPT-55

SYSTEM NAME:

Executive Personnel Files.

SYSTEM LOCATION:

Headquarters Office.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Executive employees; namely, executive levels, members of the Senior Executive Service, supergrades, schedule C's experts and consultants, field office directions, and high potential senior level employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Data pertaining to experience, training, education, achievements, personal activities, potential and career objectives, and evaluation of these skills and attributes.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 401–415 Civil Reform Act of 1978. Pub. L. 95–454.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See routine uses paragraph in prefatory statement. Other routine uses: To former employers, education, institution, and references for information verification.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file cabinets.

RETRIEVABILITY:

Name of applicant or HUD organization.

SAFEGUARDS:

Records are maintained in lockable file cabinets with access limited to authorized personnel.

RETENTION AND DISPOSAL:

Retained during active status and then disposed, usually 3 years.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Headquarters Operations Division, Office of Personnel, APH, Department of Housing and Urban Development 451 Seventh Street, S.W., Washington, D.C. 20410.

NOTIFICATION PROCEDURE:

For information, assistance, or inquiry about the existence of records, contact the Privacy Act officer at the headquarters location, in accordance with 24 CFR Part 16. This location is given in Appendix A.

RECORD ACCESS PROCEDURES:

The Department's rules for providing access to records to the individuals concerned appear in 24 CFR Part 16. If additional information or assistance is required, contact the Privacy Act officer at the headquarters location. This location is given in Appendix A.

CONTESTING RECORD PROCEDURES:

The Department's rules for contesting the contents of records and appealing initial denials, by the individual concerned, appear in 24 CFR Part 16. If additional information or assistance is needed, it may be obtained by contacting: (i) In relation to contesting contests of records, the Privacy Act officer at the headquarters location. This location is given in Appendix A. (ii) In relation to appeals of initial denials, the HUD departmental privacy appeals officer, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street S.W., Washington, D.C. 20410.

RECORD SOURCE CATEGORIES:

Subject individuals, former employers and references.

***HUD/DEPT-77**

SYSTEM NAME:

Audit Planning and Operations System (APOS).

SYSTEM LOCATION:

This system is located in Headquarters with regional and Headquarters data entry and access capabilities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All OIG staff personnel and Independent Public Accountants (IPAs) who perform audits of HUD grantees where reports are subject to OIG review and acceptance.

CATEGORIES OF RECORDS IN THE SYSTEM:

The automated APOS contains name and ID number for OIG auditors and Independent Public Accountants (IPAs) who perform audits of HUD grantees where the audit reports are subject to OIG review and acceptance. Additionally, the APOS has records reflecting the OIG Annual Audit Plan (AAP) and detailed assignments within the AAP staffing and time goals for each assignment; records on direct time expenditures for each task within each assignment for each OIG employee; indirect time for each employee; information reflecting the receipt, review, acceptance and audit verification of IPA audits; and direct time charges to other categories of OIG audit work such as assistance to U.S. Attorneys, complaint handling and special projects.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

OMB Circular No. A–73, Revised, dated March 15, 1978, Audit of Federal Operations and Programs; Paragraphs 7 and 7(3). Inspectors General Act 1978. Pub. L. 95–452; Section 4, Paragraph (1) and Section 5(a).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See routine uses paragraphs in prefatory statement. Other routine uses: None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

In file folders and on magnetic media.

RETRIEVABILITY:

Retrievability of records that refer to OIG personnel will be by HUD–OIG numbers and regional identifier. Retrieval of records that refer to Independent Public Accountants will be by the OIG designated numeric code for the IPA and regional identifier.

SAFEGUARDS:

Manual files are kept in lockable file drawers in secure areas. Technical restraints are employed with regard to accessing the automated records.

RETENTION AND DISPOSAL:

Coded imput forms will be retained for one month, and upon successful execution of program, the forms will be destroyed. Printed computer output forms will be retained until the next cyclical run. The system report cycles will occur monthly, quarterly, or semiannually depending on the nature of the report. Stored data within the system will be retained for three years. At the end of that period the records will be removed and maintained for two more years on tape where they will be restored to the system only as needed. At the end of a 5-year period, records will be removed from tape library and destroyed.

SYSTEM MANAGER AND ADDRESS:

Assistant Director, Audit Operations Division, Field Operations, 451 7th Street, SW., Washington, D.C. 20410.

NOTIFICATION PROCEDURE:

For information, assistance, or inquiry about existence of records, contact the Privacy Act Officer at the Headquarters location, in accordance with 24 CFR Part 16. This location is given in Appendix A.

RECORD ACCESS PROCEDURES:

The Department's rules for providing access to records to the individual concerned appear in 24 CFR Part 16. If additional information or assistance is needed, contact the Privacy Act Officer at the Headquarters location. This location is given in appendix A.

CONTESTING RECORD PROCEDURES:

The Department's rules for contesting the contents of records and appealing initial denials by the individual concerned appear in 24 CFR Part 16. If additional information or assistance is needed in relation to contesting the contents of records, it may be obtained by contacting the Privacy Act Officer at the appropriate location. A list of all locations is given in Appendix A. If additional information or assistance is needed in relation to appeals of initial denials, it may be obtained by contacting the HUD Departmental Privacy Appeals Officer, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 24010.

RECORD SOURCE CATEGORIES:

Subject individuals and other HUD employees. All records within the automated APOS will be developed from current existing records within Regional and Headquarters OIG sites. Time records will be reported for OIG personnel through their supervisors. IPA data will be reported by the IPA liaison groups within each OIG regional facility.

HUD/H–11

SYSTEM NAME:

Multifamily Tenant Certification System.

SYSTEM LOCATION:

Headquarters and Field Offices. For a listing of Field Offices with addresses, see Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals receiving housing assistance from HUD under one of the following programs: Section 8, Public/Indian Housing, Section 236 (including Section 236 RAP), Rent Supplement, Section 221(d)3 BMIR, and Section 202/8.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system will include identification data such as name, Social Security Number (if available), alien registration number, or other identification number, address, and tenant unit number; financial data such as income and contract rent; tenant characteristics such as number in family, sex of family member and minority code; unit characteristics such as number of bedrooms; geographic data such as county code and census tract; and related information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

United States Housing Act of 1937, as amended, 42 U.S.C. 1437 *et seq.*, and the Housing and Community Amendments of 1981, Pub. L. 97–35, 95 Stat. 408.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See routine uses paragraph in prefatory statement. Other routine uses: To Federal, State, and local agencies—to verify the accuracy of the data provided; to HUD contractor-for processing certifications/recertifications; to the Social Security Administration and the Immigration and Naturalization Service—to verify alien status.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders, magnetic tape/disk/drum.

RETRIEVABILITY:

Name of tenant, address, Social Security or other identification number.

SAFEGUARDS:

File folders, automated records kept in a secured area. Access restricted to authorized individuals.

RETENTION AND DISPOSAL:

Obsolete records are destroyed or sent to storage facility in accordance with HUD Handbook 2225.6, Records Dispositon Management: HUD Records Schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Management Information Systems Division, Office of Management, Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410.

NOTIFICATION PROCEDURE:

For information, assistance, or inquiry about the existence of records, contact the Privacy Act Officer at the appropriate location, in accordance with 24 CFR Part 16. A list of all locations is given in Appendix A.

RECORD ACCESS PROCEDURES:

The Department's rules for providing access to records to the individual concerned appear in 24 CFR Part 16. If additional information or assistance is required, contact the Privacy Act Officer at the appropriate location. A list of all locations is given in Appendix A.

CONTESTING RECORD PROCEDURES:

The Department's rules for contesting the contents of records and appealing initial denials by the individual concerned appear in 24 CFR Part 16. If additional information or assistance is needed in relation to contesting the contents of records, it may be obtained by contacting the Privacy Act Officer at the appropriate location. A list of all locations is given in Appendix A. If additional information or assistance is needed in relation to appeals of initial denials, it may be obtained by contacting the HUD Departmental Privacy Appeals Officer, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410.

RECORD SOURCE CATEGORIES:

Subject individuals, other individuals, PHA staff/private owners/management agents.

HUD/H-12

SYSTEM NAME: HOUSING COMPLIANCE FILES.

SYSTEM LOCATION:

Headquarters and Field Offices. For a listing of Field Offices with addresses, see Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals [those who are direct or indirect recipients of HUD funds; participants, or contractors with participants in HUD–FHA assisted or sponsored programs including mortgage insurance programs; or former HUD employees as set forth in 24 CFR 24.3 and 24.4(f)] who have been suspended, or debarred, or who are ineligible to participate in HUD programs or those whose records of participation in HUD programs are being reviewed for possible administrative actions to exclude them from further participation.

CATEGORIES OF RECORDS IN THE SYSTEM:

The files consist of correspondence and documents pertaining to the subject individuals. The documents may include indictments, information, judgments, audits, inspector general investigation reports, credit reports and financial reports, FBI reports, copies of HUD/FHA forms, and related documentation and information. The individual's name, family composition, marital status, arrest record address, telephone number (if provided), and employment information are also included in the file together with documentary evidence and/or narrative details relative to improper or illegal acts or omissions of participants in HUD programs.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Department of HUD Act, 79 Stat. 670; [42 U.S.C. 3535(d)].

ROUTINE USES OF RECORDS MAINTANIED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

See routine uses paragraph in prefatory statement. Other routine uses: Attorneys who are in private practice who represent clients who have files in the system—to permit the attorneys to properly represent their clients; to licensing and regulatory agencies as well as to other Federal and State government agencies—to provide information concerning individuals who have been administratively sanctioned by HUD.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

In file folders.

RETRIEVABILITY:

Name of individual.

SAFEGUARDS:

Desks, file cabinets kept in a secured area. Access restricted to authorized individuals.

RETENTION AND DISPOSAL:

Obsolete records are destroyed or sent to storage facility in accordance with HUD Handbook 2225.6, Records Disposition Management: HUD Records Schedules.

SYSTEM MANAGER AND ADDRESS:

Director, Participation and Compliance Division, Office of Management, HAC, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410.

NOTIFICATION PROCEDURE:

For information, assistance, or inquiry abut the existence of records, contact the Privacy Act Officer at the appropriate location, in accordance with 24 CFR Part 16. A list of all locations is given in Appendix A.

RECORD ACCESS PROCEDURES:

The Department's rules for providing access to records to the individual concerned appear in 24 CFR Part 16. If additional information or assistance is required, contact the Privacy Act Officer at the appropriate location. A list of all locations is given in Appendix A.

CONTESTING RECORD PROCEDURES:

The Department's rules for contesting the contents of records and appealing initial denials, by the individual concerned, appear in 24 CFR Part 16. If additional information or assistance is needed in relation to contesting the contents of records, it may be obtained by contacting the Privacy Act Officer at the appropriate location. A list of all locations is given in Appendix A. If additional information or assistance is needed in relation to appeals of initial denials, it may be obtained by contacting the HUD Departmental Privacy Appeals Officer, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street SW., Washington D.C. 20410.

RECORD SOURCE CATEGORIES:

HUD employees, Federal government agencies, non-Federal government agencies, Federal and State courts, financial institutions (mortgagees), Federal, State, and local law enforcement, regulatory or licensing agencies.

HUD/H-14

SYSTEM NAME:

Interstate Land Sales Registration Files.

SYSTEM LOCATION:

Headquarters.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Developers of land offering 25 or more lots for sale and using any means or instruments of interstate commerce including the mails.

CATEGORIES OF RECORDS IN THE SYSTEM:

Property reports; statements of record including documentation such as corporate charter, individual and corporate financial statements, title policy, deeds, mortgages, local ordinances, health regulations, availability of utilities, plats, information on roads and recreational facilities and contracts; statistical records; budget estimates; microfilm information; exemption applications; and related information and documentation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

15 U.S.C. 1704(d).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Routine Uses paragraphs in prefatory statements. Other routine uses: To contractor for microfilming; to the general public in accordance with

provisions of the Interstate Land Sales Full Disclosure Act (15 U.S.C. 1704(d)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

In file folders, microfilm and on magnetic tape, disc, or drum.

RETRIEVABILITY:

OILSR file number, name of subdivision or name of the developer.

SAFEGUARDS:

Manual records are kept in secured area. Computer facilities are secured and accessible only by authorized personnel, and all files are stored in a secured area. Technical restraints are employed with regard to accessing the automated files.

RETENTION AND DISPOSAL:

Files on subdivisions are active and kept up-to-date in a secured area. Files are in the process of being microfilmed and will be retained in the Records and Control Branch. HUD handbooks establish procedures for retention and disposition of other records.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Interstate Land Sales Registration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410

NOTIFICATION PROCEDURE:

For information, assistance, or inquiry about existence of records, contact the Privacy Act Officer at the Headquarters location, in accordance with 24 CFR Part 16. This location is given in Appendix A.

RECORD ACCESS PROCEDURES:

The Department's rules for providing access to records to the individual concerned appear in 24 CFR Part 16. If additional information or assistance is required contact the Privacy Act Officer at the Headquarters location. This locations is given in Appendix A.

CONTESTING RECORD PROCEDURES:

The Department's rules for contesting the contents of records and appealing initial denials, by the individual concerned, appear in 24 CFR Part 16. If additional information or assistance is needed in relation to contesting the contents of records it may be obtained by contacting the Privacy Act Officer at the Headquarters location. This location is given in Appendix A. If additional information or assistance is needed in relation to appeals of initial denials, it may be obtained by contacting the HUD Departmental Privacy Appeals Officer, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410.

RECORD SOURCE CATEGORIES:

Subject individual; HUD field representatives.

HUD/PD&R-11

SYSTEM NAME:

HUD Community Development Block Grant State Transfer Evaluation Files.

SYSTEM LOCATION:

HUD contractor to be selected and Headquarters Office.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

A sample of local community development officials and the state officials responsible for the Community Development Block Grant Small Cities Program transfer to those same states (a sample of states out of a potential universe of thirty-seven states). Also, a limited number of other relevant and informed persons on the state transfer, e.g., HUD Area Office personnel responsible for CDBG small cities program review.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, title, organizational address, and telephone numbers of interviewees; demographic and socio-economic characteristics of the cities and states sampled, such as population, poverty population, and age of housing stock; and program development and administration interview data about the small cities program transfer to the states in the sample cities and states.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C 552a, 88 Stat. 1896; Sec. 7(d). Department of HUD Act (42 U.S.C. 3535(d)).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To HUD contractor-for analysis by the contractor of the state transfer.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual records stored in lockable file drawers located in lockable rooms. Access limited to authorized personnel. Personnel identifiers such as mailing labels, names, addresses, and assigned codes maintained in separate locked files with access restricted. Automated records contain no identification of individuals except assigned numeric codes.

RETRIEVABILITY:

Name, address, and numeric code.

SAFEGUARDS:

Manual records stored in lockable file cabinets in secured areas. Computer records will be maintained in secured with regard to accessing records. Access to both types of records is limited to authorized personnel.

RETENTION AND DISPOSAL:

Records are periodically returned to Federal Records Center and destroyed in accordance with HUD Handbook 2225.6.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Community Development and Fair Housing Analysis, Assistant Secretary for Policy Development and Research, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410.

NOTIFICATION PROCEDURE:

For information, assistance, or inquiry about existence of records, contact the Privacy Act Officer at the Headquarters location, in accordance with 24 CFR Part 16. This location is given in Appendix A.

RECORD ACCESS PROCEDURES:

The Department's rules for providing access to records to the individual concerned appear in 24 CFR Part 16. If additional information or assistance is required, contact the Privacy Act Officer at the Headquarters location. This location is given in Appendix A.

CONTESTING RECORD PROCEDURES:

The Department's rules for contesting the contents of records and appealing initial denials, by the individual concerned, appear in 24 CFR Part 16, If additional information or assistance is needed in relation to contesting the contents of records, it may be obtained by contacting the Privacy Act Officer at the Headquarters location. This location is given in Appendix A. If additional information or assistance is needed in relation to appeals of initial denials, it may be obtained by contacting the HUD Departmental Privacy Appeals Officer, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410.

RECORD SOURCE CATEGORIES:

Subject individuals.

Appendix A—Officials to Receive Inquiries, Requests for Access and Requests for Correction or Amendment

Headquarters

Privacy Act Officer, 551 Seventh Street SW., Washington, D.C. 20410.

Region I

Regional Administrator, Room 800, John F. Kennedy Federal Building, Boston, Mass. 02203.

Area Offices

Area Manager, Bulfinch Building, 15 New Cardon Street, Boston, Mass. 02114.
Area Manager, One Hartford Square West, Suite 204, Hartford, Conn. 06106.

Service Offices

Supervisor, Norris Cotton Federal Building, 275 Chestnut Street, Manchester, New Hampshire 03103.
Supervisor, Room 330, John O. Pastore Federal Building, U.S. Post Office, Kennedy Plaza, Providence, Rhode Island 02903.

Valuation/Endorsement Stations

Supervisor, Federal Building and Post Office, 202 Harlow Street, Bangor, Maine 04401.
Supervisor, 110 Main Street, P.O. Box 989, Burlington, Vermont 05402.

Region II

Regional Administrator, 26 Federal Plaza, New York, New York 10278.

Area Offices

Area Manager, Mezzanine, Statler Building, 107 Delaware Avenue, Buffalo, New York 14202.
Area Manager, 26 Federal Plaza, New York, New York 10278.
Area Manager, Military Park Building, 60 Park Place, Newark, New Jersey 07102.
Area Manager, Gateway I Building, Raymond Plaza, Newark, New Jersey 07102.

Caribbean Area Office

Area Manager, Federico Degetau Federal Building, U.S. Courthouse, Room 428, Carlos E. Chardon Avenue, Hato Ray, Puerto Rico 00918.

Service Offices

Supervisor, Leo W. O'Brien Federal Building, North Pearl Street and Clinton Avenue, Albany, New York 12207.
Supervisor, The Parkade Building, 519 Federal Street, Camden, New Jersey 06103.

Region III

Regional Administrator, Curtis Building, 6th and Walnut Streets, Philadelphia, Pa. 19106.

Area Offices

Area Manager, The Equitable Building, Third Floor, 10 North Calvert Street, Baltimore, Maryland 21202.
Area Manager, Curtis Building, 625 Walnut Street, Philadelphia, Pa. 19106.
Area Manager, Fort Pitt Commons, 445 Fort Pitt Blvd., Pittsburgh, Pennsylvania 15219
Area Manager, 701 East Franklin Street, Richmond, Virginia 23219
Area Manager, Universal North Building, 1875 Connecticut Avenue NW., Washington, D.C. 20009

Service Office

Supervisor, Kanawha Valley Building, Capitol and Lee Streets, Charleston, West Virginia 25301

Valuation/Edorsement Station

Supervisor, 800 Delaware Avenue, Rm. 511, Wilmington, Delaware 19801

Region IV

Regional Administrator, Richard B, Russell, Federal Building, 75 Spring Street, S.W., Atlanta, Georgia 30303

Area Offices

Area Manager, Richard B. Russell Federal Building, 75 Spring Street, S.W., Atlanta, Georgia 30303
Area Manager, Daniel Building, 15 South 20th Street, Birmingham, Alabama 35233
Area Manager, Strom Thurmon Federal Building, 1835—45 Assembly Street, Columbia, South Carolina 29201
Area Manager, 415 N. Edgeworth Street, Greensboro, North Carolina 27401
Area Manager, Federal Building, 100 W. Capital St., Suite 1016, Jackson, Mississippi 39201
Area Manager, 325 West Adams St., Jacksonville, Florida 32202
Area Manager, One Northshore Building, 1111 Northshore Drive, Knoxville, Tennessee 37919
Area Manager, 539 Fourth Avenue, P.O. Box 1044, Louisville, Kentucky 40201.

Service Officers

Supervisor, 3001 Ponce de Leon Boulevard, Coral Gables, Florida 33134
Supervisor, Federal Building, 700 Twiggs Street, Post Office Box 2097, Tampa, Florida 33601
Supervisor, Federal Office Building, 80 N. Hughey, Orlando, Florida 32801
Supervisor, 28th Floor, 100 North Main Street, Memphis, Tennessee 38103
Supervisor, One Commerce Place, Suite 1600, Nashville, Tennessee 37219

Region V

Regional Administrator, 300 South Wacker Drive, Chicago, Illinois 60606

Area Offices

Area Manager, 547 West Jackson Boulevard, Chicago, Illinois 60606.
Area Manager, New Federal Building, 200 North High Street, Columbus, Ohio 43215
Area Manager, Patrick V. McNamara Federal Building, 477 Michigan Avenue, Detroit, Michigan 48226
Area Manager, 151 North Delaware Street, Indianapolis, Indiana 46207
Area Manager, Henry S. Reuss. Federal Plaza, Suite 1380, 310 West Wisconsin Avenue, Milwaukee, Wisconsin 53203.
Area Manager, Bridge Place Building 220 Second Street, South, Minneapolis, Minnesota 56401

Service Offices

Supervisor, Federal Office Building, 550 Main Street, Cinninnatt, Ohio 45202
Supervisor 777 Rockwell Avenue, Cleveland, Ohio 44114
Supervisor, Northbrook Building Number II, 2922, Fuller Avenue, N.E., Grand Rapids, Michigan 49505
Supervisor, Genesee Bank Building, Room 200, 352 South Saginaw Street, Flint, Michigan 48502

Valuation/Endorsement Station

Supervisor, Lincoln Tower Plaza, 524 South Second Street, Springfield, Illinois 52701

Region VI

Regional Administrator, 221 West Lancaster St., Fort Worth, Texas 76113

Area Offices

Area Manager, 1403 Slocum St., P.O. Box 2005D Dallas, Texas 75207
Area Manager, Savers Building, 320 West Capitol, Suite 700, Little Rock, Arkansas 72201
Area Manager, 1661 Canal Street, New Orleans, Louisana 70112.
Area Manager, 200 N.W. Fifth Street, Oklahoma City, Oklahoma 73102
Area Manager, Washington Square, 800 Dolorosa, Post Office Box 9163, San Antonio, Texas 78285

Sevice Offices

Supervisor, 221 West Lancaster St., Fort Worth, Texas 76113
Supervisor, Two Greenway Plaza East, Suite 200, Houston, Texas 77046
Supervisor, Federal Building, 1205 Texas Avenue, Lubbock, Texas 79406
Supervisor, 625 Truman Street, N.E., Albuquerque, New Mexico 87110
Surpervisor, New Federal Building 500 Fannin St., Shreveport, Louisiana 71101
Supervisor, 440 South Houston Avenue, Tulsa, Oklahoma 74127

Region VII

Regional Administrator, Professional Bldg., 1103, Grand St., Kansas City, Missouri 64106

Area Offices

Area Manager, Professional Building 1103 Grand St., Kansas City, Missouri 64106
Area Manager, Braiker/Brandeis Building, 210 South 16th Street, Omaha, Nebraska 68102.
Area Manager, 210 North Tucker Boulevard, St. Louis, Missouri 63101

Service Office

Supervisor, Room 259, Federal Building, 210 Walnut Street, Des Moines, Iowa 50309

Valuation/Endorsement Station

Supervisor, 444 S.E., Quincy Street, Topeka, Kansas 66683

Region VIII

Regional Administrator, Executive Tower Building, 1405 Curtis Street, Denver, Colorado 80202

Service Office

Supervisor, Federal Office Bldg. Rm. 340, Drawer 10095, 301 South Park, Helena, Montana 59626
Supervisor, 125 South State Street, Salt Lake City, Utah 84111

Valuation/Endorsement Stations

Supervisor, Federal Office Building, 100 East B St., P.O. Box 580, Casper, Wyoming 82602
Supervisor, Federal Building, 653 2nd Avenue North, P.O. Box 2483, Fargo, North Dakota 58108
Supervisor, 119 Federal Building, U.S. Couthouse, 400 S. Phillips Avenue, Sioux Falls, South Dakota 57102

Region IX

Regional Administrator, 450 Golden Gate Avenue, Post Office Box 36003, San Fancisco, California 94102

Area Offices

Area Manager, Federal Building, 300 Ala Moana Boulevard, Suite 3318, Honolulu, Hawaii 96650
Area Manager, 2500 Wilshire Boulevard, Los Angeles, California 90057
Area Manager, 1 Embarcadero Center, Suite 1600, San Francisco, California 94111

Service Offices

Supervisor, 34 Civic Center Plaza, Room 614, Santa Ana, California 92701
Supervisor, Federal Office Building, 880 Front Street, San Diego, California 92188
Supervisor, Arizona Bank Building, 101 N. First Avenue, Suite 1800, Phoenix, Arizona 85003
Supervisor, Arizona Bank Building, 33 North Stone Avenue, Tucson, Arizona 85701
Supervisor, 1315 Van Ness Street, Fresno, California 93721
Supervisor, 545 Downtown Plaza, Post Office Box 1978, Sacramento, California 95809
Supervisor, 1050 Bible Way, Post Office Box 4700 Reno, Nevada 89505
Supervisor, 720 South 7th St., Las Vegas, Nevada 89101

Region X

Regional Administrator, 3003 Arcade Plaza Building 1321 Second Avenue, Seattle, Washington 96101

Area Offices

Area Manager, 701 C Street, Box 64, Anchorage, Alaska 99513
Area Manager, 520 Southwest 6th Avenue, Portland, Oregon 97204
Area Manager, Arcade Plaza Building, 1321 Second Avenue, Seattle, Washington 96101

Service Offices

Supervisor, 419 North Curtis Road, Boise, Idaho 83705.
Supervisor, West 920 Riverside Avenue, Spokane, Washington 99201

[FR Doc. 83-23222 Filed 8-24-83 8:45 am]
BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F-14874-A through F-14874-J]

Alaska Native Claims Selection

The purpose of this decision is to modify the Decision to Issue Conveyance (DIC) dated June 27, 1983, and the notice of decision to issue conveyance published in the **Federal Register** on June 27, 1983, pages 2918 and 29619. The DIC reserve certain easements in accordance with the Alaska State Director (SD), Bureau of Land Management (BLM), memorandum of March 10, 1982, which was amended June 8, 1983, and June 23, 1983, listing final easements to be reserved in the conveyance for the village of Kiana.

On July 22, 1983, the SD memorandum of March 10, 1982, was further amended as to easements numbered (EIN 3 C3, C5, D1, D9), (EIN 16 C5), and (EIN 21 C5).

Therefore, the DIC dated June 27, 1983 is modified as follows:

Easement (EIN3 C3, C5, D1, D9) now reads:

a. (EIN 3 C3, C5, D1, D9) An easement twenty-five (25) feet in width for an existing access trail from site EIN 3a E in Sec. 25, T. 18 N., R. 8 W., Kateel River Meridian, southerly to public land. The uses allowed are those listed for a twenty-five (25) foot wide trail easement.

This easement is hereby modified to read:

a. (EIN 3 C3, C5, D1, D9) An easement twenty-five (25) feet in width for an existing and proposed access trail from site EIN 3a E in Sec. 25, T. 18 N., R. 8 W., Kateel River Meridian, southerly to public land. The uses allowed are those listed for a twenty-five (25) foot wide trail easement.

Easement (EIN 16 C5) now reads:

f. (EIN 16 C5) An easement fifty (50) feet in width for an existing access trail from site EIN 16a C3, E in Sec. 35, T. 19 N., R. 8 W., Kateel River Meridian, northeasterly to public land in T. 19 N., R. 7 W., Kateel River Meridian. The uses allowed are those listed for a fifty (50) foot wide trail easement.

This easement is hereby modified to read:

f. (EIN 16 C5) An easement fifty (50) feet in width for an existing and proposed access trail from site EIN 16a C3, E in Sec. 35, T. 19 N., R. 8 W., Kateel River Meridian, Northeasterly to public land in T. 19 N., R. 7 W., Kateel River Meridian. The uses allowed are those listed for a fifty (50) foot wide trail easement.

Easement (EIN 21 C5) now reads:

i. (EIN 21 C5) An easement twenty-five (25) feet in width for an existing access trail from the Kobuk River, Sec. 11, T. 18 N., R. 7 W., Kateel River Meridian, southerly to public land. The uses allowed are those listed for a twenty-five (25) foot wide trail easement.

This easement is hereby modified to read:

i. (EIN 21 C5) An easement twenty-five (25) feet in width for an existing and proposed access trail from the Kobuk River, Sec. 11, T. 18 N., R. 7 W., Kateel River Meridian, southerly to public land. The uses allowed are those listed for a twenty-five (25) foot wide trail easement.

The easement maps attached to the decision of June 27, 1983, are still valid and were not changed by this modified decision.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice of this modified decision is being published once in the **Federal Register** and once a week for four (4) consecutive weeks, in the Tundra Times.

Any party claiming a property interest in lands affected by this modified decision, an agency of the Federal government, or regional corporation may appeal the modified decision to the Interior Board of Land Appeals, Office of Hearings and Appeals, in accordance with the attached regulations in Title 43, Code of Federal Regulations (CFR), Part 4, Subpart E, as revised. However, pursuant to Pub. L. 96-487, this modified decision constitutes the final administrative determination of the Bureau of Land Management concerning navigability of water bodies.

If an appeal is taken the notice of appeal must be filed in the Bureau of Land Management, Alaska State Office, Division of Conveyance Management, (960), 701 C Street, Box 13, Anchorage, Alaska 99513. Do not send the appeal directly to the Interior Board of Land Appeals. The appeal and copies of pertinent case files will be sent to the Board from this office. A copy of the appeal must be served upon the Regional Solicitor, 701 C Street, Box 34, Anchorage, Alaska 99513.

The time limits for filing an appeal are:

1. Parties receiving service of this modified decision by personal service or certified mail, return receipt requested, shall have thirty days from receipt of this modified decision to file an appeal.

2. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who failed or refused to sign their return receipt and parties who received a copy

of this modified decision by regular mail which is not certified, return receipt requested, shall have until September 26, 1983 to file an appeal.

Any party known or unknown who is adversely affected by this modified decision shall be deemed to have waived those rights which were adversely affected unless an appeal is timely filed with the Bureau of Land Management, Alaska State Office, Division of Conveyance Management.

To avoid summary dismissal of the appeal, there must be strict compliance with the regulations governing such appeal. Further information on the manner of and requirements for filing an appeal may be obtained from the Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513.

If an appeal is taken, the party to be served with a copy of the notice of appeal is: NANA Regional Corporation, Inc., Successor in Interest to Katyaak Corporation, P.O. Box 49, Kotzebue, Alaska 99752.

Except as modified by this decision, the decision of June 27, 1983, stands as written.

Steven L. Willis,

Acting Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 83-23321 Filed 8-24-83; 8:45 am]

BILLING CODE 4310-84-M

[M 37743-A]

Montana; Conveyance of Public Land, Lewis and Clark County

August 19, 1983.

Notice is hereby given that, pursuant to Section 203 of the Act of October 21, 1976 (90 Stat. 2750; 43 U.S.C. 1713), the following described land was sold by noncompetitive sale to George C. Watters, Jr. of Helena, Montana:

Principal Meridian, Montana

T. 10 N., R. 4 W.,
Sec. 36, Lot 35.

Containing 0.49 acres.

The purpose of this notice is to inform the public and interested state and local governmental officials of the issuance of the conveyance document to Mr. Watters.

Edgar D. Stark,

Chief, Lands Adjudication Section.

[FR Doc. 83-23329 Filed 8-24-83; 8:45 am]

BILLING CODE 4310-84-M

[A-16128]

Arizona; Application for Issuance of Disclaimer of Interest to Lands in Arizona

August 18, 1983.

Notice is hereby given that the United States of America, pursuant to the provisions of the Federal Land Policy and Management Act of 1976 (FLPMA), Section 315, 43 U.S.C. 1745 (1976), does hereby give notice of its intention to disclaim all interest in the following described property, to wit:

Gila and Salt River Meridian, Arizona

T. 14 N., R. 5 E.,
That tract of land consisting of a portion of the riparian attachments (accretions) to Lot 6 of Section 29, Township 14 North, Range 5 East, Gila and Salt River Meridian, Arizona, as well as a portion of the south half of the river bed which lies directly between the medial line of the Verde River, as it may exist from time to time, and the upland areas of Lot 6, Section 29, T. 14 N., R. 5 E., G&SRM, Arizona.

After review of the offical records, it is the position of the Bureau of Land Management that the United States has issued patent to a fractional lot bounded by the Verde River, and there are no specific reservations in said patent, there exists no valid United States claim to land which might have been formed by accretion to said lot and there is no valid United States claim to land within the bed of the Verde River in front of said lot.

Any person wishing to submit a protest or comments on the above disclaimer should do so in writing before the expiration of 90 days from the date of publication of this notice. If no protest(s) is received, the disclaimer will become effective on the date set out below.

Disclaimer of title and release of all interest of the United States shall issue on or after November 30, 1983.

Information concerning this land and the proposed disclaimer may be obtained from and the protest filed with State Director, Bureau of Land Management, 2400 Valley Bank Center, Phoenix, Arizona 85073.

Mildred C. Kozlow,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 83-23330 Filed 8-24-83; 8:45 am]

BILLING CODE 4310-84-M

[A-17000-L]

Arizona; Order Providing for Opening of Public Lands

August 18, 1983.

1. In **Federal Register** Volume 47, Number 83, Pages 18433-18434 dated April 29, 1982, approximately 3280 acres were proposed as suitable for classification for transfer to the State of Arizona under the State Indemnity Selection Program. All the lands have been transferred to the State of Arizona with the exception of 163.38 acres, which have been deleted from the State's application and are described as follows:

T.16-½ N., R. 18 W., G&SRM
Sec. 20: S½NE¼SE¼, E½SE¼NW¼SE¼, E½NE¼SE¼, E½SE¼SW¼SE¼, NW¼SE¼SE¼, those portions lying outside I-40 R/W.

Approximately 34.00 acres.

T.19N., R.17W., G&SRM
Sec. 18: Lots 2, 9, 12, 19 all west of Railroad R/W.

Approximately 100.00 acres.

T. 21 N., R. 17 W., G&SRM
Sec. 8: W½SW¼SW¼NW¼, SW¼NE¼ SW¼SW¼NW¼, SE¼SW¼, SW¼NW¼, S½SW¼SE¼SW¼NW¼, NW¼NW¼SW¼, W½NE¼N W¼SW¼, NW¼NE¼NE¼NW¼SW¼, S½NE¼NE¼NW¼SW¼, SE¼NE¼ NW¼SW¼.

Approximately 29.375 acres.

The areas described aggregate about 163.38 acres in Mohave County.

2. Subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law, the lands described in paragraph 1 are hereby open to the operation of the public land laws including the mining laws (Ch. 2, Title 30 U.S.C.).

All valid applications under the public land laws received at or prior to 10:00 a.m. on September 26, 1983 shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

Appropriation of lands under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. Section 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determination in local courts.

3. The lands have been and will continue to be open to applications and offers under the mineral leasing laws.

4. Inquiries concerning the lands should be addrssed to the Bureau of Land Management, Department of the Interior, 2400 Valley Bank Center, Phoenix, Arizona 85073 (602–261–4774).

Mildred C. Kozlow,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 83–23340 Filed 8–24–83; 8:45 am]

BILLING CODE 4310–84–M

California Desert District; Shoshone Cave Wildlife Habitat Management Area

AGENCY: Bureau of Land Management, Interior.

ACTION: Vehicle route closure on public lands.

SUMMARY: This route closure is being implemented to protect sensitive wildlife values from inadvertent damage caused by vehicle use. A single vehicle route which extends for approximately one-half mile will be closed to vehicle use. This route is located in the SW¼ of Section 12 of Township 22 North, Range 6 East in southern Inyo County, California. Route closure is the result of a management plan for the area which was developed following guidelines established in the California Desert Conservation Area Plan. Development of this plan included public involvement.

A single route where vehicle use is not permitted will be clearly signed. Copies of maps showing this route are available for review at the BLM Barstow Resource Area Office, 831 Barstow Road, Barstow, California 92311. The public lands within this area will remain available to other resource uses not in conflict with the objectives of this management plan. Administrative access into areas closed to vehicle use is allowed for BLM personnel, BLM contractors, licensees, permittees, lessees, and other Federal, State, and county employees when on official duty and when authorized beforehand by the Area Manager.

Under the authority provided in the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), 43 CFR 8000.0–6, 8340, 8341, 8342, and 8364, the Sikes Act of 1974, and Executive Order 11644 (Use of Off-road Vehicles on Public Lands).

DATE: This notice is effective upon publication and will remain in effect until a formal notice is published which opens the area.

FOR FURTHER INFORMATION CONTACT: Area Manager, Barstow Resource Area, 831 Barstow Road, Barstow, California 92311, or telephone (619) 256–3591.

Dated: August 18, 1983.

H. W. Riecken,

Acting District Manager.

[FR Doc. 83–23339 Filed 8–24–83; 8:45 am]

BILLING CODE 4310–84–M

Colorado; Filing of Plats of Survey

August 15, 1983.

The plats of survey of the following described lands were officially filed in the Colorado State Office, Bureau of Land Management, Colorado, effective 10:00 a.m., August 15, 1983.

Sixth Principal Meridian

T. 4 N., R. 71 W.

The plat representing the dependent resurvey of a portion of the south boundary, the west boundary, a portion of the subdivisional lines and the survey of the subdivision of certain sections, T. 4 N., R. 71 W., Sixth Principal Meridian, Colorado, Group 632, was accepted July 19, 1983.

This survey was executed to meet certain administrative needs of the U.S. Forest Service.

T. 10 S., R. 84 W.

The supplemental plat creating lots 38, 39, and 40, in section 7, T. 10 S., R. 84 W., Sixth Principal Meridian, Colorado, was accepted July 18, 1983.

This survey was executed to meet certain administrative needs of this Bureau.

New Mexico Principal Meridian

T. 33 N., R. 12 W.

The plat represent the dependent resurvey of a portion of the Eighth Standard Parallel North (south boundary), a portion of the west boundary, and subdivisional lines, and a portion of the subdivision of sections 19, 30, and 31, and the survey of the subdivision of sections 19, 30, and 31, T. 33 N., R. 12 W., New Mexico Principal Meridian, Colorado, Group 725, was accepted July 14, 1983.

T. 32 N., R. 13 W.

The plat representing the dependent resurvey of a portion of the subdivisional lines and a portion of the subdivision of sections 3 and 4, and the survey of the subdivision of sections 3 and 4, T. 32 N., R. 13 W., New Mexico Principal Meridian, Colorado, Group 725, was accepted July 14, 1983.

T. 33 N., R. 13 W.

This plat representing the dependent resurvey of a portion of the Eighth Standard Parallel North (south boundary), a portion of subdivisional lines, and the survey of the subdivision of certain Sections,T. 33 N., R. 13 W., New Mexico Principal Meridian, Colorado, Group 725, was accepted July 14, 1983.

These surveys were executed to meet certain administrative needs of the Bureau of Indian Affairs.

All inquiries about these lands should be sent to the Colorado State Office, Bureau of Land Management, 1037 20th Street, Denver, Colorado 80202.

Kenneth D. Witt,

Chief Cadastral Surveyor for Colorado.

[FR Doc. 83–23331 Filed 8–24–83; 8:45 am]

BILLING CODE 4310–84–M

[Serial No. I–20193A]

Idaho; Conveyance of Public Lands, Blaine County

August 17, 1983.

Notice is hereby given that pursuant to the Act of October 21, 1976 (90 Stat. 2750; 43 U.S.C. 1713), a patent was issued to William E. McCormick, Gooding, Idaho, for the following-described public land:

Boise Meridian, Idaho

T. 2 S., R. 17 E.,
Sec. 1, lot 62.
Containing .046 acres.

The purpose of this notice is to inform the public and interested State and local governmental officials of the conveyance.

Louis B. Bellesi,

Deputy State Director for Operations.

[FR Doc. 83–23333 Filed 8–24–83; 8:45 am]

BILLING CODE 4310–84–M

Idaho; Wilderness Inventory Reevaluation

The Interior Board of Land Appeals (IBLA 81–1037) has directed the Bureau of Land Management to reevaluate the decision not to designate Idaho Wilderness Inventory Unit 111–5 as a Wilderness Study Area. Specifically the IBLA decision requires the BLM to reconsider and document the following points:

(1) Determine if the unit is properly subdivided into three subunits consistent with criteria outlined in Organic Act Directive (OAD), 78–61, Change 3 (July 12, 1979).

(2) If the facts do not support subdivision of the unit into three subunits, reevaluate opportunities for solitude.

The following constitutes the reevaluation in accordance with the IBLA decision:

Reevaluation of the Decision to Subdivide the Unit into Three Subunits

In the inventory decision Unit 111–5 was subdivided into three subunits. boundaries of the subunits were cherry-stem roads that nearly bisect the unit leaving narrow land necks about 1 mile and ¼ mile in width. The IBLA decision notes that the roads do not bisect the unit. Boundaries of BLM wilderness inventory units are ordinarily located along roads or other substantially noticeable imprints of man. Organic Act Directive (OAD), 78–61, Change 2 (June 28, 1979) specifies that when a boundary adjustment is made due to the imprints of man, the boundary should be relocated on the physical edge of the imprint of man. OAD 78–61, Change 3, however, provides that unit boundaries may also be adjusted in the following circumstances:

(a) When a narrow finger of roadless land extends outside the bulk of the unit;

(b) When land without wilderness characteristics penetrates the unit in such a manner as to create narrow fingers of the unit (e.g., cherry-stem roads closely paralleling each other);

(c) When extensive inholdings occur and create a very congested and narrow boundary area. These situations are expected to rarely occur, and boundary adjustments in such cases may only be made with State Director approval. Very good judgment will be required in locating boundaries under such conditions so as to exclude only the minimum appropriate land. Such boundary adjustments are *not* permissible if the land in question possesses an outstanding opportunity for primitive and unconfined recreation. (Emphasis in original).

Examination of the inventory record indicates that subunit boundaries do not follow the physical edge of the imprints of man. Division of the unit into three subunits was based on the application of criteria (b) above which provides for adjusting boundaries to eliminate narrow fingers of a unit. Upon reexamination, this criteria may have been inappropriately applied. Creation of the three subunits does not, in fact, eliminate a narrow finger of the unit. The three subunits were created to resolve serious configuration problems with the original unit. In conclusion, there is no specific policy permitting the subdivision of this unit into three subunits.

Reevaluation of Opportunities for Solitude

Because the facts do not support subdivision of the unit into three subunits, it is necessary to reevaluate the unit's opportunities for solitude. To evalutate solitude the BLM must consider the interrelationship between size, screening, configuration, and other factors that influence solitude. Evaluating the unit as a whole rather than as three subunits could affect these interrelationships, particularly size and configuration.

This unit is dominated by low shrubs and grass vegetation. Vegetative screening is minimal. The western end of the unit has fair to good topographic screening in the draws perpendicular to Birch Creek. However, topographic layout would draw visitors into a narrow corridor of use along Birch Creek, increasing the potential for visitor contacts. The relatively straight open character of the canyon magnifies this corridor effect. The central portion of the unit is characterized by parallel ridges and short draws. These draws and ridges provide some opportunities for solitude in isolated locations. This ability to hide, however, does not equate with an outstanding opportunity for solitude. In the eastern end of the unit, the shallow open character of the terrain reduces the capacity of the topography to provide adequate screening.

Opportunities for solitude in the unit are severely compromised by the 10+ miles of cherry-stem roads that penetrate the central portion of the unit. These roads lie in the Birch Creek and Poison Gulch drainages. Their relationship to the surrounding terrain indicates recreationists seeking solitude in these areas would frequently encounter these nonwilderness corridors. Many of the small draws where a person might find temporary refuge lie perpendicualr to these roads.

The relatively large size of this unit (30,742 acres) does not insure outstanding opportunities for solitude. The unit's size must be evaluated in conjunction with configuration. The unit has a very irregular configuration. This irregular configuration negates much of the value that size contributes to opportunities for solitude. There is no place in the unit where a recreationist would be more than 1½ miles from a boundary. This is indicative of much smaller inventory units and shows the importance of configuration in conjunction with size.

After careful reevaluation of the unit as a whole the BLM has concluded that opportunities for solitude remain less than outstanding. In spite of its relatively large size, the unit's topographic features, minimal vegetative screening and configuration combine to preclude outstanding opportunities for solitude.

Recommendation

Previous evaluations of naturalness and opportunities for primitive recreation are not affected by the IBLA decision. The imprints of man are substantially unnoticeable in the unit as a whole. The unit does not have outstanding opportunities for primitive and unconfined recreation because it lacks natural features that would provide a strong recreational attraction to primitive recreationists.

Reevaluation following the IBLA decision indicates this unit should not be identified as a wilderness study area due to a lack of outstanding opportunities for solitude and a lack of outstanding opportunities for primitive recreation.

Any person adversely affected by this decision can appeal to the Interior Board of Land Appeals, as specified in the 43 Code of Federal Regulations (CFR), Part 4.

For further information contact the following office: Bureau of Land Management, Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706.

Dated: August 16, 1983.

Clair M. Whitlock,

State Director.

[FR Doc. 83-23332 Filed 8-24-83; 8:45 am]

BILLING CODE 4310-84-M

[N-38132]

Nevada; Realty Action Non-Competitive Sale of Public Land in Humboldt County, Nevada

August 16, 1983.

The following described public land has been examined and identified as suitable for disposal by sale under Sec. 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713), at no less than the appraised fair market value.

Mount Diablo Meridian, Nevada

T. 36 N., R. 37 E.,
Sec. 26, S½S½S½SW¼NE¼,
S½S½S½SE¼NW¼,
S½S½S½S½SW¼NW¼.

This land, containing 12.5 acres, is being offered at direct sale to the District Court Judge, Richard J. Legarza, who will act as intermediary and deed the property to the individual land owners as the property is paid for. This land disposal effort by the Bureau of Land Management will resolve a trespass situation resulting from a surveying error that affects property owners in the Jungo Road vicinity.

This sale is consistent with the Bureau of Land Management's planning system.

Bureau policy is that public lands will be disposed of in an attempt to achieve resolution of inadvertent trespass actions involving substantial improvements on the public lands. The public interest will be served by offering this land for direct sale to the District Court Judge. The land will not be offered for sale until 60 days after the date of this notice.

BLM may accept or reject any and all offers, or withdraw any land or interest in land from sale if, in the opinion of the authorized officer, consumation of the sale would not be fully consistent with FLPMA or other applicable laws.

The patent, when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States. Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945.

2. All mineral deposits in the lands so patented, and to it, or persons authorized by it, the right to prospect, mine, and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

And will be subject to:

1. Those rights for communication line purposes which have been granted to Bell Telephone Company of Nevada, its successors or assigns, by Permit No. Nev-060546, under the Act of March 4, 1911, 36 Stat. 1253, 43 U.S.C. 961.

2. Those rights granted by oil and gas lease, N-34369, made under Section 29 of the Act of February 25, 1920, 41 Stat. 437 and the Act of March 4, 1933, 47 Stat. 1570. This patent is issued subject to the right of the prior permittee or lessee to use so much of the surface of said land as is required for oil and gas exploration and development operations, without compensation to the patentee for damages resulting from proper oil and gas operations, for the duration of oil and gas lease, N-34369, and any authorized extension of that lease. Upon termination or relinquishment of said oil and gas lease, this reservation shall terminate.

Detailed information concerning the sale is available for review at the Bureau of Land Management District Office, 705 East 4th Street, Winnemucca, Nevada 89445.

For a period of 45 days from the date this notice is published in the **Federal Register**, interested parties may submit comments to the State Director (NV-943), P.O. Box 12000, Reno, Nevada 89520.

Wm. J. Malencik,

Deputy State Director, Operations.

[FR Doc. 83-23334 Filed 8-24-83; 8:45 am]

BILLING CODE 4310-84-M

[OR 36110]

Realty Action; Recreation and Public Purposes Classification and Lease; Public Land in Multnomah County, Oregon

August 17, 1983.

The following described land has been examined and determined to be suitable for lease under the Recreation and Public Purposes Act of June 14, 1926, as amended (43 U.S.C. 869 et seq.), and is hereby so classified:

Willamette Meridian, Oregon

T. 2 N., R. 2 W.,
Section 15: metes and bounds within the NW¼SE¼.

The above described land contains approximately 1.3 acres.

The subject land will be leased to the Multnomah County Rural Fire Protection District No. 20 for a fire station. The lease will authorize the construction of 36-foot by 44-foot building for the storage of a water tanker and pumper trucks and related fire equipment.

The addition of the fire station will reduce the severity of homefires and wildfires for the surrounding community. The presence of the fire station will also reduce the risk of forest fires on nearby public lands. The land is not of national significance and this action will have no significant impact on the environment. The action is consistent with existing land use plans and with State and local planning and zoning designations. The proposal has been reviewed by Multnomah County officials who have expressed their support for the new fire station.

The lease will have a term of 25 years and, under the special pricing provision, the rental shall be $10.00 for the entire term.

Classification of this land segregates it from all forms of appropriation, including locations under the mining laws, except as to applications under the mineral leasing laws and applications under the Recreation and Public Purposes Act.

Detailed information concerning the lease, including the environmental assessment/land report, is available for review at the Bureau of Land Management, Salem District Office, 1717 Fabry Road S.E., Salem, Oregon.

For a period of 30 days from the date of this notice, interested parties may submit comments to the Tillamook Area Manager, 6615 Officer's Row, Tillamook, Oregon 97141. Any adverse comments will be evaluated by the Salem District Manger, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the Salem District Manager, this realty action will become the final determination of the Department of the Interior.

Jerome M. Heinz,

Tillamook Area Manager.

[FR Doc. 83-23335 Filed 8-24-83; 8:45 am]

BILLING CODE 4310-84-M

Geophysical Explorations (Oil and Gas); Intent to Prepare Environmental Impact Statement and Scoping Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Prepare an Environmental Impact Statement and hold public scoping meeting on a proposed exploratory oil well, 28 miles west of Cody.

SUMMARY: The U.S. Department of the Interior, Bureau of Land Management, Worland District Office, Wyoming, will be the lead agency; and the Shoshone National Forest, Cody, Wyoming, will be the cooperating agency to prepare an Environmental Impact Statement on a proposed exploratory oil well. The proposed well is located on the Shoshone National Forest in Park County about 28 miles west of Cody, Wyoming, near the highway to Yellowstone National Park and 2 miles east of the Washakie Wilderness. Site specific and cumulative effects of drilling, development, and production will be analyzed. Preliminary issues and concerns include: (1) The effects on wildlife (particularly Bighorn sheep and elk), (2) the effects of noise on residents and other forest users, (3) the potential for contaminating streams, (4) the potential visual impacts, (5) the potential for increased traffic on the Yellowstone Highway, (6) the potential for hydrogen sulfide gas, and (7) the potential for changing the character of the area from "undisturbed" to developed. Other issues may also be identified and addressed.

A public meeting on the scope of the issues to be addressed will be held October 19, 1982, at 7:00 p.m. at the Cody Convention Center in Cody, Wyoming. The purpose of the meeting is to gather information from the public and identify issues important to the public.

Any person wishing to submit written comment or suggestions on issues or alternatives to the proposed action should send them to: John Thompson, Bureau of Land Management, P.O. Box 119, Worland, Wyoming 82401. These should be received no later than November 1, 1983, in order to be considered in determining the scope of the EIS.

DATE: October 19, 1982, at 7:00 p.m.

ADDRESS: Cody Convention Center, 1240 Beck Avenue, Cody, Wyoming.

FOR FURTHER INFORMATION CONTACT: John Thompson, Bureau of Land Management, P.O. Box 119, Worland, Wyoming 82401, telephone: (307) 347-6151.

Chester E. Conard,

District Manager.

[FR Doc. 83-23362 Filed 8-24-83; 8:45 am]

BILLING CODE 4310-84-M

[ES 32699, Survey Group 501]

Minnesota; Filing of Plat of Survey

1. On July 6, 1983, the plat representing the survey of one island in Hyland Lake, T. 116 N., R. 21 W., Fifth Principal Meridian, Minnesota, was accepted. It will be officially filed in the Eastern States Office, Alexandria, Virginia, at 7:30 a.m. October 11, 1983.

The land listed below describes the island omitted from the original survey.

Fifth Principal Meridian, Minnesota

T. 116 N., R. 21 W.,
Tract No. 37.

2. Tract No. 37 is firm land 20 feet above ordinary high water mark. The soil is sandy loam, between 1 to 3 feet deep. The forest type is upland hardwood, consisting of oak, elm, and ash, with a maximum age of 80 years. The ground cover is of various species of shrubs, including rose, hazel, willow, and sumac along with native grasses and forbs.

3. The present water level of the lake compares favorably with the original meander line; therefore, the elevation and the upland character of the island and the depth and width of the channel between the upland and the island is considered evidence that the island did exist in 1858, the year Minnesota was admitted into the Union. The original survey in 1854 did not note the presence of this island.

4. Tract No. 37 was found to be over 50 percent upland in character within the purview of the Swamp Lands Act of September 28, 1850 (9 Stat. 519). It is therefore held to be public land.

5. All inquiries relating to this island should be sent to the Deputy State Director for Lands and Renewable Resources, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304 on or before October 11, 1983.

Robert Gausman,

Acting Chief, Branch of Lands.

[FR Doc. 83-23379 Filed 8-24-83; 8:45 am]

BILLING CODE 4310-84-M

[ES 32726, Survey Group 122]

Wisconsin; Filing of Plat of Survey

1. On July 13, 1983, the plat representing the dependent resurvey of a portions of the subdivisional lines, the reesetablishment of a portion of the record meander lines, and the survey of new meander lines to include lands omitted from the original survey in Sec. 20, T. 33 N., R. 2 E., Fourth Principal Meridian, Wisconsin, was accepted. It will be officially filed in the Eastern States Office, Alexandria, Virginia, at 7:30 a.m. on October 11, 1983.

The lands listed below describe the areas omitted from the original survey.

Fourth Principal Meridian, Wisconsin.

T. 33 N., R. 2 E.,
Sec. 20, Lots 7, 8, 9, and 10.

2. The omitted areas described above are covered primarily by large second growth timber consisting of ash, aspen, birch, maple, balsam fir, hemlock, cedar, white pine, red pine, and spruce, with alder and tamarack located in the lower poorly drained areas. The soil consists of sandy clay loam in the uplands to an organic muck in the swampland areas.

Numerous old stumps attest to the fact that no lakes existed in this area except for Skinner Lake as it exists today.

3. The Lots Nos. 7, 8, 9, and 10 were found to be over 50 percent upland within the purview of the Swamp Lands Act of September 28, 1850 (9 Stat. 519). Therefore, they are held to be public land.

4. All inquiries relating to these lands should be sent to the Deputy State Director for Lands and Renewable Resources, 350 South Pickett Street, Alexandria, Virginia 22304, on or before October 11, 1983.

Barry E. Crowell,

Acting Chief, Branch of Lands.

[FR Doc. 83-23380 Filed 8-24-83; 8:45 am]

BILLING CODE 4310-84-M

California; Use Fee Schedule for Permitted Recreation Activities

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice, California; special recreation permit fee; correction.

SUMMARY: This document corrects a notice that appeared on p. 21665 in the Federal Register of Friday, May 13, 1983 (48 FR 21665). The action is necessary to correct fee amounts for special area management as described under 43 CFR Part 8372.

FOR FURTHER INFORMATION CONTACT: John Skibinski, Outdoor Recreation Planner, Bureau of Land Management, (916) 484-4636.

The correction is made in FR Doc. 83-12894 appearing on 21665 in the issue of May 13, 1983.

3. Special area (individual/group/family use permits) fees are $2.00 per user day where the authorized officer determines that fees are required;

This paragraph is corrected to read as follows:

3. Special area (individual/group/family use permits) fees shall be no less than the cost of issuing and administering the permit where the authorized officer determines that permits are required.

Dated: August 19, 1983.

Ed Hastey,

State Director.

[FR Doc. 83-23370 Filed 8-24-83; 8:45 am]

BILLING CODE 4310-84-M

[OR 33511]

Oregon; Realty Action Exchange of Public Land for Private Land in Grant County, Oregon

The following described public lands have been examined and determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2756; 43 U.S.C. 1716):

Willamette Meridian

T. 14 S., R. 32 E.,
Sec. 5, lot 3.

The area described aggregates approximately 33.41 acres in Grant County.

In exchange for these lands the United States will acquire the following described private land from Mr. Carl Sheedy.

Willamette Meridian

T. 14 S., R. 32 E.,
Sec. 8, SW¼NW¼

The area described aggregates approximately 40 acres in Grant County.

The purpose of the exchange is to facilitate the resource management program of the Bureau of Land Management and to enhance the range management potential for the area. The Federal land to be exchanged is an isolated parcel surrounded by the

private lands of the exchange proponent.

This proposal is consistent with Bureau planning for the lands involved and has been discussed with State and local officials. The public interest will be well served by making this exchange. The comparative values of the lands exchanged are approximately equal although a small monetary adjustment will be used to equalize the values. This monetary adjustment will be for no more than 25% of the appraised value of Federal lands involved.

The exchange will be subject to:

(1) A reservation to the United States of a right-of-way for ditches or canals under the Act of August 30, 1890.

(2) Valid, existing rights including but not limited to any right-of-way, easement, or lease of record.

Publication of this notice has the effect of segregating all of the above described Federal land from appropriation, under the public land laws and these lands are further segregated from appropriation under the mining laws, but not from exchange pursuant to Section 206 of the Federal Land Policy and Management Act of 1976. The segregative effect of this notice will terminate upon issuance of patent or in two years from the date of the publication of this notice, whichever occurs first.

Detailed information concerning the exchange is available for review at the Burns District Office of the Bureau of Land Managment, 74 South Alvord, Burns, Oregon 97720.

For a period of 45 days interested parties may submit comments to Burns District Manager at the above address. Any adverse comments will be evaluated by the Burns District Manager, BLM, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this realty action will become the final determination of the Department of the Interior.

Thomas R. Thompson, Jr.,

Associate District Manager.

[FR Doc. 83-23369 Filed 8-24-83; 8:45 am]

BILLING CODE 4310-84-M

Realty Action, Competitive Sale of Public Lands in Custer County, Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, competitive sale of public lands in Custer County, Idaho, I-19381.

SUMMARY: The following described land has been examined and identified as suitable for disposal by public sale under Section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, U.S.C. 1713), at no less than the appraised market value. This sale is in compliance with the Challis Management Framework Plan.

Legal Description

I-19381

T.13N., R.19E., B.M.
Sec. 15, SW¼SW¼.
40 acres.

The BLM may, within 30 days of receipt of any offer, accept or reject any or all offers or withdraw any land or interest in land from sale, at the discretion of the authorized officer (Section 203(a) FLPMA). There is no legal access to this tract.

Both oral and sealed bids will be accepted. If no bids are received on the sale date, either oral or sealed, the sale will be adjourned until the next Thursday at the same hour and place and continue on each succeeding Thursday until the lands are sold as specified in this notice. This notice terminates on February 9, 1984 and the land will not be available after that date.

A patent for the land, when issued, will be subject to the following conditions:

1. A right-of-way for ditches or canals constructed by the authority of the United States. Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945.

2. All minerals in the lands will be reserved to the United States in accordance with Section 209(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1719.

3. All valid existing rights and reservations of record.

DATE: The public auction will be held on Thursday, November 10, 1983, beginning at 10:00 a.m.

ADDRESS: The public auction will be held at the Salmon District Office, Bureau of Land Management, South Highway 93 (P.O. Box 430), Salmon, Idaho 83467. Additional information concerning the land, terms and conditions of the sale and bidding instructions can be obtained from Chuck Keller at the above address or by calling 208-756-2201.

SUPPLEMENTARY INFORMATION: For a period of 45 days from the date of this notice, interested parties may submit comments to the Salmon District Manager at the above address. Any adverse comments will be evaluated by the District Manager who may vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager this realty action will become the final determination of the Department of the Interior.

Dated: August 16, 1983.

Jerry Goodman,

Acting District Manager.

[FR Doc. 83-23367 Filed 8-24-83; 8:45 am]

BILLING CODE 4310-84-M

Realty Action, Competitive Sale of Public Lands in Lemhi County, Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, competitive sale of public lands in Lemhi County, Idaho, I-19628A and I-19628B.

SUMMARY: The following described land has been examined and identified as suitable for disposal by public sale under Section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, U.S.C. 1713), at no less than the appraised market value. This sale is in compliance with the Salmon Management Framework Plan.

Legal Description

I-19628A Tract I-4(1)

T. 20N., R.21E., B.M.,
Sec. 12, N½NW¼.
80.0 acres.

I-19628B Tract I-4(2)

T. 22N., R.22E., B.M..
Sec. 2, lot 2.
40.23 acres.

The BLM may, within 30 days of receipt of any offer, accept or reject any or all offers or withdraw and land or interest in land from sale, at the discretion of the authorized officer (Section 203(a) FLPMA). There is legal access to both tracts.

Both oral and sealed bids will be accepted. If no bids are received on the sale date, either oral or sealed, the sale will be adjourned until the next Thursday at the same hour and place and continue on each succeeding Thursday until the lands are sold as specified in this notice. This notice terminates on February 9, 1984 and the land will not be available after that date.

A patent for the land, when issued, will be subject to the following conditions:

1. A right-of-way for ditches or canals constructed by the authority of the United States. Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945.

2. All minerals in the lands will be reserved to the United States in

accordance with Section 209(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1719.

3. All valid existing rights and reservations of record.

DATE: The public auction will be held on Thursday, November 10, 1983, beginning at 10:00 a.m.

ADDRESS: The public auction will be held at the Salmon District Office, Bureau of Land Management, South Highway 93 (P.O. Box 430), Salmon, Idaho 83467. Additional information concerning the land, terms and conditions of the sale and bidding instructions can be obtained from Chuck Keller at the above address or by calling 208–756–2201.

SUPPLEMENTARY INFORMATION: For a period of 45 days from the date of this notice, interested parties may submit comments to the Salmon District Manager at the above address. Any adverse comments will be evaluated by the District Manager who may vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager this realty action will become the final determination of the Department of the Interior.

Dated: August 16, 1983.

Jerry Goodman,

Acting District Manager.

[FR Doc. 83–23368 Filed 8–24–83; 8:45 am]

BILLING CODE 4310–84–M

Minerals Management Service

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Aminoil, U.S.A., Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development and production plan.

SUMMARY: Notice is hereby given that Aminoil U.S.A., Inc. has submitted a Development and Production Plan describing the activities it proposes to conduct on Lease OCS 0453, Block 130, Ship Shoal Area, offshore Louisiana.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the Plan and that it is available for public review at the Office of the Regional Manager, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m., 3301 North Causeway Blvd., Metairie; Louisiana 70002, Phone (504) 838–0519.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became efffective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: August 18, 1983.

John L. Rankin,

Regional Manager, Gulf of Mexico OCS Region.

[FR Doc. 83–23378 Filed 8–24–83; 8:45 am]

BILLING CODE 4310–MR–M

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Chevron U.S.A. Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development and production plan.

SUMMARY: This Notice announces that Chevron U.S.A. Inc., Unit Operator of the Main Pass Block 40 Federal Unit Agreement No. 14–08–001–3847, submitted on August 11, 1983, a proposed supplemental plan of development describing the activities it proposes to conduct on the Main Pass Block 40 Federal Unit.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the plan and that it is available for public review at the offices of the Regional Manager, Gulf of Mexico OCS Region, Minerals Management Service, 3301 N. Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Public Records, Room 147, open weekdays 9:00 a.m. to 3:30 p.m., 3301 N. Causeway Blvd., Metairie, Louisiana 70002, phone (504) 838–0519.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in development and production plans available to affected States, executives of affected local governments, and other interested parties became effective on December 13, 1979 (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: August 16, 1983.

John L. Rankin,

Regional Manager, Gulf of Mexico OCS Region.

[FR Doc. 83–23337 Filed 8–24–83; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

Intention To Extend Concession Contract

Pursuant to the provisions of Section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that sixty (60) days after the date of publication of this notice, the Department of the Interior, through the Director of the National Park Service, proposes to extend a concession contract with El Portal Market authorizing it to continue to provide merchandising, laundry and drycleaning facilities and services for the public at Yosemite National Park for a period of one (1) year from the date of execution or until such time as a new contract may be executed.

This contract extension has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing contract which expires by limitation of time on December 31, 1983, and therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract. This provision, in effect, grants El Portal Market the opportunity to meet the terms and conditions of any other proposal submitted in response to this notice which the Secretary may consider better than the proposal submitted by El Portal Market. If El Portal Market amends its proposal and the amended proposal is substantially equal to the better offer, then the proposed new contract will be negotiated with El Portal Market.

The Secretary will consider and evaluate all proposals received as a result of this notice Any proposal,

including that of the existing concessioner, must be postmarked or hand-delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Interested parties should contact the Regional Director, Western Regional Office, National Park Service, 450 Golden Gate Avenue, San Francisco, CA 94102 for information as to the requirements of the proposed contract.

Dated: August 12, 1983.

Howard H. Chapman,

Regional Director, Western Region.

[FR Doc. 83-23343 Filed 8-24-83; 8:45 am]

BILLING CODE 4310-70-M

Record of Decision for Grizzly Bear Management Program at Yellowstone National Park

AGENCY: National Park Service, Interior.

ACTION: Notice of Availability of the Record of Decision for the Final Environmental Impact Statement for the Grizzly Bear Management Program at Yellowstone National Park.

SUMMARY: Pursuant to regulations of the Council on Environmental Quality (40 CFR 1505.2) and the Implementing Procedures of the National Park Service for the National Environmental Policy Act of 1969, the National Park Service has prepared a Record of Decision on the Final Environmental Impact Statement for Grizzly Bear Management at Yellowstone National Park, Idaho, Montana and Wyoming.

The Record of Decision is a concise statement of the decision to adopt a program of modifying past management practices so as to better protect the threatened grizzly bear within the park. The Record of Decision also identifies what alternatives were considered, and what acceptable mitigating measures were developed in order to avoid or minimize environmental harm.

FOR FURTHER INFORMATION CONTACT: The Record of Decision may be obtained from the Superintendent, Yellowstone National Park, Yellowstone National Park, Wyoming 82190; or from the Regional Director, Rocky Mountain Regional Office, National Park Service, 655 Parfet Street, Post Office Box 25287, Denver, Colorado 80225.

Dated: August 16, 1983.

James B. Thompson,

Acting Regional Director, Rocky Mountain Region.

[FR Doc. 83-23342 Filed 8-24-83; 8:45 am]

BILLING CODE 4310-70-M

Upper Delaware National Scenic and Recreational River; Meeting

AGENCY: National Park Service; Upper Delaware Citizens Advisory Council, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the date of the forthcoming meeting of the Upper Delaware Citizens Advisory Council. Notice of this meeting is required under the Federal Advisory Committee Act.

DATE: September 9, 1983, 7 p.m.

ADDRESS: Town of Tusten Hall, Narrowsburg, New York.

FOR FURTHER INFORMATION CONTACT: John T. Hutzky, Superintendent, Upper Delaware Scenic and Recreational River, Drawer C, Narrowsburg, N.Y. 12764-0159, (717) 729-7135).

SUPPLEMENTARY INFORMATION: The Advisory Council was established under section 704(f) of the National Parks and Recreation Act of 1978, Pub. L. 95-625, 16 U.S.C. 1274 note, to encourage maximum public involvement in the development and implementation of the plans and programs authorized by the Act. The Council is to meet and report to the Delaware River Basin Commission, the Secretary of the Interior, and the Governors of New York and Pennsylvania in the preparation of a management plan and on programs which relate to land and water use in the Upper Delaware region. The agenda for the meeting will include discussion of Draft Management Plan.

The meeting will be open to the public. Any member of the public may file with the Council a written statement concerning agenda items. The statement should be addressed to the Council c/o Upper Delaware National Scenic and Recreational River, Drawer C, Narrowsburg, N.Y. 12764-0159. Minutes of the meeting will be available for inspection four weeks after the meeting at the permanent headquarters of the Upper Delaware National Scenic and Recreational River, River Road, 1¾ miles north of Narrowsburg, N.Y., Damascus Township, Pennsylvania.

Dated: August 16, 1983.

James W. Coleman, Jr.,

Regional Director, Mid-Atlantic Region.

[FR Doc. 83-23341 Filed 8-24-83; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 450]

Rail Carriers; Railroad Revenue Adequacy-1982 Determination

AGENCY: Interstate Commerce Commission.

ACTION: Notice of 1982 determinations of rail revenue adequacy.

SUMMARY: In Ex Parte No. 393, *Standards for Railroad Revenue Adequacy*, 364 I.C.C. 803 (1981), the Commission determined that a railroad would be considered revenue adequate under 49 U.S.C. 10704(a) if the railroad had a rate of return equal to the current cost of capital. This decision uses the rate of return standard developed in Ex Parte No. 393, *supra*, as more fully defined in Ex Parte No. 416, *Railroad Revenue Adequacy-1980 Determination*, 365 I.C.C. 285 (1981) using data for the year 1982. Using these data, the Commission has now determined that none of the 35 Class I carriers are revenue adequate.

FOR FURTHER INFORMATION CONTACT: Ward L. Ginn, Jr., (202) 275-7489.

SUPPLEMENTARY INFORMATION: To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, D.C., or call 289-4357 (D.C. Metropolitan area) or toll free (800) 424-5403.

(49 U.S.C. 10704(a))

Decided: August 17, 1983.

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

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-23387 Filed 8-24-83; 8:45 am]

BILLING CODE 7035-01-M

[I.C.C. Order No. 4]

Rail Carriers; Rerouting Traffic

To: Chesapeake and Ohio Railway; Grand Trunk Western Railroad Company; Michigan Northern Railway Company; and, Soo Line Railroad Company.

On May 9, 1983, the Commission issued I.C.C. Reroute Order No. 84. That order permitted certain carriers to divert traffic, routed via the car ferry between St. Ignace and Mackinaw City, Michigan, and the Detroit & Mackinac Railway Company (DM) or Michigan Northern Railway Company (MN), over any available route and to maintain rates on that traffic consistent with its original routing. That order was

replaced by I.C.C. Order No. 2, served June 30, 1983, and which expired on July 31, 1983.

MN has advised the Commission that the period originally requested for rerouting authority was insufficient for completion of the necessary repairs to the vessel. MN now urgently requests additional rerouting authority for a period of ninety (90) days in order to complete the repairs on the vessel. MN is joined in this urgent request by Detroit & Mackinac Railway Company, Soo Line Railroad Company, Straits Corporation (Lumber Company and Wood Preserver), Georgia Pacific Corporation (Lumber and Building Products Manufacturer), Hager Distribution Company, and Schultz, Snyder and Steele Lumber Company. These requests generally emphasize the need for continuity of the cross-lake rates and routes, and the substantially higher rates applicable to alternative routings.

It is the opinion of the Commission that the MN (operator of the car ferry) and DM are presently unable to transport or accept traffic for movement via the car ferry between St. Ignace and Mackinaw City, Michigan, due to the out-of-service condition of the ferry; that interests of the affected shippers, connecting railroads, and the State of Michigan require continuation of this authority; that continuation of this authority until November 22, 1983, will not constitute an undue burden for any originating carrier; and, that this matter is considered to be outside the scope of a single railroad, as provided by *Ex Parte No. 376, Rerouting of Traffic,* 364 I.C.C. 827, thereby making this action by the Commission necessary.

It is ordered:

(a) *Rerouting traffic.* The Detroit & Mackinac Railway Company and Michigan Northern Railway Company being unable to transport promptly all traffic offered for movement via the car ferry between St. Ignace and Mackinaw City, Michigan, because the car ferry is out of service, those named lines are authorized to reroute such traffic via any available route to expedite the movement. Traffic necessarily diverted by authority of this order shall be rerouted so as to preserve as nearly as possible the participation and revenues of other carriers provided in the original routing. All traffic accepted for movement via this routing must be rerouted in accordance with this order and will not be subject to diversion or other charges beyond those covered by paragraph (d) of this order. The billing covering all such cars rerouted shall carry a reference to this order as authority for the rerouting.

(b) *Notification to shippers.* Each originating carrier accepting traffic to be rerouted in accordance with this order shall notify each shipper at the time each shipment is accepted and, to the best of its ability, shall furnish to such shipper the new routing provided for under this order.

(c) *Concurrence of receiving roads to be obtained.* The railroad rerouting cars in acordance with this order shall receive the concurrence of other railroads to which such traffic is to be diverted or rerouted, before the rerouting or diversion is ordered.

(d) Inasmuch as the diversion or rerouting of traffic is deemed to be due to carrier disability, the rates applicable to traffic diverted or rerouted shall be rates which were applicable at the time of shipment on the shipments as originally routed.

(e) In executing the directions of the Commission provided for in this order, the common carriers involved shall proceed even though no contracts, agreements or arrangements now exist between them with reference to the divisions of the rates of transportation applicable to the traffic. Divisions shall be, during the time this order remains in force, those voluntarily agreed upon by and between the carriers; or upon failure of the carriers to so agree, the divisions shall be those hereafter fixed by the Commission in accordance with authority conferred upon it by the Interstate Commerce Act.

(f) *Effective date.* This order shall become effective at 12:01 a.m., August 25, 1983.

(g) *Expiration date.* This order shall expire at 11:59 p.m., November 22, 1983, unless otherwise modified, amended or vacated by order of this Commission.

This action is taken under the authority of 49 U.S.C. 11124.

This order shall be served upon the Association of American Railroads, Transportation Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. A copy of this order shall be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., August 19, 1983.

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

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-23386 Filed 8-24-83; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 29478]

Rail Carriers; Shelton-Davis Transportation Co.; Purchase (Portion)—Chicago, Rock Island and Pacific Railroad Company, Debtor (William M. Gibbons, Trustee) in Oklahoma

AGENCY: Interstate Commerce Commission.

ACTION: Revised application accepted for consideration.

SUMMARY: The Commission is accepting for consideration the revised application of Shelton-Davis Transportation Co. to purchase certain properties of the Chicago, Rock Island and Pacific Railroad Company, Debtor (William M. Gibbons, Trustee), located in Oklahoma. The Commission is also setting a schedule for the filing of pleadings.

DATES: Verified statements supporting or opposing the application must be received at the Commission by August 30, 1983.

ADDRESSES: An original and 10 copies of all statements should be sent to: Office of the Secretary, Interstate Commerce Commission, Washington, D.C. 20423, Attention: RITEA acquisitions.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Shelton-Davis Transportation Co. (Shelton-Davis), doing business as North Central Oklahoma Railway, filed a revised application on August 12, 1983, under section 17(b) of the Milwaukee Railroad Restructuring Act, Pub. L. No. 96-101, 93 Stat. 736 (1979), and section 112 of the Rock Island Railroad Transition and Employee Assistance Act, Pub. L. No. 96-254 (1980) (RITEA), for authority to purchase approximately 155 miles of the Chicago, Rock Island and Pacific Railroad Company, Debtor (William M. Gibbons, Trustee) (Rock Island) in Oklahoma. The application will be handled under the rules adopted in Ex Parte No. 282 (Sub-No. 4), *Acquisition Procedures for Lines of Railroads,* 360 I.C.C. 623 (1980), 45 FR 6107 (January 25, 1980).

Shelton-Davis seeks to purchase segments of the Rock Island between Ponca City and North Enid, OK (55 miles), between Anadarko and Lone Wolf, OK (63 miles), and between Okeene and Geary, OK (37 miles).

We have reviewed the application and found it to be in substantial compliance with the information required in our regulations.

Preliminary approval of the proposed purchase transaction by the Court overseeing the reorganization of the

Rock Island *In the Matter of Chicago, Rock Island and Pacific Railroad Company, Debtor,* in No. 75 B 2697 (U.S. Dist. Court, N.D. Ill.), was obtained on March 30, 1983. A copy of the order is unavailable for filing with the application and that requirement [49 CFR 1180.21(a)(3)(iii)] is waived.

The application, as originally filed, was accepted on November 25, 1980, and verified statements were submitted in December 1980. The previously submitted statements are now stale and, furthermore, the original application did not include all lines embraced by the revised applications. Therefore, a new record will be compiled in accordance with the terms of this decision. All supporting and opposing verified statements, including resubmissions of previously-tendered verified statements, must be received by the Commission no later than August 30, 1983. Previously-tendered verified statements will not be considered unless resubmitted. Statements may not incorporate prior submissions by reference. Copies of statements should be served on the Attorney General of the United States, the United States Secretary of Transportation, and on applicant.

A. final decision will be served by September 12, 1983.

A copy of all comments and requests for copies of the application should be addressed to: Calvin L. Shelton, North Central Oklahoma Railway, P.O. Box 1339, El Reno, OK 73036.

It is ordered:

1. The revised application in Finance Docket No. 29478 is accepted for consideration.

2. The parties shall comply with all provisions stated above.

3. This decision shall be effective on the date of service.

Dated: August 19, 1983.

By the Commimssion, Heber P. Hardy, Director, Office of Proceedings.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-23389 Filed 8-24-83; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30240]

Rail Carriers; Southern Pacific Transportation Co.; Abandonment Exemption in Davis and Calcasieu Parishes, LA

AGENCY: Interstate Commerce Commission.

ACTION: Notion of exemption.

SUMMARY: The Interstate Commerce Commission exempts the abandonment by the Southern Pacific Transportation Company (SPT) over 29.05 miles of railroad track between milepost 4.75 at or near Harbor, LA and milepost 33.80 at or near Lake Arthur, LA in Davis and Calcasieu Parishes, LA, subject to conditions for the protection of employees.

DATES: This exemption is effective on September 26, 1983. Petitions to stay must be filed by September 5, 1983; and petitions for reconsideration must be filed by September 14, 1983.

ADDRESSES: Send pleadings referring to Finance Docket No. 30240 to:

(1) Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Thurmond A. Miller, Esq., Southern Pacific Building, One Market Plaza, San Francisco, CA 94105

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289-4357 (D.C. Metropolitan area) or toll free (800) 424-5403.

Dated: August 18, 1983.

By the Commission, Chairman Taylor, Vice Chairman Sterrett, Commissioners Andre and Gradison. Vice Chairman Sterrett and Commissioner Andre would not impose a deadline on consummation of the exempted transaction.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-23388 Filed 8-24-83; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30186]

Rail Carriers; Tongue River Railroad Co.; Construction and Operation—In Custer, Powder River, and Rosebud Counties, MT

Decided: August 18, 1983.

On August 15, 1983, the Northern Plains Resource Council (Petitioner) filed a letter requesting an extension of time for filing comments.

Petitioner states that it, as well as other interested parties in the proceeding, have not as yet received the Commission's Draft Environmental Impact Statement (DEIS), although the service date of the document was July 15, 1983. Comments are now due September 6, 1983. Accordingly, petitioner requests a 30-day extension following actual receipt of the DEIS.

Petitioner is correct that there have been delays in forwarding the documents to some parties of record. However, the problem has now been remedied, and all parties should now have received the document. In the circumstances, a short extension of time to file comments on the DEIS is warranted.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The time for filing comments on the DEIS is exended to September 21, 1983.

2. This decision is effective on the date of service.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-23390 Filed 8-24-83; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

National Advisory Committee For Juvenile Justice and Delinquency Prevention; Meeting

The twenty-eighth quarterly meeting of the National Advisory Committee for Juvenile Justice and Deliquency Prevention will be held in San Diego, California on September 19 and 20, 1983. The meeting will take place at the Sheraton Harbor Island Hotel and will run from 9:00 a.m. to 5:00 p.m. on Monday, September 19th, and from 9:00 a.m. to 12:00 noon on Tuesday, September 20th.

Discussion of the reauthorization of the Juvenile Justice and Delinquency Prevention Act of 1974 will be one of the agenda items. Members of the public are welcome to attend.

Further information regarding this meeting may be obtained by contacting: Mary L. Bush, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue, NW., Washington, D.C. 20531. (202) 724-7655.

Dated: August 19, 1983.

Thomas A. Dailey,

Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 83-23322 Filed 8-24-83; 8:45 am]

BILLING CODE 4410-18-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 83-71]

NASA Advisory Council (NAC), Space Applications Advisory Committee (SAAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Applications Advisory Committee.

DATE AND TIME: September 27, 1983, 8:30 a.m. to 5 p.m.; September 28, 1983, 8:30 a.m. to 3 p.m.

ADDRESS: National Aeronautics and Space Administration, Goddard Space Flight Center (GSFC), Building 26, Room 200, Greenbelt, MD 20771.

FOR FURTHER INFORMATION CONTACT: Dr. William P. Raney, Code E, National Aeronautics and Space Administration Washington, DC 20546 (202/755-4826).

SUPPLEMENTARY INFORMATION: The NAC Space Applications Advisory Committee consults with and advises the Council as a whole and NASA on plans for, work in progress on, and accomplishments of NASA's Space Applications Programs. The meeting will be open to the public up to the seating capacity of the room (approximately 40 persons) including Committee members and other participants. Topics under discussion at this meeting will include the remote sensing portion of the Applications Program, with special presentations of relevant work at the GSFC, and a continuation of planning for the work of the Committee.

AGENDA

September 27, 1983
- 8:30 a.m.—Administrative Matters.
- 9 a.m.—Overview of NASA Remote Sensing Activities.
- 2 p.m.—Tour of GSFC Applications Areas.
- 5 p.m.—Adjourn.

September 28, 1983
- 8:30 a.m.—Committee Discussion of Programs.
- 1 p.m.—Arrangements for next meeting, assignment, general discussion, meeting summary.
- 3 p.m.—Adjourn.

Dated: August 18, 1983.

Ann P. Bradley,

Acting Associate Administrator for Management, Office of Management.

[FR Doc. 83-23278 Filed 8-24-83; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL SCIENCE FOUNDATION

Permit Applications Received Under the Antarctic Conservation Act of 1978; Brian H. Shoemaker, et al.

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received under Antarctic Conservation Act of 1978, Pub. L. 95-541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act of 1978 at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATE: Interested parties are invited to submit written data, comments, or views with respect to these permit applications by September 23, 1983. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESS: Comments should be addressed to Permit Office, Room 627, Division of Polar Programs, National Science Foundation, Washington, D.C. 20550.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers at the above address or (202) 357-7934.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95-541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed in 1964 by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest. Additional information was published in the 21 July 1983 **Federal Register**, page 33372.

The applications received are as follows:

1. *Applicant:* Brian H. Shoemaker, Captain, U.S. Navy, U.S. Naval Support Force, Antarctica, Construction Battalion Center, Bldg. 836, Port Hueneme, California 93043.

Activity for Which Permit Requested: Introduction of non-indigenous species into Antarctica.

The applicant proposes to introduce one canine into Antarctica for periods of 2-3 days at a time in support of the U.S. Navy Drug Interdiction Program. The dog will be under the physical control of U.S. Navy personnel or their agents at all times.

Location: McMurdo Station, Antarctica.

Dates: October 1, 1983 to March 31, 1986.

2. *Applicant:* Jonathan H. Berg, Department of Geology, Northern Illinois University, DeKalb, Illinois 60115.

Activity for Which Permit Requested: Enter Site of Special Scientific Interest (Cape Crozier).

The applicant proposes to enter Cape Crozier Site of Special Scientific Interest to collect rock samples which are of scientific value in a study of the volcanic rocks in the region.

Location: Ross Island, Antarctica.

Dates: November 1, 1983 to December 31, 1983.

Authority to publish this notice has been delegated by the Director, NSF to the Director, Division of Polar Programs.

Edward P. Todd,

Division Director, Division of Polar Programs.

[FR Doc. 83-23365 Filed 8-24-83; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

International Atomic Energy Agency Draft Safety Guide; Availability of Draft for Public Comment

The International Atomic Energy Agency (IAEA) is completing development of a number of internationally acceptable codes of practice and safety guides for nuclear power plants. These codes and guides are in the following five areas: Government Organization, Design, Siting, Operation, and Quality Assurance. All of the codes and most of the proposed safety guides have been completed. The purpose of these codes and guides is to provide guidance to countries beginning nuclear power programs.

The IAEA codes of practice and safety guides are developed in the following way. The IAEA receives and collates relevant existing information used by member countries in a specified safety area. Using this collation as a starting point, an IAEA working group of a few experts develops a preliminary draft of a code or safety guide which is then reviewed and modified by an IAEA Technical Review Committee corresponding to the specified area. The draft code of practice or safety guide is

then sent to the IAEA Senior Advisory Group which reviews and modifies as necessary the drafts of all codes and guides prior to their being forwarded to the IAEA Secretariat and thence to the IAEA Member States for comments. Taking into account the comments received from the Member States, the Senior Advisory Group then modifies the draft as necessary to reach agreement before forwarding it to the IAEA Director General with a recommendation that it be accepted.

As part of this program, Safety Guide SG–011, "Operational Management of Radioactive Effluents and Wastes Arising in Nuclear Power Plants," has been developed. The working group consisting of Mr. E. Hladky from Czechoslovakia; Mr. A. Higashi from Japan; Mr. A. B. Fleishman from the United Kingdom; and Mr. L. C. Oyen (Sargent and Lundy Engineers) from the U.S.A., developed the initial draft of this guide from an IAEA collation. This draft was subsequently modified by the IAEA Technical Review Committee for Operation, and we are now soliciting public comment on a modified draft (Rev. 2, dated June 24, 1983). Comments received by the Director, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, by October 10, 1983, will be particularly useful to the U.S. representatives to the Technical Review Committee and the Senior Advisory Group in developing their positions on its adequacy prior to their next IAEA meetings.

Single copies of this draft Safety Guide may be obtained by a written request to the Director, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

(5 U.S.C. 522(a))

Dated at Washington, D.C. this 19th day of August 1983.

For the Nuclear Regulatory Commission.

Robert B. Minogue,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 83–23375 Filed 8–24–83; 8:45 am]

BILLING CODE 7590–01–M

NRC/DOE Procedural Agreement

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of NRC/DOE Procedural Agreement.

SUMMARY: The Nuclear Regulatory Commission and the Department of Energy have signed a Procedural Agreement identifying guiding principles for interface during site investigation and site characterization of sites for a geologic repository under the Nuclear Waste Policy Act of 1982. The text of this agreement is published below.

FOR FURTHER INFORMATION CONTACT: Mr. Robert E. Browning, Acting Director, Division of Waste Management, Nuclear Regulatory Commission, Mail Stop 623–SS, Washington, DC 20555; (301) 427–4200.

Dated at Silver Spring, Maryland, this 16th day of August 1983.

For the Nuclear Regulatory Commission.

Joseph O. Bunting,

Chief, Licensing Process and Integration Branch, Division of Waste Management.

Procedural Agreement Between the U.S. Nuclear Regulatory Commission and the U.S. Department of Energy Identifying Guiding Principles for Interface During Site Investigation and Site Characterization

This Procedural Agreement outlines procedures for consultation and exchange of information which the Commission (NRC) and the Department (DOE) will observe in connection with the characterization of sites for a geologic repository under the Nuclear Waste Policy Act of 1982. The purpose of these procedures is to assure that an information flow is maintained between the two agencies which will facilitate the accomplishment by each agency of its responsibilites relative to site investigation and characterization under the National Waste Policy Act (NWPA). The agreement is to assure that NRC receives adquate information on a timely basis to enable NRC to review, evaluate, and comment on those DOE activities of regulatory interest in accordance with DOE's project decision schedule and thereby facilitate early identification of potential licensing issues for timely staff resolution. The agreement is to assure that DOE has prompt access to NRC for discussions and explanations relative to the intent, meaning and purpose of NRC comments and evaluations on DOE activities and so that DOE can be aware, on a current basis, of the status of NRC actions relative to DOE activities.

This Procedural Agreement shall be subject to the provisions of any project decision schedule that may hereafter be established by DOE, and any regulations that may hereafter be adopted by NRC, pursuant to law. In particular, nothing herein shall be construed to limit the authority of the Commission to require the submission of information as part of a general plan for site characterization activities to be conducted at a candidate site or the submission of reports on the nature and extent of site characterization activities at a candidate site and the information developed from such activities.

1. NRC On-Site Representatives

As early as practicable, following area phase field work, NRC on-site representatives will be stationed at each site undergoing investigation principally to serve as a point of prompt informational exchange and consultation and to preliminarily identify concerns about such investigations relating to potential licensing issues.

2. Meetings

From the time this agreement is entered into, and for so long as site characterization activities are being planned or are in progress, DOE and NRC will schedule and hold meetings periodically as provided in this section. A written report agreed to by both DOE and NRC will be prepared for each meeting including agreements reached.

a. Technical meetings will be held between DOE and NRC technical staff to: review and consult on interpretations of data; identify potential licensing issues; agree upon the sufficiency of available information and data; and agree upon methods and approaches for the acquisition of additional information and data as needed to facilitate NRC reviews and evaluations and for staff resolution of such potential licensing issues.

b. Periodic management meetings will be held at the site-specific project level whenever necessary, but at least quarterly, to review the summary results of the technical meetings; to review the status of outstanding concerns and issues; discuss plans for resolution of outstanding items and issues; to update the schedule of technical meetings and other actions needed for staff resolution of open items regarding site characterization programs; and to consult on what generic guidance is advisable and necessary for NRC to prepare. Unresolved management issues will be promptly elevated to upper management for resolution.

c. Early technical meetings will be scheduled to discuss written NRC comments on DOE documents such as Site Characterization Plans, DOE's semi-annual progress reports, and technical reports to foster a mutual understanding of comments and the information or activities needed for staff resolution of the comments.

d. In formulating plans for activities

which DOE will undertake to develop information needed for staff resolution of potential licensing issues, DOE will meet with NRC to provide an overview of the plans so that NRC can comment on their sufficiency. These discussions will be held sufficiently early so that any changes that NRC comments may entail can be duly considered by DOE in a manner not to delay DOE activities.

e. Schedules of activities pertaining to technical meetings will be made publicly available. Potential host States and affected Indian tribes will be notified and invited to attend technical meetings covered in this section (Section 2, Meetings). The notification will be given on a timely basis by the DOE. These technical meetings will be open meetings with members of the public being permitted to attend as observers.

3. Timely Release of Information

a. Data collected during site investigations will be made available to NRC on a current, continuing basis after the DOE (or DOE contractor) quality assurance checks that are inherent in determining that the data has been obtained and documented properly.

b. DOE's analyses and evaluations of data will be made available to NRC in a timely manner.

4. Site Specific Samples

Consistent with mutually agreed on procedures, DOE will provide NRC with site specific samples to be used by NRC for independent analysis and evaluation.

5. Agency Use of Information

It is understood that information made available to either Agency under this agreement may be used at that Agency's option in carrying out its responsibilities.

6. Project Specific Agreements

Project specific agreements to implement the above principles will be negotiated within 120 days of the time this agreement is entered into. These project specific agreements will be tailored to the specific projects to reflect the differences in sites and project organizations.

7. Nothing in this agreement shall be construed as limiting forms of informal consultation not mentioned in this agreement (for example, telephone conversation or exchanges of reports). These other consultations will be documented in a timely manner.

Dated: June 27, 1983.

Robert L. Morgan,

Project Director, Nuclear Waste Policy Act Project Office, U.S. Department of Energy.

Dated: June 17, 1983.

John G. Davis,

Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission.

[FR Doc. 83-23376 Filed 8-24-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-309; CLI-83-21]

Maine Yankee Atomic Power Co. (Maine Yankee Atomic Power Station); Memorandum and Order

The Commission has considered and affirms the Director's Decision, DD-83-3, issued February 14, 1983 under 10 CFR 2.206.[1] The Decision denied the October 20, 1982 petition of Safe Power for Maine, Emil G. Garrett, John B. Green and John Jerabek (collectively "Safe Power") for action pursuant to 10 CFR 2.206. Safe Power sought an order to show cause why Maine Yankee Atomic Power Company ("Maine Yankee" or "licensee") should not be ordered to discontinue operation of its nuclear power plant at Wiscasset, Maine, in light of Safe Power's allegations of Maine Yankee's financial imcapability to operate the Wiscasset facility safely and dispose of spent fuel now stored there and to be generated during the remainder of the licensing period. The Commission has concluded that denial of this petition lay within the Director's discretion but notes that subsequent developments provide additional justification for the Director's decision. Accordingly, rather than simply declining to review the Director's decision the Commission is issuing the memorandum and order to enlarge the discussion of the issues raised by the petition.

In its petition for a show cause order Safe Power alleged a number of circumstances indicating "poor financial condition of Maine Yankee".[2] Safe Power requested that the Commission halt operation of Maine Yankee until the license "has demonstrated that it has adequate financial backing and adequate financial support . . . to raise capital requirement to continue operation, to make and changes or capital investments required by the NRC, and to provide for the funding of its shutdown and disposal of spent fuel at the end of its licensed term." Safe Power also asked that the Commission determine what amounts Maine Yankee should collect to provide for decommissioning and disposal of spent fuel and order the creation of a trust fund in which these monies would accumulate until needed.

In denying Safe Power's petition the Director correctly observed that the Commissions' concern with financial problems of a licensee is limited to the relation which those problems may have to the protection of public health and safety.[3] Allegations about financial difficulties at an operating facility are not be themselves a sufficient basis for action to restrict operations. In the Commission rulemaking, cited by the Director, which eliminated the financial qualification review for electric utilities, 47 F.R. 13750, the Commission noted the absence of evidence that financial problems are inevitably linked with corner-cutting on safety.[4] Thus, even had the Commission retained its financial qualifications review requirements, a showing the Maine Yankee was undergoing financial difficulties would not by itself require that the Commission halt operations at that plant.[5] On the other hand,

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[1] By successive orders of the Secretary pursuant to 10 CFR 2.772, the time in which the Commission may take review of the Director's Decision was extended to July 29, 1983.

[2] These asserted circumstances include: (1) Use of funds obtained through pledge of the company's stock of nuclear fuel for purposes other than purchase, remanufacturing and handling of nuclear fuel; (2) need to ask for early payment from Central Maine Power Company to meet Maine Yankee's daily cash requirement because its unsecured borrowing limit has been reached; (3) exhaustion of all of Maine Yankee's established sources of capital with the exception of infusion of additional common equity contributions by its sponsors; and (4) need for "sponsor guarantees" to continue the fuel financing.

[3] Recently in an opinion issued subsequent to the Director's decision the Supreme Court took note of this limitation on the Commission's concern with economics:

> The Nuclear Regulatory Commission (NRC) * * * does not purport to exercise its authority based on economic considerations, 10 CFR 8.4, and has recently repealed its regulations concerning the financial qualifications and capabilities of a utility proposing to construct and operate a nuclear power plant. 47 F.R. 13751. In its notice of rule repeal, the NRC stated that utility financial qualifications are only of concern to the NRC if related to the public health and safety.

Pacific Gas & Electric Co. v. *State Energy Resources Conservation and Development Commission*, ——— U.S. ———, 75 L.Ed. 2d 752, 767 (1083).

[4] The Commission's rule is currently under review in the D.C. Circuit in *New England Coalition on Nuclear Pollution* v. *NRC*, No. 82-1581.

[5] Under Section 186 of the Atomic Energy Act the Commission may revoke a license when a condition exists that would have permitted the Commission to deny the license in the first instance, but it is not required to do so, especially where means short of license suspension are available to provide continued assurance of public health and safety.

allegations that defects in safety practices have in fact occurred or are imminent would of course form a possible basis for enforcement action, whether or not the root cause of the fault was financial. In the case at issue Safe Power has offered no evidence nor made any claim of actual hazards at Maine Yankee. Indeed, Safe Power's petition supports a view that Maine Yankee has continued to seek and receive from its "prime sponsors" or otherwise the funding which it needs to conduct its operations in a safe fashion. The Director did not abuse his discretion in refusing to take enforcement action based on mere speculation that financial pressures might in some unspecified way undermine the safety of Maine Yankee's operation.

Safe Power's concerns about decommissioning of the plant and disposal of spent fuel address matters which are presently the subject of rulemaking. The Director correctly advised Safe Power that proceedings will not generally be instituted in response to a petition under 10 CFR 2.206 to consider an issue the Commission is treating generically through rulemaking. The Commission currently expects to issue early in 1984 a proposed rule dealing with decommissioning of nuclear power plants and addressing, among other questions, how to assure the adequate financing of decommissioning by the licensee. In the absence of any evidence of need for early decommissioning at Maine Yankee, Safe Power's concerns about financing for decommissioning afford no safety-related reason to take individual enforcement action against Maine Yankee, pending completion of the Commission's generic treatment of the issue.[6]

Similarly, Safe Power's concern about adequate financing for spent fuel storage and disposal presents not need for safety-related enforement action. The Commission has determined in its decision in the so-called "Waste Confidence" Rulemaking, 44 F.R. 61372, that there is reasonable assurance that spent fuel can be stored safely in storage basins at reactor sites for an extended period of time (*i.e.*, up to 30 years beyond expiration of reactor operating licenses) until the availability of geologic repositories for safe, permanent disposal. *See* 48 F.R. 22730 (May 20, 1983). Thus the issue raised by Safe Power's petition is not a matter of safety but rather a question of the assurance that Maine Yankee will be able to pay the costs of storage and disposal of spent fuel produced by the facility. That assurance is enhanced by two developments subsequent to the Director's decision denying the petition.

With regard to financing of spent fuel disposition, the Commission has proposed for public comment an amendment to 10 CFR Part 50 whereby reactor licensees must submit for Commission approval no later than five years before expiration of operating license written notification of the program by which the licensee intends to manage and provide funding for management of spent fuel at the facility upon expiration of the operating license until ultimate disposal in a repository. 48 F.R. 22730, 22732. The Commission noted that "[t]he procedures established by this amendment are intended to confirm that there will be adequate lead time for whatever actions may be needed at individual sites to assure that the management of spent fuel following the expiration of the reactor operating license will be accomplished in a safe and environmentally acceptable manner." 42 F.R. 22731.

As the Director noted, establishment of a fund for ultimate disposal of spent fuel was provided by Congress in the Nuclear Waste Policy Act of 1982. 42 U.S.C. 10101. That provision is part of a comprehensive framework for disposing of spent nuclear fuel and high-level radioactive waste, of domestic origin, generated by civilian nuclear power reactors. 48 FR. 16590, April 18, 1983.

Subsequent to the Director's Decision in the instant matter, the Department of Energy (DOE), acting pursuant to the Nuclear Waste Policy Act, issued first a proposed rule for comment [7] and them a revised final rule requiring utilities, including Maine Yankee, to contract with DOE for waste disposal services that they will ultimately require.[8] While the contracts have separate fee structures for spent fuel in place on April 4, 1983 [9] and spent fuel to be generated after that date,[10] they provide in essence for total prepayment for the waste program.

On June 14 DOE received from main Yankee and executed contract, which when accepted by DOE will impose on Maine Yankee an obligation to begin monthly payments to DOE to cover disposal costs for spent fuel being generated. Within a maximum of two years Maine Yankee must elect how to pay for disposal of spent fuel now on site and begin to pay for that disposal, which must be paid for in full by the end of ten years. These provisions are in addition to Commission requirements for insurance and for decommissioning with which Maine Yankee will be obliged to comply. In summary, Safe Power's petition demonstrated no safety-related concerns which might require immediate enforcement action, and there are procedures proposed or already in place to deal in a timely manner with the financial concerns raised by Safe Power's allegations. The Commission therefore affirms the Director's decision that the relief requested by Safe Power should be denied.

Although the Commission has concluded that it may legally deny Safe Power's petition and has affirmed the Director's decision, the Commission has decided as a matter of diescretion to direct the staff to look into the situation at Maine Yankee to determine whether there are any safety problems which might stem from financial difficulties.

Commissioner Roberts believes that financial qualifications reviews do little to enhance the protection of the public's health and safety. Thus, as a policy matter, he would spend staff resources on safety-related issues.

Commissioner Gilinsky dissents from this decision. His separate views are attached.

It is so ordered.

Dated at Washington, DC, this 2nd day of August, 1983.

For the Commission. [11]

Samuel J. Chilk,

Secretary of the Commission.

Separate Views of Commissioner Gilinsky Maine Yankee Atomic Power Co.

I am not prepared to join in the Commission's overblown and highly legalistic rejection of Safe Power for Maine's petition under Section 2.206 of our regulations. The petition alleges the Maine Yankee Atomic Power Company is suffering from financial difficulties and that the Company has inadequate resources to continue to operate the reactor safely and to dispose of the spent fuel and decommission the plant

[6] In the event of an accident that might require premature decommissioning, increased property insurance levels now available for accident decontamination and required by NRC provide substantial assurance that funding will be available. See 47 F.R. 13750

[7] 48 FR 5458 (1983).

[8] 48 FR 16590.

[9] Three options are available: Payment in a lump sum within two years without interest; payment in a lump sum within ten years with interest and payment in four installments per year over ten years with interest.

[10] There is a pay-as-you-go charge of 1 mil per kilowatt hour to be paid monthly to cover disposal of spent fuel being generated.

[11] Commissioner Gilinsky was not present when this Order was approved but had previously indicated his disapproval.

at the expiration of its license. The Commission argues that since it no longer examines the financial qualifications of utilities for the purposes of licensing, and because the petitioners did not identify specific safety problems, the NRC is not obligated to look any further.

Whatever the merits of the petition, it should have been handled differently. Section 2.206 is intended to serve as an informal way for members of the public to raise concerns which they would like the NRC to address. The NRC's objective in responding should not be solely to determine whether the specific action requested should be granted or denied, but to make a reasonable evaluation of the concern raised and to do what is sensible.

The Commission has repeatedly professed that it wants to get away from legalistic formalities and to find more common sense ways of dealing with safety concerns. Here, instead, it has run a relatively straightforward petition through a series of legal buzz saws.

The NRC's response quotes statutes, rules and court decisions, yet there is no record that at any point anyone looked into whether there are, in fact, any safety problems at Maine Yankee which might stem from financial difficulties. It would have been more helpful in dealing with this petition if, instead of peppering us with legal citations, the Director of Nuclear Reactor Regulation had told us that he had called the Region-I Administrator to check if there have been any such problems.

When the Commission dropped its licensing review of a utility's financial qualifications—because these reviews had never been useful in determining an applicant's qualifications to build and operate a nuclear power plant—it was not intented that absolutely no notice ever be taken of a utility's financial difficulties. These may well be a reason to double check that a company is complying with NRC's safety requirements. While I am pleased that the Commission has agreed with my suggestion that the staff undertake such a check at Maine Yankee, I would not act on the petition until we have a response.

As a final matter, this petition should serve as a reminder to the Commission that it must face up to setting a standard for decommissioning. Instead of saying that it "currently expects to issue in early 1984" the long promised—and long delayed—decommissioning rule, the Commission should set a firm deadline of no later than December 31, 1983, for the NRC staff to submit a proposed rule.

[FR Doc. 83-23371 Filed 8-24-83; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-416 License No. NPF13 EA 83-45]

Mississippi Power & Light Co., (Grand Gulf Nuclear Station Unit 1); Order Imposing Monetary Civil Penalty

I

Mississippi Power & Light Company, P.O. Box 1640, Jackson, Mississippi 39205 (the "Licensee") is the holder of License No. NPF-13 (the "License") issued by the Nuclear Regulatory Commission (the "Commission"). The license authorizes operation of the Grand Gulf Nuclear Station Unit 1 facility in Claiborne County, Mississippi under certain specified conditions and is due to expire on September 4, 2014.

II

An inspection of the licensee's activities under the license was conducted on April 29 and May 3-4, 1983 at the Grand Gulf Nuclear Station Unit 1. As a result of this inspection, it appears that the licensee has not conducted its activities in full compliance with the conditions of its license and with the requirements of Commission regulations. A written Notice of Violation and Proposed Imposition of Civil Penalty was served upon the licensee by letter dated June 13, 1983. The Notice stated the nature of the violation, license conditions which the licensee has violated, and the amount of civil penalty proposed for the violation. An answer dated July 12, 1983 to the Notice of Violation and Proposed Imposition of Civil Penalty was received from the licensee.

III

Upon consideration of the answer received and the statements of fact, explanation, and arguments for mitigation of the proposed civil penalty contained therein, as set forth in the appendix to this Order, the Director of the Office of Inspection and Enforcement has determined that the penalty proposed for the violation in the Notice of Violation and Proposed Imposition of Civil Penalty should be reduced to reflect the proper base amount as noted in Table 1A of 10 CFR Part 2, Appendix C, and should be imposed. As explained in the Attachment to this Order, no mitigation of the base penalty is warranted.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2282, Pub. L. 96-295), and 10 CFR 2.205, it is hereby ordered that:

The licensee pay a civil penalty in the amount of Twenty Thousand Dollars within 30 days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director of the Office of Inspection and Enforcement, USNRC, Washington, D.C. 20555.

V

The licensee may, within thirty days of the date of this Order, request a hearing. A request for a hearing shall be addressed to the Director, Office of Inspection and Enforcement. A copy of the hearing request shall also be sent to the Executive Legal Director, USNRC, Washington, D.C. 20555. If a hearing is requested, the Commission will issue an Order designating the time and place of hearing. Should the licensee fail to request a hearing within thirty days of the date of this Order, the provisions of this Order shall be effective without further proceedings and, if payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issues to be considered at such a hearing shall be:

(a) Whether the licensee was in violation of the Commission's requirements as set forth in the Notice of Violation and Proposed Imposition of Civil Penalty referenced in Section II above, and

(b) Whether on the basis of such violation this Order shall be sustained.

Dated at Bethesda, Maryland this 18th day of August 1983.

For the Nuclear Regulatory Commission.

Richard C. DeYoung,

Director, Office of Inspection and Enforcement.

Appendix—Evaluation and Conclusions

The violation and associated civil penalty as presented in the Notice of Violation (dated June 13, 1983) are restated below. The licensee admitted the violation in its response of July 12, 1983. This response is summarized, and the NRC evaluation and conclusions regarding the response are presented.

Statement of Violation

License Condition Section 2.E of Facility Operating License No. NPF-13 requires the licensee to maintain in effect and fully implement all provisions of the Commission approved plans collectively entitled "Grand Gulf Station Physical Security Plan." Section 6.6.2.2 of the approved Physical Security Plan

requires a member of the security force to be posted at an affected vital area portal to provide positive access control when there is a necessity to leave the door to a vital area open.

Contrary to the above, on April 29, 1983, the licensee failed to provide positive access control in that the security force member posted at the lower containment hatch to control access was observed to be asleep.

This is a Severity Level III Violation (Supplement III) (Civil Penalty $40,000).

Reduction of Base Civil Penalty Amount

1. *Licensee Response.* Mississippi Power and Light Company (MP&L) stated that the magnitude of the proposed civil penalty exceeded the guidelines of 10 CFR Part 2, Appendix C. MP&L contends that the NRC Enforcement Policy classifies light water reactors as noncategory 1 safeguards licensees for the purpose of determining enforcement sanctions. Also, MP&L suggests that because the Grand Gulf Unit 1 had specific limitations in the license in effect at the time the violation occurred, the noncategory 1 safeguards classification is doubly applicable.

2. *NRC Evaluation and Conclusion.* The intent of the Base Civil Penalty Table in the Enforcement Policy (Table 1A) is that power reactors of all types be considered category 1 safeguards licensees for enforcement purposes. The basis of this intent lies not so much in the strategic significance of the material present, but in the possible consequences to the public health and safety should sabotage, rather than theft, occur. The category 1 versus noncategory 1 differentiation is based on the potential consequences of theft of a formula quantity of SNM, and the exemptions (10 CFR 73.6) pointed out by the licensee address this concern.

Theft of irradiated or spent fuel from a power reactor is highly unlikely, but the potential consequences of an act of radiological sabotage are very serious.

Because the licensee had a 5% power limitation on the operation of Grand Gulf Unit–1 at the time of the event, the staff agrees that sufficient fission product inventory to pose a serious threat to the public health and safety had not accumulated in the reactor core. Therefore, the staff agrees with the licensee that for this limited case a noncategory 1 safeguards classification is appropriate and that the base civil penalty under Table 1A of the NRC Enforcement Policy is $40,000. Application of the appropriate factor for a Severity Level III violation reduces this amount by 50% to $20,000 before application of any mitigation or escalation factors provided in the policy.

It is important to note that the reduction discussed above is not based on application of the mitigation factors in the policy, but rather the proper application of the Base Civil Penalty Table to an unusual case.

Request for Mitigation of Proposed Civil Penalty

1. MP&L requests mitigation due to the licensee's good record of prompt identification and reporting on other types of events.

NRC Evaluation: The violation was discovered by the NRC Senior Resident Inspector. The NRC Enforcement Policy, 10 CFR 2, Appendix C, is intended to recognize and encourage licensee management and administrative systems designed to detect and deter situations which constitute violations of NRC requirements by allowing a reduction in the amount of a civil penalty when a licensee promptly identifies and reports a violation. This was not the case in this violation since the NRC identified the violation.

2. MP&L requests mitigation for the corrective actions taken and believes them to be comprehensive.

NRC Evaluation: While the staff evaluation of the licensee's corrective actions reveals that these actions were responsive and may be expected to reduce the frequency of occurence of this type of violation in the future, the actions taken were no more than expected. In addition, prompting from the NRC was required to convince the licensee that some of the program changes were needed. Also, the licensee told the NRC that the individual who was sleeping while on duty as a vital area access control guard had been found on a previous occasion to be in a posture indicating that he was possibly asleep. It is understood by the staff that for apparently sound reasons, MP&L chose not to discipline the individual for that occurence, but this should have warned the licensee of a potential for a future violation and the licensee should have taken preventive measures at that time. Such measures would presumably have been programmatic in nature rather than taking the form of individual action.

3. MP&L believes mitigation is warranted because the violation was not indicative of a programmatic or managerial deficiency.

NRC Evaluation: As noted in item 2, above, programmatic problems were detected. Also, the Enforcement Policy does not provide specifically for mitigation on the basis of a lack of programmatic or managerial deficiency. However, when such a deficiency is profound, the amount of the penalty may be increased as much as 25%.

4. MP&L believes the penalty should be mitigated because no unauthorized access to the vital area was detected.

NRC Evaluation: The NRC notes that no unauthorized access to a vital area occurred, but that in itself is not sufficient cause for mitigation. The Enforcement Policy provides a specific example of this type of violation as noted in Supplement III.C.1 and lists the violation as a Severity Level III because the potential for a serious safeguards incident existed. Had there been an actual unauthorized entry, the Severity Level may have been higher.

NRC Conclusion

Further mitigation of the amount of Proposed Civil Penalty is not warranted for the reasons stated above.

[FR Doc. 83-23373 Filed 8-24-83; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-416]

Mississippi Power & Light Co., et al. Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–13, issued to Mississippi Power & Light Company, Middle South Energy, Inc., and South Mississippi Electric Power Association (the licensees), for operation of the Grand Gulf Nuclear Station, Unit 1, located in Claiborne County, Mississippi.

The amendment would establish later submittal dates to meet license conditions in accordance with the licensees' application for amendment dated May 31, 1983. The proposed changes to license conditions are as follows: (1) Submit an evaluation report on reactor internals prototype vibration tests no later than 6 months after start of full power operation, (2) submit the initial inservice inspections program by April 1, 1984 and (3) submit a report on inplace communications systems testing by August 1, 1984.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves 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 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 changes proposed for the amendment simply accommodate schedular delays encountered during the low power testing period at this facility. The proposed changes do not affect reactor operations or accident analyses and have no radiological consequences and, therefore, clearly involve no significant hazards consideration. In Supplement No. 4 to the Safety Evaluation Report (SSER #4) for Grand Gulf, Units 1 and 2, issued on May 31, 1983, the staff supported an extension of the reporting dates for the above listed

license conditions on the basis that plant operability was required to perform the tests and inspections and that the plant had experienced prolonged delay in achieving operability. Since the licensees' letter and SSER #4 were issued prior to the expiration date in the effective license condition, we consider this matter to have been handled in a timely manner. The staff proposes to determine that the changes involved in this license amendment involve no significant hazards considerations on the basis that the changes do not affect reactor operations or accident analyses and have no radiological consequences, and therefore, clearly do 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 the margin of safety.

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 final determination unless it receives a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, ATTN: Docketing and Service Branch.

By September 26, 1983, the licensees 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. Request 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 reason why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

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 requests involve no significant hazards consideration, the Commission may issue the amendment and make it 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 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. 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, D.C. 20555, ATTN: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. 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 (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to A. Schwencer: 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 Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Troy B. Conner, Jr., Esquire, Conner & Wetterhahn, 1747 Pennsylvania Avenue, NW., Washington, D.C. 20006, attorney for the licensees.

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 designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the 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, 1717 H Street, NW., Washington, D.C., and at the Hinds Jr. College, George M. McLendon Library, Raymond, Mississippi 39154.

Dated at Bethesda, Maryland, this 17th day of August 1983.

For the Nuclear Regulatory Commission.

R. Caruso,

Acting Chief, Licensing Branch No. 2, Division of Licensing.

[FR Doc. 83-23372 Filed 8-24-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-445 and 50-446]

Texas Utilities Generating Co., et al. (Comanche Peak Steam Electric Station, Units 1 and 2); Issuance of Director's Decision

Notice is hereby given that the Director, Office of Inspection and Enforcement, has denied a petition under 10 CFR 2.206 filed by Mrs. Juanita Ellis on behalf of Citizens Association for Sound Energy (CASE), of Dallas, Texas. This petition related to the Comanche Peak Steam Electric Station, Units 1 and 2. In its petition, CASE requested that the licensees be required to provide certain documents containing ITT Grinnell and NPSI design criteria used for pipe supports at Comanche Peak, or in the alternative, if these documents are not in the licensees' possession, then the licensees be found in violation of NRC regulations.

The reasons for the denial of CASE's petition are fully described in the "Director's Decision Under 10 CFR 2.206" issued on this date, which is available for public inspection in the Commission's Public Document Room located at 1717 H Street NW., Washington, D.C. 20555, and in the local public document rooms for the Comanche Peak Station at the Sommerville County Public Library, On the Square, P.O. Box 1417, Glen Rose, Texas 70643, and the University of Texas Library, Arlington, Texas 76019. A copy of the decision will be filed with the Secretary for the Commission's review in accordance with 10 CFR 2.206(c).

Dated at Bethesda, Maryland this 19th day of August 1983.

For the Nuclear Regulatory Commission.

Richard C. DeYoung,

Director, Office of Inspection and Enforcement.

[FR Doc. 83-23374 Filed 8-24-83; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[File No. 22-12622]

American Southwest Financial Corporation; Applications and Opportunity for Hearing

August 19, 1983.

Notice is hereby given that American Southwest Financial Corporation (the "Company") has filed an application pursuant to clause (ii) of Section 310(b)(1) of the Trust Indenture Act of 1939, as amended (the "Act"), for a finding by the Securities and Exchange Commission (the "Commission") that trusteeship of The Valley National Bank of Arizona ("Valley") under indentures dated as of December 1, 1982, April 1, 1983 (the "Qualified Indentures"), between the Company and Valley which were heretofore qualified under the Act, the trusteeship by Valley under a proposed indenture dated as of June 1, 1983 which has been qualified under the Act (the "Proposed Indenture") and trusteeship by Valley under an indenture tentatively to be dated as of July 1, 1983, and which will be qualifed under the Act (the "New Indenture"), are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Valley from acting as trutee under any of these indentures and the New Indenture.

Section 310(b) of the Act provides in part that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest (as defined in the section), it shall, within ninety days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign. Subsection (1) of this section of the Act provides, with certain exceptions stated therein, that a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture of the same obligor.

However, pursuant to clause (ii) of subsection (1), there may be excluded from the operation of this provision another indenture or indentures under which other securities of such obligor are outstanding, if the issuer shall have sustained the burden of proving on application to the Commission, and after opportunity for hearing thereon, that the trusteeships under the indentures are not so likely to involve a material conflict of interest to make it necessary in the public interest or for the protection of investors to disqualify such trustee from acting as trustee under any such indentures.

The Company alleges that:

(1) Pursuant to the Qualified Indentures, the Company has issued $50,475,000 aggregate principal amount of its 12⅞% GNMA-Collateralized Bonds, Series A (the "Series A Bonds") and $35,280,000 aggregate principal amount of its 12¼% GNMA-Collateralized Bonds, Series B (The "Series B Bonds"), for which Valley serves as trustee. The Series A Bonds and Series B Bonds were registered under the Securities Act of 1933 and the Qualified Indentures were qualified under the Act.

(2) The Proposed Indenture relating to Series C of the Company's GNMA-Collateralized Bonds has not been executed. After the application for an order of exemption with respect to the Proposed Indenture had been filed, the Company elected to issue its next series of GNMA-Collateralized Bonds. As a result, although the Order dated June 22, 1983 was issued with respect to the Proposed Indenture, Valley is not presently serving as trustee under the Proposed Indenture because it is not yet in effect. At presnt, the Company does not contemplate that the Proposed Indenture will be executed.

(3) Pursuant to the New Indenture, the Company proposes to issue and sell up to $100,000,000, in aggregate principal amount of its GNMA-Collateralized Bonds, issuable in series (the "New Bonds") for which it contemplates Valley will serve as trustee. The Company contemplates that the New Bonds will be registered under the Securities Act of 1933 and that the New Indenture will be qualified under the Act.

(4) The Collateral granted to Valley as trustee for the Series A Bonds will serve as collateral security only for the Series A Bonds and the holders of other Bonds issued by the Company (including the Series B Bonds and the New Bonds) will not have recourse to the collateral granted to Valley as trustee for the series A Bonds.

(5) The collateral granted to Valley as trustee for the Series B Bonds will serve as collateral security only for the Series B Bonds and the holders of other Bonds issued by the Company (including the Series A Bonds and the New Bonds) will not have recourse to the collateral granted to Valley as trustee for the Series B Bonds.

(6) The collateral to be granted to Valley as trustee for the New Bonds will serve as collateral security only for the New Bonds and the holders of other Bonds issued by the Company (including the Series A Bonds and Series B Bonds) will not have recourse to the collateral

granted to Valley as trustee for the New Bonds.

(7) The Company is not in default under either Qualified Indenture.

(8) Such differences as exist between the Qualified Indentures, the Proposed Indenture and the New Indenture are not likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Valley from acting as trustee under any of the Indentures.

The Company has waived notice of hearing, hearing and any and all rights to specify procedures under the Rules of Practice of the Securities and Exchange Commission in connection with this matter.

For a more detailed statement of the matters of fact and law asserted, all persons are referred to said application which is on file in the offices of the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. 20549.

Notice is further given that any interested person may, not later than September 13, 1983 request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request and the issues of law or fact raised by such application which he desires to controvert, or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. At any time after said date, the Commission may issue an order granting the application, upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and the interest of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-23287 Filed 8-24-83; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 83-178]

Recordation of Trade Name: "Underground Camera, Inc."

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of Recordation.

SUMMARY: On May 6, 1983, a notice of application for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "Underground Camera, Inc." was published in the **Federal Register** (48 FR 20531). The notice advised that before final action on the application, consideration would be given to relevant data, views, or arguments submitted in opposition to the recordation and received not later than July 5, 1983. No responses were received in opposition to the application.

Accordingly, as provided in section 133.14, Customs Regulations (19 CFR 133.14), the name "Underground Camera, Inc." is recorded as the trade name used by Underground Camera, Inc., a corporation organized under the laws of the State of Massachusetts, located at 369 Central Street, Foxboro, Massachusetts 02035. The trade name is used in connection with photographic equipment, namely, cameras and lenses; photographic supplies, namely, photographic film and chemicals; and photographic accessories, namely camera supports and illuminators. The trade name is applied to the goods in the United States.

DATE: August 25, 1983.

FOR FURTHER INFORMATION CONTACT: Harriet Lane, Entry, Licensing and Restricted Merchandise Branch, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229 (202-566-5765).

Dated: August 19, 1983.

Donald W. Lewis,

Director, Entry Procedures and Penalties Division.

[FR Doc. 83-23327 Filed 8-24-83; 8:45 am]

BILLING CODE 4820-02-M

VETERANS ADMINISTRATION

Privacy Act of 1974; Amendment of Systems Notice, Revised Systems of Records

Notice is hereby given that the VA (Veterans Administration) is considering changing a system of records entitled, "Repatriated American Prisoners of War-VA" (60VA07), set forth in the document entitled Privacy Act Issuances, 1980 Comp., Volume V, p. 695. The system of records was originally established by PP&E (Office of Program Planning and Evaluation) because Pub. L. 95-479 required the VA to conduct a study on the impact of the POW (Prisoner of War) experience and the current needs of former POWs. Before the study coud be conducted, former POWs had to be identified and considerable information concerning them had to be collected. At this time, the study has been completed and PP&E no longer has a need to maintain the system or records. DVB (Department of Veterans Benefits) can still utilize this system of records since Congressional, Federal, and public groups continue to request updated information on former POWs and the VA has an operational need to be able to quickly, easily, and accurately verify veterans' POW status. This system also has significant long-term historical value for future studies and short-range value to provide information for the VA's POW Advisory Committee and for VA analysis of the needs of former POWs. Based upon the above, it is proposed that the system manager duties be transferred from PP&E to DVB.

In the republished VA system of records, we are proposing to add four routine use statements. Routine use number 1 concerns the release of information to a member of Congress or staff person acting for the member when the member or staff person requests the record on behalf of and at the request of the individual to whom the record pertains. Routine use number 2 concerns the release of information to accredited service organizations, VA-approved claims agents and attorneys acting under a declaration of representation so that these individuals can aid veterans in the preparation, presentation and prosecution of claims under the laws administered by the VA. It is noted that routine use number 2 limits disclosure of a veteran's name to only those instances where a veteran has requested the assistance of an accredited service organization, claims agent or an attorney. Routine use number 3 concerns the release of information to the Office of the Secretary of Defense, International Security Affairs (POW-MIA), for the purpose of aiding the Department in verifying the status of individuals who were prisoners of war or missing in action and/or in determining their most recent location. Routine use number 4 concerns the release of information to the National Archives and Records Service, in order that they may produce extracts to perform statistical analysis; reconstruct military personnel records information; and respond to inquiries from the general public.

2. Notice is hereby given that the Veterans Administration is considering deleting a system of records entitiled, "Dental Services for Former Prisoners of War-VA" (61VA136), set forth in the document entitled Privacy Act Issuances, 1980 Comp., Volume V, p. 696. In 1980, microfiche records (61VA136)

were established to enable VA health care facilities to make eligibility determinations for former POWs who make application for dental benefits. The microfiche records were created from the magnetic tape which consitututes the current VA system of records 60VA07. This new system of records was created since the purpose of the original system of records 60VA07 was to conduct a study of a limited duration and was not directly related to ther providing of benefits to POWs. However, a review of these two systems indicates that once DVB assumes responsibility of 60VA07 for benefit purposes, the records currently covered by 61VA136 should be considered a subsystem of 60VA07. Based upon the above, we are modifying the proposed 60VA23 to reflect the existence of microfiche records and at the same time deleting 61VA136.

Interested persons are invited to submit written comments, suggestions, or objections regarding the proposed systems of records Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW., Washington, D.C. 20420. All relevant material received before September 23, 1983 will be considered. All written comments received will be available for public inspection at the above address only between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays) until October 7, 1983.

If no public comment is received during the 30-day review period allowed for public comment or unless otherwise published in the **Federal Register** by the Veterans Administration, the revised systems of records are effective September 23, 1983.

Approved: August 16, 1983.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

August 16, 1983.

Notice of System of Records

The system identified as 60VA07, "Repatriated American Prisoners of War-VA", set forth in the document entitled Privacy Act Issuances, 1980 Comp., Volume V, p. 695 is revised as follows:

60VA23

SYSTEM NAME:

Repatriated American Prisoners of War-VA

SYSTEM LOCATION:

Records are maintained at the VA regional offices, VA Central Office, all health care facilities and the Data Processing Center at Austin, Texas. Address locations are listed in VA Appendix 1 at the end of this document.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are repatriated prisoners of war, including but not limited to those of World War II; Korean Conflict; Vietnam Era; Pueblo Crisis; the members of the group known as Civilian Employees, Pacific Naval Air Bases, who actively participated in the defense of Wake Island and were determined to be eligible for veterans' benefits under Pub. L. 95–202; and those determined by the VA to have been held as prisoners of war during peacetime.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal identification information related to the POW experience and identifying data, e.g., name, Social Security number, file number, service number, date of birth, date of death (if applicable), period of service branch of service, entitlement code, aid and attendance or household status, number of service-connected disabilities, number of days interned as a POW, place of internment and hospital discharge data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 102, Pub. L. 96–22, June 13, 1979, 38 U.S.C. 612; Pub. L. 97–37, August 14, 1981, 38 U.S.C. 101, 221, 312, 610 and 612; and 38 U.S.C. 210(c)(1).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. The record of an individual who is covered by this system may be disclosed to a member of Congress or staff person acting for the member when the member or staff person requests the record on behalf of and at the request of that individual.

2. Any information in this system relevant to a veteran's claim such as the name, military service information and the number of days interned as a POW may be disclosed at the request of the veteran to accredited service organizations, VA-approved claims agents and attorneys acting under a declaration of representation so that these individuals can aid veterans in the preparation, presentation and prosecution of claims under the laws administered by the VA. The name of a veteran will not, however, be disclosed to these individuals under this routine use if the veteran has not requested the assistance of an accredited service organization, claims agent or an attorney.

3. Any information in this system may be disclosed to the Office of the Secretary of Defense, International Security Affairs (POW/MIA), upon their official request, in order to aid the Department in verifying the status of individuals who were prisoners of war or missing in action and/or in determining their most recent location.

4. Any information in this system may be disclosed to NARS (National Archives and Records Service), upon their official request, in order that NARS may produce extracts to perform statistical analysis; reconstruct military personnel records information; and respond to inquiries from the general public.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on magnetic tape and microfiche.

RETRIEVABILITY:

The magnetic tape is indexed by the veteran's service, VA file or Social Security number. The microfiche is indexed by the veteran's name with secondary verification by the veteran's service, VA file or Social Security number.

SAFEGUARDS:

1. Access to the basic file in the Austin DPC (Data Processing Center) is restricted to authorized VA employees and vendors. Access to the computer room where the magnetic tape is located within the DPC is further restricted to specifically authorized employees and is protected by an alarm system, the Federal Protective Service, and other VA security personnel.

2. Access to microfiche listing and readers is restricted to authorized VA employees on a "need to know" basis. The microfiche is stored in protected drawers and protected from outside use by the Federal Protective Service.

RETENTION AND DISPOSAL:

Records are maintained on magnetic tape and microfiche and are retained and disposed of in accordance with disposition authorization approved by the Archivist of the United States.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Administrative Service (23), VA Central Office, 810 Vermont Avenue, NW., Washington, D.C. 20420.

NOTIFICATION PROCEDURE:

Any individual who wishes to determine whether a record is being maintained in this system under his or

her name or other personal identifier, or wants to determine the contents of such record should submit a written request or apply in person to the nearest VA regional office or medical center. Addresses for these offices may be found in VA Appendix 1 at the end of this document. Inquiries should include as much of the following information as possible: the veteran's full name, VA file number, service number and Social Security number.

RECORD ACCESS PROCEDURES:

Individuals seeking information regarding access to and contesting of VA records in this system may write, call or visit the nearest VA regional office of medical center.

CONTESTING RECORD PROCEDURES:

(See Record Access Procedures above.)

RECORD SOURCE CATEGORIES:

The Department of Defense, National Archives and Records Service, and VA records such as the Patient Treatment File, the Veterans and Beneficiary Indentification and Records Locator Subsystem, and Veterans, Dependents and Beneficaries Compensation and Pension records.

[FR Doc. 83-23234 Filed 8-24-83; 8:45 am]

BILLING CODE 8320-01-M

Medical Research Service Merit Review Boards; Meetings

The Veterans Administration gives notice pursuant to Pub. L. 92-463 of the meetings of the following Merit Review Boards.

Merit review board	Date	Time	Location
Neurobiology	Sept. 15, 1983	8 a.m. to 5 p.m.	Caucus Room, Hotel Washington.[1]
Do	Sept. 16, 1983	do	Do.
Mental Health and Behavioral sciences	Sept. 22, 1983	do	Do.
Do	Sept. 23, 1983	do	Do.
Immunology	Sept. 27, 1983	do	Do.
Do	Sept. 28, 1983	do	Do.
Oncology	Sept. 28, 1983	do	Assembly Room, Hotel Washington.[1]
Cardiovascular studies	Sept. 29, 1983	do	Do.
Do	Sept. 30, 1983	do	Do.
Gastroenterology	Oct. 4, 1983	do	Council Room, Hotel Washington.[1]
Do	Oct. 5, 1983	do	Do.
Nephrology	Oct. 6, 1983	do	Do.
Do	Oct. 7, 1983	do	Do.
Alcoholism and drug dependence	Oct. 11, 1983	do	Do.
Endocrinology	Oct. 12, 1983	do	Assembly Room, Hotel Washington.[1]
Do	Oct. 13, 1983	do	Do.
Basic sciences	Oct. 17, 1983	do	Council Room, Hotel Washington.[1]
Do	Oct. 18, 1983	do	Do.
Do	Oct. 19, 1983	do	Do.
Surgery	Oct. 20, 1983	do	Brampton A Room, Omni International Hotel.[2]
Respiration	do	7 p.m. to 10 p.m.	Council Room, Hotel Washington.[1]
Do	Oct. 21, 1983	8 a.m. to 5 p.m.	Do.
Infectious diseases	Oct. 23, 1983	8 a.m. to 5 p.m.	Continental Salon, Las Vegas Hilton.[3]
Do	Oct. 24, 1983	do	Do.
Hematology	do	do	Room 817, VA Central Office.[4]

[1] Hotel Washington, 15th & Pennsylvania Avenue NW, Washington, DC 20004.
[2] Omni International Hotel, One Omni International, Atlanta, GA 30303.
[3] Las Vegas Hilton, 3000 Paradise Road, Las Vegas, NV 89109.
[4] Veterans Administration Central Office, 810 Vermont Avenue NW, Washington, DC 20420.

These meetings will be for the purpose of evaluating scientific merit of research conducted in each specialty by Veterans Administration investigators working in Veterans Administration Medical Centers and clinics.

The 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 research projects.

The closed portion of the meetings involve: 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 would 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 Public Law 94-409, closing portions of these meetings are 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 Mr. Howard M. Berman, Chief, Merit Review Board Staff Division, Medical Research Service, Veterans Administration, Washington, DC (202) 389-5065 at least five days prior to each meeting. Minutes of the meeting and rosters of the members of the Boards may be obtained from this source.

Dated: August 16, 1983.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 83-23364 Filed 8-24-83; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 48, No. 166
Thursday, August 25, 1983

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).

CONTENTS

1

FEDERAL DEPOSIT INSURANCE CORPORATION

Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Monday, August 22, 1983, the Corporation's Board of Directors determined, on motion of Director Irvine H. Sprague (Appointive), seconded by Mr. Doyle L. Arnold, acting in the place and stead of Director C. T. Conover (Comptroller of the Currency), that Corporation business required the withdrawal from the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matter:

Application of Bank of Western Indiana, Covington, Indiana, an insured State nonmember bank, for consent to merge, under its charter and title, with The Hillsboro State Bank, Hillsboro, Indiana, and to establish the three offices of The Hillsboro State Bank as branches of the resultant bank.

The Board further determined, by the same majority vote, that no earlier notice of this change in the subject matter of the meeting was practicable.

Dated: August 22, 1983.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S-1211-83 Filed 8-23-83; 12:20 pm]

BILLING CODE 6714-01-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 pm. on Tuesday, August 30, 1983, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda:

Application for consent to merge and establish three branches:

Bank of Western Indiana, Covington, Indiana, and insured State nonmember bank, for consent to merge, under its charter and title, with The Hillsboro State Bank, Hillsboro, Indiana, and to establish the three offices of The Hillsboro State Bank as branches of the resultant bank.

Notice of acquisition of control:

Name of acquiring person and name and location of bank authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 45,757-L (Amended): International City Bank and Trust Company, New Orleans, Louisiana

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6), of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, N.W., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389-4425.

Dated: August 23, 1983.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S-1216-83 Filed 8-23-83; 4:00 pm]

BILLING CODE 6714-01-M

3

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2 p.m. on Tuesday, August 30, 1983, to consider the following matters.

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Desposition of minutes of previous meetings.

25Application for consent to acquire assets and assume liabilities and establish one branch:

Citytrust, Bridgeport, Connecticut, an insured State nonmember bank, for consent to acquire certain assets of and assume the liability to pay deposits made in the Cos Cob Branch located in Greenwich, Connecticut, of BancOne of Connecticut,

Bridgeport, Connecticut, and to establish that office as a branch of Citytrust.

Application for consent to merge and establish one branch:

American Security Bank, North Platte, Nebraska, an insured State nonmember bank, for consent to merge, under its charter and title, with American State Savings Company, North Platte, Nebraska, a noninsured industrial loan and investment company, and to establish the existing branch of American State Savings Company as a branch of the resultant bank.

Application for consent to convert to a non-FDIC-insured institution:

Northfield Savings Bank, FSB, New York City (Port Richmond), New York.

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Memorandum and Resolution re: Banco Credito y Ahorro Ponceno, Ponce, Puerto Rico

Reports of committees and officers:

Minutes of actions approved by the standing committees of the Corporation pursuant to authority delegated by the Board of Directors.

Reports of the Division of Bank Supervision with respect to applications, requests, or actions involving administrative enforcement proceedings approved by the Director or an Associate Director of the Division of Bank Supervision and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Report of the Director, Division of Accounting and Corporate Services:

Memorandum re: Investment Management Report as of June 30, 1983

Reports of the Director, Office of Corporate Audits and Internal Investigations:

Memorandum re: Status of Auditee Corrective Actions

Audit Report re: Summary of Three Liquidation Site Audits, dated August 1, 1983

Discussion Agenda:

Memorandum and resolution re: Examination of FDIC-Insured Federal Savings Banks.

Memorandum and resolution re: Advance notice of proposed rulemaking in connection with Parts 332, 333, and 337 of the Corporation's rules and regulations, entitled "Powers Inconsistent with Purposes of Federal Deposit Insurance Law," "Extension of Corporate Powers," and "Unsafe and Unsound Banking Practices," respectively, to solicit comment on: the need for rulemaking to govern the direct or indirect involvement of insured banks with respect to real estate activities, insurance brokerage and underwriting activities, data processing activities for third parties, and travel agency activities; whether or not such activities on the part of insured banks pose any safety and soundness problems, present any conflicts of interest, or are consistent with the purposes of the Federal Deposit Insurance Act; and whether or not the Corporation should impose any limitation on the ability of a firm engaged in any of the foregoing activities to own an insured bank.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, N.W., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389-4425.

Dated: August 23, 1983.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S-1217-83 Filed 8-23-83; 4:00 pm]

BILLING CODE 6714-01-M

4

FEDERAL MARITIME COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 48 FR 37762, August 19,1983.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 9 a.m., August 24, 1983.

CHANGE IN THE MEETING: Withdrawal of the following item from the open session:

1. Sea-Land Service, Inc. 10 percent general increase applying between U.S. Atlantic and Gulf ports and ports in Puerto Rico and the U.S. Virgin Islands, and between Puerto Rico and Canada.

[S-1209-83 Filed 8-22-83; 4:13 pm]

BILLING CODE 6730-01-M

5

FEDERAL RESERVE SYSTEM

TIME AND DATE: Approximately 10:30 a.m., Wednesday, August 31, 1983, following a recess at the conclusion of the open meeting.

PLACE: 20th Street and Consititution Avenue NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed purchase of check reader/sorters within the Federal Reserve System.

2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve Systememployees.

3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board (202) 452-3204.

Dated: August 23, 1983.

James McAfee,

Associate Secretary of the Board.

[S-1214-83 Filed 8-23-83; 3:24 pm]

BILLING CODE 6210-01-M

6

FEDERAL RESERVE SYSTEM

TIME AND DATE: 10 a.m., Wednesday, August 31, 1983. (This meeting had been originally scheduled for August 25, 1983.)

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED: *Summary Agenda:* Because of their routine nature, no substantive dicussion of the following items is anticipated. These matters will be voted on without discussion unless a member of the Board requests that an item be moved to the discussion agenda:

1. Proposed final amendments to Regulation L (Management Official Interlocks) to implement the Depository Institution Management Interlocks Act. (Proposed earlier for public coment; Docket No. R-0431.)

2. Proposed amendments to Regulation 0 (Loans to Executive Officers, Directors and Principal Shareholders) to implement the Garn-St Germain Depository Institutions Act of 1982. (Proposed earlier for public comment; Docket No. R-0469.)

Discussion Agenda:

3. Proposed expansion of the Automated Clearing House (ACH) night cycle.

4. Any items carried forward from a previously announced meeting.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: August 23, 1983.

James McAfee,

Associate Secretary of the Board.

[S-1215-83 Filed 8-23-83; 3:24 pm]

BILLING CODE 6210-01-M

7

INTERNATIONAL TRADE COMMISSION

TIME AND DATE: 2:30 p.m., Tuesday, September 6, 1983.

PLACE: Room 117, 701 E Street NW., Washington, D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and complaints:

a. Certain structural connectors (Docket No. 964).

5. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 523–0161.

[S–1212 Filed 8–23–83; 2:17 pm]

BILLING CODE 7020–02–M

8

TENNESSEE VALLEY AUTHORITY:

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: — FR —, August—, 1983.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:15 a.m., Wednesday, August 24, 1983.

PREVIOUSLY ANNOUNCED PLACE OF MEETING: TVA West Tower Auditorium, 400 West Summit Hill Drive, Knoxville, Tennessee.

STATUS: Open.

ADDITIONAL MATTER: The following item is added to the previously announced agenda:

F. *Unclassified*

8. Supplement to Interagency Agreement Between TVA and Agency for International Development (AID) Covering Arrangements for TVA's Assistance to AID's Bioenergy Program.

CONTACT PERSON FOR MORE INFORMATION: Craven H. Crowell, Jr., Director of Information, or a member of his staff can respond to requests for information about this meeting. Call 615–632–3257, Knoxville, Tennessee. Information is also available to TVA's Washington Office, 202–245–0101.

SUPPLEMENTARY INFORMATION:

TVA Board Action

The TVA Board of Directors has found, the public interest not requiring otherwise, that TVA business requires the subject matter of this meeting to be changed to include the additional item shown above and that no earlier announcement of this change was possible.

The members of the TVA Board voted to approve the above findings and their approvals are recorded below.

Dated: August 22, 1983.

C. H. Dean, Jr.,

S. David Freeman,

Richard M. Freeman.

[S–1208–83 Filed 8–22–83; 4:11 pm]

BILLING CODE 8120–01–M

9

TENNESSEE VALLEY AUTHORITY

TIME AND DATE: 9:30 a.m., Monday, August 29, 1983.

PLACE: TVA West Tower Auditorium, 400 West Summit Hill Drive, Knoxville, Tennessee.

STATUS: Open.

MATTER FOR ACTION:

Consideration of proposed interim rate arrangements under which electric power would continue to be made available on a temporary basis to distributors of TVA power that have not entered into renewal standard form wholesale power contracts applicable for long-term supply arrangements.

CONTACT PERSON FOR MORE INFORMATION: Craven H. Crowell, Jr., Director of Information, or a member of his staff can respond to requests for information about this meeting. Call 615–632–3257, Knoxville, Tennessee. Information is also available at TVA's Washington Office, 202–245–0101.

SUPPLEMENTARY INFORMATION:

TVA Board Action

The TVA Board of Directors has found, the public interest not requiring otherwise, that TVA business requires that this meeting be called at the time set out above and that no earlier announcement of this meeting was possible.

The members of the TVA Board voted to approve the above findings and their approvals are recorded below.

Dated: August 23, 1983.

C. H. Bean, Jr.,

S. David Freeman,

Richard M. Freeman.

[S–1213–83 Filed 8–23–83; 3:40 pm]

BILLING CODE 8120–01–M

federal register

Thursday
August 25, 1983

Part II

Department of Transportation

Maritime Administration

Revisions to the Voluntary Tanker Agreement

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Revisions to the Voluntary Tanker Agreement

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice of Revised Voluntary Tanker Agreement.

SUMMARY: The Maritime Administration announces the text of the Voluntary Tanker Agreement, as authorized under section 708 of the Defense Production Act of 1950, as amended (50 U.S.C. App. 2158). This Agreement revises and replaces the original agreement, as amended, and is issued in accordance with the provisions of 44 CFR 332.4. Since the Revised Voluntary Tanker Agreement contains extensive changes from the original, both new participants and those currently enrolled are asked to confirm their participation by submitting new applications, which are available from the Maritime Administration. Copies of the Revised Voluntary Tanker Agreement and Application Form will be made available upon request.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Nevel, Division of National Security Plans, Room 7123, U.S. Department of Transportation, Maritime Administration, 400 Seventh Street SW., Washington, D.C. 20590, (202) 382–6100.

SUPLEMENTARY INFORMATION: The Maritime Administration, since 1952, has administered a program whereby tanker owners and charterers have signed standby agreements to make available tankers and tanker space when needed for the national defense. The 1978 amendments to the Defense Production Act of 1950 (Act) imposed new procedures which must be followed by agencies developing standby agreements for industrial mobilization in times of national emergency. The 1978 amendments to the Act necessitated adoption of regulations prescribing new procedures for standby voluntary agreement that were published by the Federal Emergency Management Agency (FEMA) at 44 CFR Part 332 (46 FR 2349, January 9, 1981); and at 49 CFR Subtitle A, § 1.66 (46 FR 2352 January 9, 1981). The authority of FEMA was enhanced and the Attorney General and the Chairman, Federal Trade Commission were given roles which assured that no undue intrusion into the antitrust area occured. The Maritime Administration proceeded to revise the text of the existing agreement to reflect the changes required in these regulations.

On January 20, 1982, the draft revisions were discussed at a public meeting. (See 46 FR 61052, December 14, 1981, and 47 FR 4635, February 1, 1982). Most of the comments offered at the meeting and in subsequent correspondence have been incorporated in the revised text. The Revised Voluntary Tanker Agreement has been concurred in by the Department of Defense, Department of Justice, Federal Trade Commission and FEMA. The reporting and record keeping provisions of the Revised Agreement have been submitted to the Office of Management and Budget for approval under the Paperwork Reduction Act of 1980, and 5 CFR 1320. The revised Agreement is a substitute for the original agreement and is offered to new applicants and present participants.

The complete text of the Revised Voluntary Tanker Agreement is published below. Copies of the Revised Agreement and Application Form are being sent to U.S. companies which own, operate, or charter tankers and ocean-going tugs and tank barges, including those companies which are party to the present agreement.

In addition, copies of the Revised Voluntary Tanker Agreement and Application Form are available to the public upon request.

TEXT OF REVISED VOLUNTARY TANKER AGREEMENT

Revised Standby Voluntary Agreement Under Pub. L. 774, 81st Congress, as Amended "Contribution of Tanker Capacity for National Defense Requirements" (Short Title: Revised Voluntary Tanker Agreement)

Table of Contents

Preface

Pursuant to the authority contained in Section 708, Defense Production Act of 1950, as amended (50 U.S.C. App. 2158) the Maritime Administrator ("the Administrator"), after consultation with representatives of the tanker industry, has developed this revised standby Agreement for voluntary contribution of tanker capacity for national defense requirements.

The Agreement provides for the contribution of tanker capacity to the Department of Defense (DoD) at freight rates and upon charter terms and conditions determined by the Administrator in such a way as to distribute the burden of such contributions in mathematical proportion to the clean tonnage and dirty tonnage controlled by each tanker operator participating in the Agreement ("Participant"). Tanker operator is defined as a corporate entity that owns or operates tankers under bareboat charters, time charters or other charter and leasing arrangements.

The Agreement has the effect of creating a pool of privately owned tanker capacity for support of national defense activities, in the management of which owners and operators are protected from civil and criminal action for violation of antitrust laws.

The Agreement establishes the terms, conditions and general procedures under which each Participant agrees voluntarily to make tankers and tanker space available to the DoD at the request of the Administrator.

The Agreement is designed to create close working relationships among the Administrator, the DoD and Participants through which military needs and the needs of the civil economy, as they exist at the time the Agreement is activated, can be met by cooperative action. The Agreement provides for responsive support of defense needs with minimum disruption of industrial operations and affords Participants maximum flexibility to adjust their commercial operations to meet current and projected defense requirements.

The capacity made available voluntarily under this Agreement may be supplemented by ships requisitioned, under the provisions of Section 902, Merchant Marine Act, 1936, as amended, from owners who are not Participants in this Voluntary Agreement and by selective requisitioning of ships of Participants.

This revision of the Voluntary Agreement of January 23, 1951 (16 FR 1964, March 1, 1951) as amended, was approved by the Attorney General and extended until April 14, 1985. Because this revised Agreement contains new administrative requirements in accordance with the revised provisions of Section 708 of the Defense Production Act of 1950, Participants in the 1951 Agreement

should confirm their participation in this Agreement by submitting new applications.

The Department of Defense has concurred in this Agreement.

The Director of the Federal Emergency Management Agency, after consultation with the Attorney General and the Chairman of the Federal Trade Commission, has concurred in this Agreement.

Revised Voluntary Tanker Agreement

I. Purpose

This Agreement establishes procedures for voluntary contribution of clean tanker capacity and dirty tanker capacity to satisfy DoD needs when the Administrator finds that a tanker capacity emergency affecting the national defense exists, that the defense requirements cannot be met by voluntary arrangements other than this Agreement, and that the defense requirement can be met more efficiently by activating this Agreement than by requisitioning ships under Section 902, Merchant Marine Act, 1936, as amended. This Agreement is a revision of the Voluntary Plan for Contribution of Tanker Capacity for National Defense Requirements (16 FR 1964, March 1, 1951), as amended on March 20, 1958 (24 FR 4119, May 21, 1951).

II. Authorities

Section 708, Defense Productioh Act of 1950 (50 U.S.C. App. 2158); EO 10480, 3 CFR 1945–1953 Comp. p. 961, as amended; EO 12148, 44 FR 43239; 44 CFR Part 332; Maritime Act of 1981 (Pub. L. 97–31); 49 CFR Subtitle A, § 166.

Section 501 of EO 10480 delegated the authority of the President under section 708 of the Defense Production Act to the Secretaries of Commerce and Transportation, among others. The Voluntary Plan for Contribution of Tanker Capacity for National Defense Requirements was sponsored by the Maritime Administrator, prior to enactment of the Maritime Act of 1981, under authority delegated by the Secretary of Commerce. The Maritime Act of 1981 transferred to the Department of Transportation all Maritime Administration agreements that were in force when the Act took effect. By 49 CFR Subtitle A, § 1.66, the Secretary of Transportation delegated to the Maritime Administrator the authority under which the Voluntary Plan was sponsored and under which this revised, replacement Agreement is sponsored.

III. General

A. *Need for the Agreement.* The Administrator has found, in accordance with section 708(c)(1) of the Defense Production Act of 1950, as amended, that conditions exist which may pose a direct threat to the national defense or its preparedness programs and, under the provisions of section 708 of the Act, has certified to the Attorney General that a standby voluntary agreement for utilization and allocation of tanker capacity is necessary for the national defense. The quantity of tanker cargo to be moved for support of a military contingency operation or war in a foreign area would exceed the capacity normally available for charter on the commercial market. It is desirable to avoid the disruptive effects of ship requisitioning under existing statutory authority so long as military requirements can be met by voluntary cooperation between the Government and the industry. The Attorney General, in consultation with the Chairman of the Federal Trade Commission, has issued a finding that tanker capacity to meet national defense requirements cannot be provided voluntarily by the industry through a voluntary agreement having less anti-competitive effects or without a voluntary agreement.

B. *History of the Agreement.* The original Agreement was approved by the Acting Secretary of Commerce on January 23, 1951, as the "Voluntary Plan for Contribution of Tanker Capacity for National Defense Requirements" (16 FR 1964, March 1, 1951). It was amended on March 20, 1958, to change details of proposed emergency plans and of administrative provisions and to place the plan in standby status (24 FR 4119, May 21, 1959). The Agreement has been revised to conform to regulations issued under 44 CFR Part 332, approved by the Department of Justice, and extended to April 14, 1985. This Agreement revises and replaces the original Agreement as amended and is issued in accordance with the provisions of 44 CFR 332.4, which shall govern any future revisions, modifications and termination.

C. *Participation.*

1. Tanker operators may become Participants in this Agreement by submitting an executed copy of the form specified in Section VII of this Agreement.

2. Ocean-going tug and barge owners and operators may become Participants in this Agreement.

3. For the purposes of this Agreement, "Participant" includes the corporate entity entering into this Agreement and all United States subsidiaries and affiliates of that entity which own or operate ships in the course of their regular business and in which that entity has more than 50 percent control either by stock ownership or otherwise.

4. A list of Participants will be published periodically in the **Federal Register.**

D. *Effective Date and Duration of Participation.* Participation in this Agreement is effective upon execution of the application form by the Participant and the Administrator or their authorized designees and remains in effect until terminated by the Administrator, the Attorney General, or the Director of the Federal Emergency Management Agency, on due notice by letter, telegram or publication in the **Federal Register** or until the Participant withdraws.

E. *Withdrawal from the Agreement.* Participants may withdraw from this Agreement subject to the fulfillment of obligations incurred under the Agreement prior to the date such withdrawal becomes effective, by giving written notice to the Administrator. Withdrawal from this Agreement will not deprive a Participant of an antitrust defense for the fulfillment of obligations incurred prior to withdrawal.

F. *Standby Period.* The "standby period" is the interval between the effective date of the Administrator's acceptance of a Participant's application and the date of activation of the Agreement as provided for in Section V.A. The Administrator's acceptance of a Participant's application does not have or imply any effect or constraint on the Participant's business operations during the standby period.

G. *Rules and Regulations.* Participants acknowledge and agree to abide by all provisions of Section 708, Defense Production Act of 1950, as amended (50 U.S.C. App. 2158), and regulations related thereto which are promulgated by the Secretary of Transportation, the Attorney General, the Chairman of the Federal Trade Commission, and the Director of the Federal Emergency Management Agency. Standards and procedures pertaining to voluntary agreements have been promulgated in 44 CFR Part 332 and reflected in 49 CFR Subtitle A, § 1.66. The Administrator shall inform Participants of new rules and regulations as they are issued.

H. *Amendment of the Agreement.*

1. The Attorney General may modify this Agreement, in writing, after consultation with the Chairman of the Federal Trade Commission and the Administrator. The Administrator, with the concurrence of or at the direction of the Director of the Federal Emergency Management Agency, may modify this Agreement, in writing, after consultation with the Attorney General and the Chairman of the Federal Trade Commission.

2. A Participant may propose amendments to the Agreement at any time. The Administrator will consider proposed amendments and obtain comments from all Participants and, if appropriate, from the public.

I. *Administrative Expenses.* Administrative and out-of-pocket expenses incurred by Participants during the standby period shall be borne by participants. Such expenses may include, among other things, travel incident to organization meetings, expenses incurred in making reports of controlled tonnage contemplated in Section V.B., and record keeping contemplated in Section III. J.

J. *Record Keeping.*

1. The Maritime Administration (MarAd) and the DoD have primary responsibility for maintaining records in accordance with 44 CFR Part 332.

2. The Director of the Office of Ship Operations, MarAd, shall be the official custodian of records related to the carrying out of this Agreement, except records of direct dealings between the DoD and Participants.

3. For direct dealings between the DoD and Participants, the designee of the Secretary of Defense shall be the official custodian of the record but the Director of the Office of Ship Operations, MarAd, shall have complete access thereto.

4. In accordance with 44 CFR § 332.3(d), each Participant shall maintain for five years all minutes of meetings, transcripts, records, documents, and other data, including any communications with other Participants or with any other member of the industry, related to the carrying out of this Agreement. Each Participant agrees to make available to the Administrator, the Attorney General, the Director of the Federal Emergency Management Agency, and the Chairman of the Federal Trade Commission for inspection and copying at reasonable times and upon reasonable notice any item that this section

requires the Participant to maintain. Any record maintained under this subsection shall be available for public inspection and copying, unless exempted on the grounds specified in 5 U.S.C. 552(b)(1) and (3) or identified as privileged and confidential information in accordance with Section 705(e) of the Defense Production Act of 1950, as amended, and 44 CFR Part 332

K. *Requisition of Ship of Non-Participants.* The Administrator may requisition ships of non-Participants to supplement capacity made available for defense operations under this Agreement and to balance the economic burden of defense support among companies operating in U.S. trade. Non-Participant owners of requisitioned tankers will not participate in the Tanker Requirements Committee and will not enjoy the immunities provided by this Agreement.

L. *Concurrent Activation of Voluntary Agreements under the International Energy Program.* This Agreement and Voluntary Agreements under the International Energy Program (IEP) are established under different authorities and for different purposes. If demands under these agreements were competitive, the Maritime Administrator would consult with all authorities concerned to develop a national course of action. This Agreement will not be used to implement the obligations of the United States under the IEP.

M. *Jones Act Waivers.* In situations where the activation of the Agreement deprives a Participant of all or a portion of its Jones Act tonnage and, at the same time, creates a general shortage of Jones Act tonnage on the market, the Administrator may request that the Secretary of the Treasury grant a temporary waiver of the provisions of the Jones Act to permit a Participant to charter or otherwise utilize non-Jones Act tonnage. The tonnage for which such waivers are requested will be approximately equal to the Jones Act tonnage chartered to the DoD and any waiver that may be granted will be effective for the period that the Jones Act tonnage is on charter to the DoD plus a reasonable time for termination of the replacement tonnage charters, as determined by the Administrator.

IV Antitrust Defense

Under the provisions of Subsection 708(j), Defense Production Act of 1950, as amended (50 App. 2158(j)), each Participant in this Agreement shall have available as a defense to any civil or criminal action brought for violation of the antitrust laws, with respect to any act or omission to act to develop or carry out this Agreement, that such act or omission to act was taken in good faith by the Participant in the course of developing or carrying out this Agreement and that the Participant fully complied with the provisions of the Act, and the rules promulgated thereunder, and acted in accordance with the terms of this Agreement. This defense shall not be available to the Participant for any act or omission occurring after the termination of this Agreement, nor shall it be available, upon the modification of this Agreement, with respect to any subsequent act or omission that is beyond the scope of the modified Agreement, except that no such termination or modification will be accomplished in a way that will deprive Participants of antitrust defense for the fulfillment of obligations incurred.

V. Terms and Conditions

A. *Agreement by Participants.*

1. Each Participant agrees to contribute clean tanker capacity and dirty tanker capacity as requested by the Administrator in accordance with Section B. below, at such times and in such amounts as the Administrator shall determine to be necessary to meet the essential needs of the DoD for the transportation of petroleum and petroleum products in bulk by sea.

2. Each Participant further agrees to make tankers and tanker capacity available to other Participants when requested by the Administrator, on the advice of the Tanker Requirements Committee, in order to ensure that contributions to meet DoD requirements are made on a proportionate basis or to ensure that no participating tanker operator is disproportionately hampered in meeting the needs of the civil economy in accordance with priorities established by authority of the President (see, for example, Section III. L.); provided, however, that the chartering of vessels between Participants in the normal course of business and not in response to requests of the Administrator is not covered by this Agreement.

B. *Proportionate Contribution of Capacity.*

1. Each Participant hereto agrees to contribute clean and dirty tanker capacity under the Agreement in the proportion that its "controlled tonnage" in each category bears to the total "controlled tonnage" of all Participants in each category. Because exact proportions may not be feasible, each Participant agrees that minor variances are permissible at the discretion of the Administrator.

2. Clean tankers and clean tonnage shall mean tankers capable of carrying refined petroleum products, including tankers in dirty trade that can be cleaned and used to carry refined products. Dirty tankers and dirty tonnage shall mean tankers used to carry crude oil and not capable of carrying refined products without major modifications to the vessel.

3. "Controlled tonnage" shall mean the total annual carrying capacity of tankers, expressed in terms of 30° gravity crude oil, Port Arthur, TX to New York, NY, including oceangoing tugs and barges, of over 6,000 dead weighttons (DWT) capacity:

a. In which, as of the effective date of the activation of this Agreement, the Participant or any of its U.S. subsidiaries or affiliates has a controlling interest and which are operated under United States, Liberian, Panamanian, Honduran, or other open registry flag; PLUS

b. Ships which are on charter or under contract to such Participant for a period of six (6) months or more from the effective date of activation of the Agreement, regardless of flag of registry, exclusive of tonnage available to the Participant under contracts of affreightment and consecutive voyage charter; provided that, in the event an owner of a vessel terminates a time charter in accordance with a war clause, the affected tonnage will be excluded from the chartering Participant's controlled tonnage; PLUS

c. Any other non-U.S.-flag tonnage which a Participant may offer to designate as "controlled tonnage" and which the Administrator agrees to; LESS

d. Tankers described in subparagraphs, a. and b. which are chartered out or under contract to others for a remaining period of six (6) months or more from the effective date of activation of this Agreement; LESS

e. Certain vessels which are fitted with special gear and are on permanent station for the storage of crude oil from a production platform and vessels which may have a dual role of production storage and transportation use to a limited location, as determined by the Administrator.

4. This Agreement shall not be deemed to commit any vessel with respect to which the law of the country of registration requires the approval of the government before entering into this Agreement of furnishing such vessel under the terms of this Agreement until such time as the required approval has been obtained.

5. "Controlled tonnage" determinations will be made separately for clean tankers and dirty tankers in the following size ranges and proportionate contributions of Participants will be calculated separately for each size category:

6,000 to 19,999 DWT
20,000 to 49,999 DWT
50,000 to 99,999 DWT
100,000 DWT and over

The Administrator may further subdivide the size categories.

6. The obligations of Participants to contribute clean and dirty capacity under the Agreement shall be calculated on a proportionate basis among the Participants by the Administrator as soon as possible after the Agreement is activated. Such calculations shall be revised thereafter at six-month intervals.

7. A vessel on incharter to a Participant shall not be subject to a relet to the DoD in the case where the period of the relet would be longer than the term of the Participant's incharter or in the case where the relet would otherwise breach the terms of the incharter, but such tonnage shall be included in the calculation of the Participant's "controlled tonnage".

8. The Administrator retains the right under law to requisition ships of Participants. A Participant's ships which are directly requisitioned by the U.S. Government or which are called up pursuant to other U.S. Government voluntary arrangements shall be credited against the Participant's proportionate contribution under this Agreement. Ships on charter to the DoD when this Agreement is activated shall not be so credited.

C. *Reports of Controlled Tonnage.* Upon request of the Administrator from time to time and in such form as may be requested, each Participant shall submit information as to "controlled tonnage" necessary for the carrying out of this Agreement. Information which a Participant identifies as privileged and confidential shall be withheld from public disclosure in accordance with Sections 708(h)(3) and 705(e) of the Defense Production

Act of 1950, as amended, and 44 CFR Part 332.

D. *Freight Rates under the Agreement.*

1. Charters of vessels at the request of the Administrator shall be made at rates of charter hire determined by the Administrator in consultation with the designee of the Secretary of Defense in accordance with paragraph 2 below and upon a type of charter determined by the Administrator in consultation with the designee of the Secretary of Defense. The type of charter may be single voyage, consecutive voyage or time charter.

2. The rate of charter hire applicable to each charter shall be the "prevailing market rate" effective at the time of the proposed loading of the vessel. The "prevailing market rate" shall be determined by the Administrator on the basis of a tanker charter market report furnished to the Administrator by a panel of three active and experienced tanker charter brokers selected by the Administrator from a list of brokers mutually agreed upon by the Administrator and the Participants and shall be equal to the lower of either (a) the average rate of the fixtures during the forty-five (45) days immediately preceding the execution of the charter party for a similar type of charter, ship DWT, equivalent loading period and trading ranges, or (b) the last three such fixtures. If within the forty-five day period prior to the execution of the charter party, there were fewer than three fixtures of the type, the brokers are to use their best judgement in recommending the rate. Voyage freight rates will be expressed in terms of American Tanker Rate Schedule (ATRS), Worldwide Tanker Nominal Freight Scale (WORLDSCALE) or other recognized voyage freight rate bases, Time hire rates will be expressed in terms of dollars per DWT per month.

3. The rate of charter hire fixed with respect to each charter shall apply for the the entire period of the charter, except that:

a. For a consecutive voyage charter, the rate of charter shall be increased or decreased to reflect increases or decreases in the price of bunker fuel applicable in the area of the vessel's trade;

b. Reimbursement for war risk insurance premiums will be made in accordance with Section V.E.;

c. The Participant will be reimbursed for crew war bonuses that are applicable to the actual voyage but are announced after the charter rate is established;

d. Each participant may apply to the Administrator for adjustments of charter hire rates to reflect other increases in the vessel's operating costs incurred directly as a consequence of operation for or under the direction of the DoD. The Administrator may effect adjustments, after consultation with the Participant, to reflect other decreases in the vessel's operating costs. In no case will the Administrator approve adjustments to reflect changes in the market other than direct operating costs.

E. *War Risk Insurance.*

1. War risk insurance premiums for time chartered vessels will be paid by the DoD.

2. For voyage and consecutive voyage charters, the Participant will be reimbursed for increases in war risk insurance premiums that are applicable to the actual voyage but are announced after the charter rate is established by the broker panel.

3. For any ship chartered under this Agreement, the Secretary of Defense may procure from the Secretary of Transportation war risk insurance on hull and machinery, war risk protection and indemnity insurance, and Second Seamen's War Risk Insurance, subject to the provisions of Section 1205(a) of the Merchant Marine Act of 1936 (46 U.S.C. 1285).

VI. Activation of the Agreement

A. *Determination of Necessity.* This Agreement shall be activated at the request of the Secretary of Defense, upon a finding by the Administrator, concurred in by the Director of the Federal Emergency Management Agency, that a tanker capacity emergency affecting the national defense exists and that the defense requirement can be met more efficiently by activation of this Agreement than by requisition of ships under Section 902, Merchant Marine Act, 1936, as amended. A tanker capacity emergency will be deemed to exist when tanker capacity required to support operations of U.S. forces outside the continental United States cannot be supplied through the commercial market or other voluntary arrangements. The Administrator shall notify the Attorney General and the Chairman of the Federal Trade Commission when such a finding is made.

B. *Tanker Requirements Committee.*

1. A Tanker Requirements committee (the "Committee") shall be appointed by the Administrator for the purpose of recommending the proportional contributions of tanker capacity by the Participants necessary to satisfy the requirements of the DoD.

2. The Committee shall be composed of a representative of each Participant and a full-time employee of MarAd. The MarAd representative shall chair the Committee and shall be assisted by experts from DoD. As the designated representative of the Administrator, the Committee Chair is authorized to administer this Agreement and apportion the contribution of tanker capacity by the Participants to the DoD.

3. Upon a finding by the Administrator in accordance with VI.A. the Committee Chair shall convene a meeting of the Tanker Requirements Committee for the purpose of:

a. Setting out the DoD requirements;

b. Establishing the approximate contribution required by each Participant to meet the requirement; and

c. Establishing the schedule for making capacity available to the DoD.

4. The Committee Chair shall:

a. Notify the Attorney General, the Chairman of the Federal Trade Commission, the Secretary of Defense, the Director of the Federal Emergency Management Agency, and all Participants of the time, place and nature of each meeting and of the proposed agenda of each meeting to be held to carry out this Agreement;

b. Provide for publication in the **Federal Register** of a notice of the time, place and nature of each meeting. If a meeting is open, a **Federal Register** notice will be published reasonably in advance of the meeting. If a meeting is closed, a **Federal Register** notice will be published within ten (10) days of the meeting and will include the reasons why the meeting is closed;

c. Establish the agenda for each meeting and be reponsible for adherence to the agenda;

d. Provide for a full and complete transcript or other record of each meeting and provide copies of transcripts or other records to the Attorney General, the Chairman of the Federal Trade Commission, the Director of the Federal Emergency Management Agency, DoD officials, and all Participants; and

e. Take necessary actions to protect confidentiality of data discussed with or obtained from Participants.

C. *Designation of the Representative of the Secretary of Defense.* The Committee Chair will announce the DoD agency designated by the Secretary of Defense to represent the DoD in the chartering of ships made available by Participants for defense service under this Agreement.

D. *Tanker Charters.* Participants will execute charter agreements with the DoD and, when requested by the Administrator in accordance with V.A.2., with other Participants, at the charter rate and on the type of charter determined in accordance with V.D. The designee of the Secretary of Defense will deal directly with tanker operators in the making of charter parties and other arrangements to meet the defense requirement, keeping the Administrator informed. If vessels are chartered between Participants, Participants will keep the Administrator informed. The Administrator will keep the Attorney General and the Chairman of the Federal Trade Commission informed of the actions taken under this Agreement.

E. *Termination of Charters under the Agreement.* The designee of the Secretary of Defense will notify the Administrator as far as possible in advance of the prospective termination of the need for tanker capacity under this Agreement and, in coordination with the Tanker Requirements Committee and as approved by the Administrator, will arrange the release of tankers from charter so as to equalize the burden on Participants.

VII. Application and Agreement

The Administrator has adopted and makes available a form on which tanker operators may apply for and become Participants in this Agreement ("Application and Agreement to Participate in the Revised Voluntary Tanker Agreement"). The form will incorporate by reference the terms of this Agreement.

By order of the Maritime Administrator, Department of Transportation.

Dated: July 16, 1983.

Georgia P. Stamas,

Secretary, Maritime Administration.

[FR Doc. 83-22997 Filed 8-24-83; 8:45 am]

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Federal Register

Thursday
August 25, 1983

Part III

Environmental Protection Agency

State Hazardous Waste Programs; Procedures for Revision of State RCRA Programs; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[SW-FRL-2368-2]

State Hazardous Waste Programs; Procedures for Revision of State RCRA Programs

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA is today proposing to amend its requirements under 40 CFR 271.21(e) (formerly § 123.13(e)) for the approval and revision of authorized state hazardous waste programs.One purpose is to ensure that states applying for final authorization under the Resource Conservation and Recovery Act of 1976, as amended, (RCRA) do not have to revise their programs and applications to respond to federal regulatory changes occurring while the states' applications are being prepared or processed. The second purpose is to provide all authorized states with one full year (or two years, if there is a need for state legislative action) from the effective date of amended federal regulations to make the revisions in their programs required by such federal amendments. This action would provide the state with an additional six months since the existing regulation requires that program revisions be made within one year (or two years) after the promulgation of amended federal regulations.

This amendment, if promulgated, will not have a major economic or environmental impact on the states or the regulated community. It will provide greater certainty to states which are applying for final authorization, since they will not have to change their applications continually when the federal regulations change.

DATE: The Agency will accept comments on these proposed amendments until September 26, 1983.

ADDRESSES: Comments on these proposed amendments should be addressed to the Docket Clerk (Docket 3006—Revision of State Programs), Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, Washington, D.C. 20460.

The public docket for this rulemaking is located in Room S-269, Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: Denise Hawkins, Office of Solid Waste (WH-563-B), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, (202) (382-2210), or the RCRA hotline, toll-free at (800) (424-9346) or in Washington at (202) (382-3000).

SUPPLEMENTARY INFORMATION:

I. Background

Section 3006(b) of the Resource Conservation and Recovery Act of 1976 (RCRA) requires EPA to grant final authorization to state hazardous waste programs that: (1) Are equivalent to the federal hazardous waste program (40 CFR Parts 124, 260-266 and 270); (2) are consistent with the federal program and other state programs which have received final authorization; and (3) provide adequate enforcement. In addition, Section 3009 of RCRA provides that state programs may not impose any requirements "less stringent" than the federal requirements. The effect of final authorization is that a state operates its state hazardous waste management program within its jurisdiction in lieu of EPA's operating the federal hazardous waste management program in the state. Regulations which govern the granting of final authorization are set forth in 40 CFR Part 271, Subpart A.[1]

Section 271.21(e) requires that all new state programs comply with the federal regulations immediately upon approval (authorization). This section also requires states which have received final authorization to make any necessary changes to their programs when the federal regulations change. The latter requirement assures that state programs remain equivalent to and no less stringent than the federal program. Program revisions after authorization must be made within one year of the date of promulgation of the modified federal regulations (or two years if a state must revise its statutes).

This provision presents problems both for states applying for final authorization and for states which are already authorized. These problems, and EPA's proposed solutions, are discussed below.

II. States Applying for Final Authorization

Section 271.21(e) presents a problem concerning the effect of federal regulatory changes on the timing of final authorizations. RCRA regulations generally do not take effect for six months after promulgation. Because RCRA gives EPA six months after a state submits its application to determine whether the state qualifies for final authorization, federal requirements promulgated during the six months before a state submits its application ordinarily would become effective during the six month application review period. As § 271.21(e) currently provides that state programs must be judged against the federal requirements in effect at the time of *approval*, a state must be concerned with new regulations promulgated while it is preparing its application that will become effective by the time the state program is scheduled to be approved. For example, if a new EPA requirement is promulgated a month before a state planned to submit its application and the state program did not contain an analogous requirement, the state would have to delay submission of its application until it modified its regulations and application. This delay could be even greater if a state needed to change its statute as well.

Further, before a state can apply for final authorization, it must provide an opportunity for public comment on the state program and must schedule a public hearing if sufficient public interest is shown (§ 271.20(a) (4) and (5)). If the adoption of a new regulation is considered a substantial revision of the state program, the state must provide an opportunity for further public comment and additional hearing (§ 271.20(b)). EPA is also required to allow for public comment and a hearing (§ 271.20(d) (1) and (2)). If the application has already been submitted and passed through the comment and hearing stage, EPA may have to provide a second opportunity for public participation as well. Thus, in addition to taking the time to amend its regulations, the state and EPA may need to allocate additional time to the state authorization hearing process.

In summary, changes in the federal program in the coming months may well delay final authorization of state programs if the federal program becomes a "moving target". This is a very serious problem because state interim authorizations expire January 26, 1985. States with interim authorization have until that date to receive final authorization or responsibility for administering the RCRA subtitle C program will automatically revert to EPA. To reduce the likelihood of such reversions and to resolve the

[1] Prior to April 1, 1983, these regulations were codified at 40 CFR Part 123, Subparts A and B. On that date, EPA recodified them at 40 CFR Part 271. (See 48 *FR* 14248-14264, April 1, 1983.)

uncertainty about what federal requirements the stated must meet to receive final authorization, EPA is proposing to establish that the federal program in effect at a specified date will be the federal program against which a state program will be measured for the purpose of receiving final authorization. This would eliminate the need for the state to revise its application continually or to delay submitting its authorization application to EPA because of federal changes occurring while the application is being prepared or being processed by EPA.

Specifically, EPA is proposing to amend § 271.21(e) to provide that each state will be reviewed for final authorization on the basis of the federal regulations in effect one year prior to submission of the state's complete application (as determined by EPA under § 271.5(b)) or the federal regulations in effect on January 26, 1983, whichever is later. The period of one year was chosen in order to be consistent with other changes (which will be explained later) being proposed today in this amendment.

The date of January 26, 1983, was chosen for this proposal since it is the date when the regulations governing treatment, storage or disposal of hazardous waste on the land became effective (47 FR 32378–32382, July 26, 1983). EPA believes all state programs must contain these critical technical requirements to receive final authorization. However, EPA would also consider using the effective date of this amendment (rather than January 26) to define the minimum program to which the states must demonstrate equivalence in their final authorization applications. This would assure that any federal regulations which become effective between January 26, 1983, and the effective date of this amendment will also be included in every state's program when it initially receives final authorization. The Agency invites comments from the public on which date would be more appropriate.

While the amendment allows a state to be reviewed based on the federal program in effect one year prior to submission of its application, it does not preclude authorization of a state based on federal regulatory amendments which become effective after that date.

III. States With Final Authorization

Several problems arise after a state receives authorization. Section 271.21(e) provides that any revisions in an authorized state program that are required because of modification of the federal regulations must be made within one year of the promulgation of the modified federal regulation. If the state must amend its statute to make the the required revisions, it has two years in which to do so.

In meetings with the Agency, the National Governor's Association (NGA) and the Association of State and Territorial Solid Waste Management Officials (ASTSWO) have expressed concern about these time periods. They have asserted that the amount of time provided by § 271.21(e) does not allow adequate leeway for their regulatory schedules, especially where there is controversy or a high level of public interest in the regulatory amendment. If a state must coordinate its regulations with other agencies, work with advisory groups or special commissions, or is developing regulations in which there is a great deal of public interest, they believe the promulgation of a state's regulations could easily be delayed beyond one year. In addition, where the state's regulations must be reviewed by the state legislature prior to becoming effective, NGA and ASTSWMO maintain that up to an additional year could be added to the process, particularly in those states where the legislature meets biennially.

Two examples illustrate this problem. Kentucky's Administrative Procedure Act prescribes rulemaking procedures which take a minimum of 218 days between the time a regulation is proposed and the time it becomes effective. These procedures include public notice and hearing and review by the Kentucky Legislative Research Commission (a standing joint committee of the Kentucky legislature) before a regulation is adopted. Preparing the regulations for proposal takes additional time. The entire process can easily take over one year.

Iowa's Administrative Procedure Act prescribes rulemaking procedures which take a minimum of 60 days between the time a regulation is proposed and the time it becomes effective. However, prior to publishing a proposed rule and holding a public hearing, the regulation must be reviewed and approved by the Environmental Quality Commission. The Commission reviews it again after the hearing. These two reviews take a minimum of 90 days. Again, preparing the regulations takes additional time. Thus, in Iowa as well, the one year time frame may be inadequate.

It appears that Iowa's and Kentucky's experience may be typical of other states. Preparation of the regulations and often-required supporting documentation (e.g., analyses of economic impact in the state, budget implications, effect on small businesses in the state) require time. These activities, combined with required coordination with other interested groups and the inevitable difficulties encountered in the governmental review and approval process, serve to create an unworkable deadline for many states. EPA needs more specific information from the states to confirm the extent of the problem and to determine what time frame would be adequate for the states to complete regulatory changes. However, because of the practical bind the states may already be in, the urgency of the "moving target" problem and the connection between these two problems (see section IV), EPA is proposing a solution now, rather than deferring a proposal until we receive a complete set of data.

Two changes to § 271.21(e) would be made to address this problem. First, all states would be given an additional six months to make their programs conform to changes in the federal program occurring after they receive final authorization. Second, the additional year already given to states which must seek statutory changes would also be given to states which must submit their regulations for review by the state legislature or legislative committees.

The reason for this latter amendment is that in a number of states, regulations must be sent to the legislature for review prior to promulgation. For example, rules in Michigan must be reviewed by the Joint Legislative Rules Committee. The Agency may not adopt rules if they have not been approved by the Committee. In Wisconsin, an objection by a standing committee of the legislature results in a full or partial ban on promulgation, depending on subsequent actions of the Joint Committee for Review of Administration Rules. The legislative review process, while varying from state to state, often takes as long or almost as long as the process to amend or adopt a statute. Therefore, EPA believes it is appropriate to distinguish between regulations which do and do not require a legislative review and to allow states as long to make changes which require legislative review as the Agency allows states to amend or adopt statutes.

In practical terms, the effect of this proposed rule is that all states would have either 18 or 30 months from the time changes are made in the federal program to make conforming changes in their own programs.

Public comments on this proposal will be critical. They will be used to confirm that there is a real need for these amendments and, if so, whether the time frames EPA has proposed are appropriate. EPA specifically requests

that the states, NGA, and ASTSWMO provide specific documentation of the problems each state is having and justify any alternative time frames they propose.

IV. Relationship Between the Proposed Amendments

The "moving target" amendment may result in the authorization of state programs that are not equivalent to, or are less stringent than, the federal program in effect on the date of authorization. However, such state programs become immediately subject to the § 271.21(e) requirement that authorized states revise their programs to correspond to changes in the federal program. Thus, the moving target amendment does not relieve any state of the obligation to amend its program when the federal program changes. To the contrary, under today's amendments to § 271.21(e) the same schedule for making changes would apply to all states, with no distinction between those that have received authorization and those whose applications are in process.

To illustrate, if a new EPA regulation took effect on November 1983, a state authorized before that date would have until November 1984 to incorporate equivalent requirements into its regulations (unless more time were needed for statutory changes or legislative review). If a state applied for authorization in January 1984, its program would not have to reflect the November 1983 federal amendment prior to being authorized. However, that state, like the one authorized before November 1983, would have to amend its program by November 1984. This means that the applicant state must actively pursue regulatory and/or statutory changes while it is preparing its application if, it is to meet the November 1984 deadline. Unlike the present situation, though, the state would not have to amend its program and delay submission of its application past November 1984, or face denial of its authorization. (Nor would the state or EPA be required to hold new public hearings on the state program before final authorization were received.)

V. Effect of Amendments

There is no practical way to assure that all states immediately incorporate analogs to federal amendments in their programs. EPA believes states must be allowed a reasonable period of time to amend their requirements. The effect of the first proposed amendment is that EPA may be authorizing states based on federal requirements which have been revised. The second proposed amendment extends the period during which state programs which have received final authorization need not be equivalent to or as stringent as the federal program.

This added time does not in any way alter the substantive requirement that state programs become equivalent to the federal program. Further, because the major elements of the federal program are already in effect, the number of requirements for which there will be a lag time between state and federal implementation should be minimal. Finally, EPA has retained the authority to issue permits in the event federal regulations are promulgated covering additional major classes of facilities (40 CFR 264.1).

VI. Effective Date

5 U.S.C. 553(d) of the Administrative Procedure Act requires that substantive rules not become effective until at least 30 days after promulgation, unless there is good cause for an earlier date. The primary purpose of these requirements is to allow persons affected by the rulemaking sufficient lead time to prepare to comply with major new regulatory requirements. The Agency believes that the effect of a moving target for authorization would be confusing and disruptive for the states, the public and the regulated community. For this amendment to provide the maximum relief, it must become effective as soon as possible. EPA invites comments on its tentative decision to make this rule immediately effective.

VII. Executive Order 12291

Under Executive Order 12291 (46 FR 12193, February 19, 1981), EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. A major rule is defined as a regulation which is likely to result in:

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, federal, state or local government agencies or geographic regions; or
- 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 regulation is not major because it will not result in an effect on the economy of $100 million or more, an increase in costs or prices, or any of the adverse affects mentioned in the Executive Order. Because this proposed amendment is not a major regulation, no Regulatory Impact Analysis is being prepared.

This proposed amendment was submitted to the Office of Management and Budget for review as required by Executive Order 12291. Any comments from OMB to EPA and any EPA response to those comments are available for public inspection at the Office of Solid Waste Docket, Room S-269, U.S. EPA, 401 M Street, SW., Washington, D.C. 20460

VIII. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. § 601 *et seq.*, EPA is required to determine whether a regulation will have significant impact on a substantial number of small entities so as to require a regulatory flexibility analysis.

The amendments proposed here merely add flexibility to procedural requirements for the revision of state hazardous waste programs and do not affect the compliance burdens of the regulated community. Therefore, pursuant to 5 U.S.C.§ 605(b), I certify that this regulation, if issued in final form, will not have a significant economic impact on a substantial number of small entities.

IX. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, EPA must estimate the paperwork burden created by any information collection requests contained in a proposed or final rule. Because there are no information collection activities created by this rulemaking, the requirements of the Paperwork Reduction Act do not apply.

Information collection requirements contained elsewhere in 40 CFR Part 271 have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act and have been assigned OMB control number 2000-0387.

List of terms used in Part 271

Hazardous materials, Indian lands, Reporting and recordkeeping requirements, Waste treatment and disposal, Intergovernmental relations, Penalties, Confidential business information.

Dated: August 18, 1983.

William D. Ruckelshaus,

Administrator.

For the reasons stated above, EPA proposes to amend 40 CFR 271.21 as follows:

PART 271—STATE PROGRAM REQUIREMENTS

40 CFR Part 271 Subpart A is proposed to be amended as follows:

1. The authority citation for Part 271 reads as follows:

Authority Secs. 1006, 2002(a), and 3006, Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*

2. 40 CFR 271.21 is amended by revising paragraph (e), as follows:

§ 271.21 Procedures for revision of state programs.

* * * * *

(e) (1) States submitting complete applications for final authorization shall be reviewed for authorization on the basis of the regulations in 40 CFR Parts 124, 260–266 and 270 that are in effect on the date one year prior to submission of the complete application or on January 26, 1983, whichever is later. However, a state may receive final authorization for any regulation in its program that is analogous to a federal regulation in effect on the date of the state's authorization.

(2) Any approved state program which requires revision because of a modification to this Part or to 40 CFR Parts 124, 260–266 or 270 shall be revised within one year of the effective date of the modified federal regulation. If a state must enact or amend a statute in order to make the required changes, or if regulations are subject to review by the state legislature, such revision shall take place within two years of the effective date of the modified federal regulation.

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Part IV

Environmental Protection Agency

Standards of Performance for New Stationary Sources; Beverage Can Surface Coating Industry

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-2097-2]

Standards of Performance for New Stationary Sources; Beverage Can Surface Coating Industry

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Standards of performance for the beverage can surface coating industry were proposed in the **Federal Register** on November 26, 1980 (45 FR 78980). This action promulgates standards of performance for the beverage can surface coating industry. These standards implement Section 111 of the Clean Air Act and are based on the Administrator's determination that beverage can surface coating operations cause, or contribute significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare. The intended effect of these standards is to require all new, modified, and reconstructed beverage can surface coating operations to control emissions to levels achievable through the best demonstrated system of continuous emission reduction, considering costs, nonair quality health, and environmental and energy impacts.

EFFECTIVE DATE: August 25, 1983.

Under Section 307(b)(1) of the Clean Air Act, judicial review of this new source performance standard is available *only* by the filing of 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 this rule. Under Section 307(b)(2) of the Clean Air Act, 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.

ADDRESSES: *Background Information Document.* The Background Information Document (BID) for the promulgated standards may be obtained from the U.S. EPA Library (MD-35), Research Triangle Park, North Carolina 27711, telephone number (919) 541-2777. Please refer to "Beverage Can Surface Coating Industry—Background Information for Promulgated Standards "EPA-450/3-80-036b. The BID contains (1) a summary of all the public comments made on the proposed standards and the Administrator's response to the comments, (2) a summary of the changes made to the standards since proposal, and (3) the final Environmental Impact Statement, which summarizes the impacts of the standards.

Docket. A docket, number A-80-4, containing information considered by EPA in development of the promulgated standards is available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section (A-130), West Tower Lobby, Gallery 1, 401 M Street SW., Washington, D.C. 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Fred Porter, Standards Development Branch, Emission Standards and Engineering Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5578.

SUPPLEMENTARY INFORMATION:

The Standards

Standards of performance for new sources established under Section 111 of the Clean Air Act reflect:

> * * * Application of the best technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, [and] any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated [Section 111(a)(1)].

For convenience, this criterion will be referred to as "best demonstrated technology" or "BDT."

The promulgated standards apply to all new, modified, and reconstructed two-piece beverage can surface coating operations for which construction, modification, or reconstruction commenced after November 26, 1980. The standards define a two-piece beverage can as any two-piece steel or aluminum container in which soft drinks or beer (including malt liquors) are packaged. Containers in which fruit or vegetable juices are packaged are excluded. Existing facilities would not be subject to the standards unless they undergo a modification or reconstruction as defined in 40 CFR 60.14 or 60.15. Emissions of volatile organic compounds (VOC) from affected facilities at two-piece can plants are limited as follows: 0.29 kg VOC/litre of coating solids from each exterior base coating operation except clear base coating, 0.46 kg VOC/litre of coating solids from each overvarnish coating operation and each clear base coating operation, and 0.89 kg VOC/litre of coating solids from each inside spray coating operation. Each affected facility consists of a coating application station, a flashoff area and a cure oven.

BDT for the surface coating operations covered by the promulgated standards is the use of best available waterborne coatings. However, the standards would permit the use of any system of continuous emission reduction that allows the facility to comply with these emission limits. For example, the standards could also be achieved through the use of solvent-borne coatings in combination with an emission control system. The compliance procedures outlined in the promulgated regulations are designed to show equivalence between the use of waterborne coatings and the use of solvent-borne coatings and an emission control system.

The owner or operator is required to conduct a performance test each calendar month for each affected facility and record the results. The calculation of the volume-weighted average mass of VOC per volume of coating solids during each calendar month constitutes a performance test. The owner or operator is required to identify and report, semiannually, each instance that the calculated volume-averaged mass of VOC per volume of coating exceeds the emission limitations. When Method 24 data are used to determine VOC content of waterborne coatings for compliance determinations, precision factors shall be used as described in Section 4.4 of Method 24.

Where compliance is achieved through the use of waterborne coatings, compliance with the standards is determined by comparing the calculated volume-weighted average mass of VOC per volume of coating solids with the applicable emission limitation in the promulgated standards. Volume and VOC content of each coating used at the affected facility for the calendar month are required for this determination. If each coating used at an affected facility during a calendar month has a VOC content equal to or less than the emission limitations prescribed in the standards, and no VOC solvents are added during distribution and application of the coatings, the affected facility is in compliance and calculation of the volume-weighted average VOC content is not required.

Where compliance is achieved through the use of solvent-borne coatings and an emission control system, the volume-weighted average VOC content is calculated as for waterborne coatings. The calculated VOC content is reduced by the most recently determined overall reduction efficiency of the capture and emission control system. The promulgated regulations prescribe procedures for determining overall reduction efficiency

for emission control systems using incineration or solvent recovery.

The owner or operator of an affected facility who uses incineration to comply with the standards must maintain records of incinerator performance and identify and report, semiannually, all 3-hour periods during which the average temperature of the device, during processing of cans, is significantly lower than the average temperature observed during the most recent performance test at which destruction efficiency was determined.

Surface coating operations in the manufacture of can ends and three-piece steel cans are excluded from the standards because industry projections show an excess capacity for these operations, indicating that no facilities will become subject to the standards through 1985. Application of ink/lithography is excluded because emissions from this operation are insignificant. Application of end-sealing compound to ends for two-piece beverage cans is excluded because BDT is the same as that in common use today.

Summary of Environmental, Energy, and Economic Impacts

The promulgated standards would reduce VOC emissions by approximately 32 percent from the baseline emission level. The standards of performance would result in a 47-percent reduction in VOC emissions from the exterior base coat operation, a 15-percent emission reduction from the overvarnish coating operation, and a 26-percent emission reduction from the inside spray coating operation. Annual nationwide VOC emissions would be reduced by about 2,900 Mg (3,190 tons) by 1986.

Little or no incremental water pollution impact from new, modified, or reconstructed beverage can surface coating operations would result from implementation of the standards.

The promulgated standards would also have little or no incremental solid waste impact.

Based on industry growth projections, application of the standards would result in a net energy reduction of about 19,000 GJ in 1985, or a reduction of 1 percent from the baseline. The net energy reduction results from the use of less coating per can because of higher solids content of the waterborne coatings upon which the standards are based.

The promulgated standards are expected to have little economic impact on the beverage can industry. At least one control option, the cost of which is equal to or less than the cost of compliance with the baseline level of control, is available for each affected facility.

The environmental, energy, and economic impacts are discussed in greater detail in the Background Information Document (BID) for the proposed standards, "Beverage Can Surface Coating Industry—Background Information for Proposed Standards," EPA–450/3–80–036a.

Standards of performance have other benefits in addition to achieving reductions in emissions beyond those required by a typical SIP. They establish a degree of national uniformity, which precludes situations in which some States may attract new industries as a result of having relaxed air pollution standards relative to other States. Further, standards of performance provide documentation which reduces uncertainty in case-by-case determinations of best available control technology (BACT) for facilities located in attainment areas, and lowest achievable emission rates (LAER) for facilities located in nonattainment areas. This documentation includes identification and comprehensive analysis of alternative emission control technologies, development of associated costs, an evaluation and verification of applicable emission tests methods, and identification of specific emission limits achievable with alternative technologies. The costs are provided for an economic analysis that reveals the affordability of controls in an unbiased study of the economic impact of controls on an industry.

Public Participation

Prior to proposal of the standards, interested parties were advised by public notice in the **Federal Register** (45 FR 30686; May 9, 1980) of a meeting of the National Air Pollution Control Techniques Advisory Committee to discuss the beverage can surface coating industry standards recommended for proposal. This meeting, held on June 4, 1980, was open to the public, and each attendee was given an opportunity to comment on the standards recommended for proposal. The standards were proposed and published in the **Federal Register** on November 26, 1980 (45 FR 78980). The preamble to the proposed standards discussed the availability of the Background Information Document, "Beverage Can Surface Coating Industry—Background Information for Proposed Standards," EPA–450/3–80–036a, which described in detail the regulatory alternatives considered in the development of the standards and the impacts of those alternatives. Public comments were solicited at the time of proposal and, when requested, copies of the BID were distributed to interested parties. To provide interested persons the opportunity for oral presentation of data, views, or arguments concerning the proposed standards, a public hearing was held on January 6, 1981, at Research Triangle Park, North Carolina. The hearing was open to the public, and each attendee was given an opportunity to comment on the proposed standards. The public comment period was from November 26, 1980 to February 5, 1981. At industry's request, the public comment period was reopened from February 27 through March 30, 1981.

Eighteen comment letters were received and four interested parties testified at the public hearing concerning issues relative to the proposed standards of performance for the beverage can surface coating industry. The comments have been carefully considered; and, where determined to be appropriate by the Administrator, changes have been made in the proposed standards.

Significant Comments and Changes to the Proposed Standards

Comments on the proposed standards were received from the beverage can surface coating industry, coating manufacturers, Federal agencies, State pollution control agencies, and a trade association. A detailed discussion of these comments and responses can be found in the BID, which is referred to in the ADDRESSES section of this preamble. The comments and analyses expressed in the responses serve as the basis for the revisions that have been made to the standards between proposal and promulgation. The major comments and responses are summarized in this preamble. The comments have been divided into the following areas: general, emission control technology, modification and reconstruction, economic impact, environmental impact, energy impact, legal considerations, test methods and monitoring, reporting and recordkeeping, and miscellaneous.

Major changes in the promulgated standards from the proposed standards are (1) exclusion of three-piece cans from the standards, (2) exclusion of end sheet coating from the standards, (3) adding the requirement that precision factors, as described in Section 4.4 of Method 24, be used when Method 24 data are employed to determine VOC content of waterborne coatings for compliance determinations, and (4) changing the requirement for immediate reporting of exceedances to semiannual reporting.

General

Six commenters stated that three-piece beverage cans were being phased out, with an estimated 1985 production of between 0.5 and 1.5 billion cans, and should be excluded from the standards. As a result of these comments, EPA analyzed previous projections and determined that estimated demands for three-piece can capacity in 1985 would be about 50 percent of the estimated available capacity. Consequently, three-piece cans are excluded from the promulgated standards. The decrease in three-piece can production would free more coating capacity than is needed for the coating of steel and aluminum sheets for the manufacture of beverage can ends. This capacity can be used for coating aluminum sheets for ends with little or no change. Thus, no end sheet coating capacity would become subject to NSPS through 1985. Consequently, surface coating of end stock is also excluded from the standards.

Several comments were received stating that the proposed standards were not based on the best demonstrated systems of continuous emission reduction. Three commenters stated that the use of waterborne coatings has not been demonstrated as being commercially available. One commenter doubted that solvent-borne coatings and incineration could be used in the event waterborne coatings were impracticable. One commenter stated that promulgation of the proposed standards would force the industry to turn to one supplier for inside spray materials.

As a result of these comments, EPA significantly expanded the data base upon which the promulgated standards are based through telephone and written communications with coaters and coating suppliers. The expanded data base substantiated EPA's previous determination that the use of waterborne coatings is BDT and that coatings meeting the promulgated emission limits are available from more than one supplier. Summary of the data base by coating operations follow:

Two-piece Can Exterior Base Coat

Five canmakers, four merchant and one captive, reported using coatings with VOC contents equal to or less than that specified in the standards. Three of these canmakers identified four coatings from one supplier as being used, two reporting the use of complying coatings for all base coat requirements. Of the remaining canmakers, one did not identify the coating being used, and the other claimed confidentiality for the coating being used. One additional coating from a second supplier has been qualified for use on one merchant coater's new and existing can lines. In discussions with canmakers during the collection of the data, no specific cases were identified in which waterborne coatings could not be used for the application of exterior base coat to two-piece beverage cans.

Two-Piece Can Overvarnish/Clear Base Coat

Four canmakers, three merchant and one captive, reported using coatings with VOC contents equal to or less than that specified in the standards. Two of these canmakers identified four coatings from two suppliers as being used, one reporting the use of complying coatings for all overvarnish requirements. Of the remaining canmakers, one did not identify the coating being used, and the other claimed confidentiality for five coatings used. All of the captive canmakers' requirements are being satisfied by waterborne coatings meeting the NSPS emission limitations. Five additional coatings meeting the NSPS emission limitations are available from three suppliers. Future testing is planned for some of these coatings. In discussions with canmakers during the collection of the data, no specific cases were identified in which waterborne coatings could not be used for the application of overvarnish or clear base coat to two-piece beverage cans.

Two-Piece Can Inside Spray

Seven canmakers, five merchant and two captive, reported using coatings with VOC contents equal to or less than that specified in the standards. Five of these canmakers identified four coatings from three suppliers as being used, two canmakers reporting the use of complying coatings for all inside spray requirements. Of the remaining two, one did not identify the coating being used, and the other claimed confidentiality for the coatings being used. During the collection of the data, two specific cases were identified in which satisfactory waterborne coatings were not available. One canmaker reported that at two plants making cans for export, excessive pinholing occurred because the extreme abuse the cans received in shipping and handling caused separation of the coating. In subsequent discussions, the canmaker reported that the problems had been resolved and that waterborne coatings meeting the NSPS emission limitations are now being used for all inside spray operations at one plant, and that a program is underway at the second plant to develop a suitable waterborne inside spray system. This plant is currently incinerating VOC emissions from inside spray operations to meet local regulations. In the second case, difficulty was being experienced in applying waterborne inside spray to steel cans. In this case, solvent-borne coatings are required to make satisfactory cans and incineration is employed to satisfy the local emission limitations. The same procedures can be used to satisfy NSPS emission limitations. The necessary capture and destruction of VOC can be attained by enclosing the flashoff areas and incinerating flashoff and cure oven exhausts.

One public hearing participant took exception to statements made in the beverage can factsheet that probably 4 new three-piece can plants and 10 to 20 new two-piece can plants were to be built between 1980 and 1985. The participant felt that this was not consistent with data that industry presented at the NAPCTAC meeting in June 1980 that indicated a dramatic reduction in three-piece can production and a leveling off of demand for two-piece cans.

The beverage can factsheet, a summary of the proposal BID and regulation published at the time of proposal, states that "EPA estimates 10 to 20 two-piece beverage can plants and 4 three-piece beverage can plants will be affected by the proposed NSPS, the latter subject under the modification or reconstruction provisions." These plants are model plants and are the number that were considered subject to NSPS for the purposes of the economic analyses. It should be noted that the statement concerning three-piece can plants specifically excludes new facilities and indicates that facilities in place in 1979 would become subject to the modification or reconstruction provisions. The estimates of the number of model plants that would be subject to NSPS were based on industry estimates of the projected market share of two-piece and three-piece beverage cans that were later changed by data provided by the industry during the public comment period. As previously mentioned, EPA analyzed the new industry data and developed revised projections that show that no three-piece can plants would be subject to the NSPS through 1985. Insofar as two-piece can plants are concerned, based on the revised projection it is estimated that between 7 and 15 two-piece model plant equivalents would be subject to NSPS in 1985, half under the reconstruction or modification provisions. These estimates are based on an average of 5 percent of existing capacity becoming subject to NSPS under the modification

and reconstruction provisions each year through 1985. These estimates are consistent with industry projections that show an increase in two-piece can shipments from 49.6 billion cans in 1980 to 61.9 billion cans in 1985.

Two participants at the public hearing were concerned that if NSPS emission limitations were promulgated, major reformulation of coatings developed to meet RACT would be required. This redirection of coating suppliers' efforts would be at the expense of developing coatings to satisfy RACT. Such an approach could result in achieving neither RACT nor NSPS.

EPA agrees that major reformulation may be required for some low-solvent coatings. However, given the coating data obtained from canmakers and coating suppliers, this does not appear to be a problem. A majority of the coatings developed to satisfy RACT requirements would also satisfy NSPS requirements. Four coatings each for exterior base coat, overvarnish, and inside spray, developed in response to RACT requirements but also meeting the NSPS emission limitations, are being widely used by the industry.

Two comments were received questioning the change in format of the standards from kilograms of VOC per litre of coating less water, as used in RACT, to kilograms of VOC per litre of solids. EPA has determined that the format of the promulgated standards is appropriate. Compliance with the promulgated standards is determined by comparing a volume-weighted average of the VOC content of all coatings and diluent solvents applied at an affected facility during each calendar month with the emission limitations of the promulgated standards. This requires conversion of VOC content of each coating used to mass of VOC per volume of coating solids. This procedure must be used in averaging VOC content of coatings for RACT determination as well. Consequently no change is made to the format of the standards.

One commenter questioned the need for an NSPS that requires industry to do what is already being done. New installations in nonattainment areas would be required to use lowest achievable emission rate (LAER), which in this case would be "achieved in practice," that would be the same as the proposed NSPS. Installations in attainment areas, if any, would of course be required to apply best available control technology (BACT), which would be the coatings now in use and the same as the proposed NSPS.

In enacting Section 111, Congress intended to insure that every new, modified, or reconstructed facility, wherever located, control emissions to at least a nationally uniform emission ceiling. Congress recognized that in individual cases greater emissions reduction could be achieved than that achievable through application of BDT. For these individual cases, the Act may require application of more stringent requirements. Even though, as the commenter suggests, BACT or LAER requirements applicable in such individual cases may eventually spur development of broadly demonstrated coatings similar to or better than NSPS-level coatings, Section 111 still requires the Agency to set minimum nationally applicable standards that will insure control of emissions at new sources to at least the level achievable through use of BDT.

One commenter stated that the proposed standards do not require the "best demonstrated system of continuous emission reduction * * * " and that by regulating the VOC content of coatings for new sources without regard to quantity of coating supplied, the Agency is encouraging the construction of new facilities with greater emissions than identical existing CTG facilities. The commenter further stated that the quantity of coating needed by the various canmakers to produce an acceptable can is a much more significant factor in emission reduction technology than is the VOC content of the waterborne coatings used, and that manufacturing materials that inherently require less applied coating than other materials represents a better system of emission reduction. The commenter submitted that this is an obvious conclusion drawn from the draft EIS and from information contained in Docket A–80–4. As a result of ignoring this fact, the Agency has prepared a standard that cannot possibly be construed as meeting the intent of Section 111 of the Clean Air Act.

In EPA's judgment, the promulgated standards are based on BDT. Formatting the standards in terms of mass of VOC per unit of production, e.g., 1,000 cans, was considered in the development of the standards. This approach was discarded because of inflexibility in accommodating the range of coating thicknesses used by the industry to meet the requirements of the many types of beverage cans produced by the industry, especially at merchant can plants. Such an approach also raised problems in setting numerical limits for the standards. If an industry-average coating thickness is used as the basis, coaters using an above-average coating thickness would be penalized. The Agency considers the cost of specifying maximum coating thickness for each usage unreasonable and exorbitant. Consequently, this format was rejected in favor of the mass of VOC per volume of coating solids format.

Emission Control Technology

A comment was made that the proposed emission limitations were so stringent that coating suppliers would not have any latitude to vary formulations as required to meet the wide range of equipment used and the environmental conditions encountered in beverage can surface coating operations.

EPA has determined from coating data obtained from canmakers that coating suppliers are providing coatings meeting the promulgated emissions limitations for a wide range of equipment and environmental conditions. Only two specific cases were identified involving two-piece can inside spray operations in which satisfactory waterborne coatings were not available. In these cases operational and environmental requirements were being satisfied through the use of solvent-borne coatings and incineration. Furthermore, the monthly averaging provisions of the standards for each affected facility would permit the use of some coatings not meeting the standards, provided other coatings with lower VOC content were used to bring the monthly volume-weighted average to the promulgated emission limitations.

One commenter stated that under NSPS, existing coating systems that have not yet been able to meet RACT values must meet even more stringent emission standards. Essentially only incineration, a counterproductive energy-consuming system, can be used.

Existing coating systems are not required to meet the promulgated standards unless the facility undergoes modification or reconstruction as defined in 40 CFR Part 60. Under such circumstances, in EPA's judgement, there are sufficient coatings commercially available for a wide variety of coating systems to meet the standards. Based on the economic analysis in Chapter 8, proposal BID, incineration is considered to be a reasonable and affordable option.

Several commenters expressed concern that if NSPS materials for two-piece can inside spray are not available, afterburners will have to be used. This could very well call for an overall control efficiency of 80 percent, requiring approximately 90 percent capture efficiency, which is not attainable.

In response to this and other comments, EPA expanded the coating

data base with information from canmakers and coating suppliers that indicates the availability of a variety of waterborne coatings for inside spray. The VOC content of waterborne coatings reported as being used by both merchant and captive canmakers ranges from 0.46 kg VOC/litre of solids to 0.90 kg VOC/litre solids compared with the promulgated emission limitation of 0.89 kg VOC/litre of solids. The promulgated regulations permit monthly averaging, which should facilitate satisfying the requirements.

During the collection of data only two cases were identified in which satisfactory waterborne coatings were not available. In these cases, solvent-borne coatings and incineration provided the emission reduction required by the applicable SIP.

A typical higher solids solvent-borne inside spray coating in general use contains 3.01 kg VOC/litre of coating solids (Table 4–2, proposal BID). An overall control efficiency of 70 percent is required to reduce the VOC emissions from the use of this typical inside spray coating to the emission level prescribed in the promulgated standards. A test at a two-piece can plant, using Method 25 procedures, showed a 78-percent capture efficiency of VOC emissions from coater, flashoff area, and cure oven on an inside spray line. This capture efficiency is considered to be conservative because the cure oven quench exhaust was not quantified in the test. Combining this capture efficiency with a nominal 90-percent incinerator destruction efficiency results in an overall control system efficiency of 70 percent. It is the Agency's engineering judgment that in instances in which the use of waterborne coatings may not be applicable, the necessary capture and control (destruction or recovery) are attainable at a reasonable and affordable cost (Chapter 8, proposal BID).

Several commenters stated that because of (1) difficulties being experienced in implementing the RACT program, (2) the limited capabilities of users to qualify new coatings, (3) the problems involved in qualifying NSPS materials on existing lines prior to the construction of new facilities, and (4) small incremental emission reduction from NSPS compared to that resulting from the trend away from three-piece cans to two-piece cans, RACT values should form the basis for NSPS.

EPA has determined that the promulgated emission limitations for two-piece cans represent BDT. The problems of implementing RACT and the problem generated by the limited capabilities of users to qualify new coatings appear to be overstated in light of the coating data obtained from canmakers and coating suppliers. Numerous coatings with VOC content equal to or less than RACT are being used on existing two-piece can lines. In addition to meeting RACT, many of these coatings also satisfy the NSPS requirements. The problems of qualifying NSPS materials on existing lines prior to the construction of new facilities would not be resolved by using RACT as the basis of the NSPS. One practice prevalent throughout the industry is that coatings must be qualified on each line regardless of their use in other plants operated by the same canmaker. EPA agrees that there has been a significant reduction in VOC emissions as a result of RACT and the trend away from three-piece cans to two-piece cans. However, EPA is mandated under Section 111 of the Clean Air Act to base NSPS on BDT, which for this industry is the use of coatings with lower organic solvent content than RACT coatings.

One commenter stated that EPA, in proposing NSPS, has tried to design can lines and specific materials.

EPA formulated model plants in order to perform the environmental and economic analyses required in NSPS development. These are not intended to represent what an actual plant should look like, but rather present a range of capacities as the basis for subsequent analyses. The model plants are based on coatings currently in use on sufficient lines to warrant the determination of the availability of NSPS-compliance coatings. EPA's specification of BDT is not in any way a requirement that facilities use a specific technology.

Two commenters challenged the implied assumption in the BID that the industry is using coatings that are RACT as defined in CTG–II.

The assumption that industry is currently using RACT coating was not made in the development of the NSPS. Rather, the assumption was made that SIP emission limitations would be based on RACT and that RACT should form the baseline case against which the environmental and energy analyses could be made.

EPA recognizes that on some can lines, coatings with VOC content lower than RACT are being used. These coatings serve as the bases for the promulgated emission limitations. On other lines RACT coatings are being used, and on the remaining lines coatings with VOC content higher than RACT are in use. In the development of a baseline for the environmental and energy analyses, EPA made the assumption that in the absence of NSPS, the industrywide average VOC content would be equal to RACT.

One commenter stated that the distinction should be made in the draft EIS (p. 3–10) between steel and aluminum with regard to exterior base coat for two-piece cans.

EPA made no distinction between steel and aluminum two-piece cans in the development of model plants. While it is recognized that different coatings thicknesses are required, the additional effort is not justified by the marginal improvement in accuracy that would result in estimating emissions and energy requirements in the subsequent analyses.

One commenter took exception to EPA's statement in 45 FR 78982 that "transfer efficiencies of 90 percent with inside spray operations are consistently achieved." Exactly what EPA's use of 10-percent VOC assessment in this instance means was unclear. It was requested that EPA consider allowing a facility that demonstrates a consistent transfer efficiency (for inside coating operations) of greater than 90 percent to credit that percentage above 90 percent against other coating operations that may exceed the compliance limits.

Because of the absence of standardized procedures for determining transfer efficiencies, the complicated calculations for estimating transfer efficiencies, and the high transfer efficiencies consistently achieved for inside spray operations (over 90 percent), EPA determined that introducing a transfer efficiency into the equations prescribed for determining compliance would unnecessarily complicate the compliance procedures. Because of the high transfer efficiencies (90 percent or higher) that are consistently achieved, inclusion of such a term in the compliance equation would be equivalent to introducing essentially the same term on both sides of the equation. Consequently, the promulgated standards are based on an assumed 100-percent transfer efficiency. It should be noted that a 90-percent transfer efficiency was used in the environmental and energy analyses for inside spray operations.

Two commenters questioned the use of an assumed VOC density of 0.85 kg/litre in converting RACT numbers to kilograms of VOC per litre of solids. One commenter claimed that it is dangerous to propose new standards on assumptions rather than hard data. For example, an error of 5 percent in VOC density would result in a change of 37 percent in the calculated kilograms of VOC per litre of solids. Furthermore, no can manufacturer or coating supplier

has been able to duplicate the data in the BID.

EPA recognizes that the conversion of VOC content from RACT terms is sensitive to the density of the VOC solvent. The selected density of 0.85 kg/litre is below that of the VOC normally used in waterborne coatings. Use of this density results in a higher VOC content per volume of solids than if the actual VOC density of the coating upon which the promulgated emission limitations are based were used. Inasmuch as this favors the coater, EPA considers this approach appropriate. The 37-percent error in calculated kilogram of VOC per litre of solids from a 5-percent error in density appears to be overstated. EPA calculations on the impact of a 5-percent error in density indicate, as shown below, that even if the assumed density of 0.85 kg/litre were inaccurate by 5 percent, the resulting effect on conversion from RACT to NSPS terms would not be significant.

Density	Calculated VOC content (kg/litre solids)	Percent change
VOC content kg/litre of coating less water = 0.050		
0.85 × 0.95	1.313	6.2
0.85	1.214	0
0.85 × 1.05	1.137	6.3
VOC content kg/litre of coating less water = 0.15		
0.85 × 0.95	0.184	1.1
0.85	0.182	0
0.85 × 1.05	0 180	1.1

The following equation was used in converting the RACT format to MSPS.

Kilograms of VOC per litre of solids = kilograms of VOC per litre of coating less water/1 (litre of coating) − kilograms of VOC per litre of coating less water/density of VOC.

Modification and Reconstruction

One commenter felt that the replacement of a coater or oven should not be classified as reconstruction because it is replacement in kind due to wear not to increased material usage, and that replacement should not be subject to NSPS.

In promulgating 40 CFR 60.15, EPA intended to subject to NSPS existing sources that have undergone such extensive component replacement that they have become essentially new sources. Application of BDT to facilities with largely new components furthers the intent of Congress that emissions be minimized through application of BDT with the turnover in the nation's industrial component base. This purpose is advanced through coverage of facilities that undergo substantial component replacement, whether the replacement is due to wear or increased material usage, and whether or not an emissions increase results from the replacement.

Under § 60.15, the replacement of a piece of equipment does not in itself subject an existing facility to NSPS. However, when the cost of components over time exceeds 50 percent of the cost of a comparable new facility and it is technologically and economically feasible for the facility to comply, NSPS would apply. In making decisions that involve the expenditure of funds that would trigger the reconstruction provisions, industry also should consider the cost of any control system that may be necessary to meet the NSPS requirements.

Economic Impact

Three commenters questioned EPA's conclusion that the proposed standards would have little economic impact on the beverage can industry. EPA would be imposing VOC emission limits below the (current) lowest achievable levels of several can coating manufacturers. If those manufacturers could not achieve the new levels, the November 26 proposals would be regulating them out out of business at the outset. This in turn would reduce or restrict competition within the coating supply industry, which would cause substantial economic hardship on can manufacturers. One commenter stated that industry's comments on this matter were ignored.

Because EPA's analyses of industry projections showed that no end or three-piece can capacity would be subject to the standards in 1985, only two-piece cans are covered by the promulgated standards. Therefore, response will be limited to two-piece beverage cans. The promulgated standards will not apply to existing facilities except when they become subject to the modification or reconstruction provisions of 40 CFR Part 60. Industry's recommendations concerning the adoption of emission limits lower than RACT were not ignored. For example, as a result of industry comments at the NAPCTAC meeting, application of end-sealing compound was excluded from the proposed standards. Industry recommendations were considered in the development of the promulgated standards, but in the light of other ecomonic and coating availability data, a determination was made that the promulgation of NSPS for the beverage can surface coating industry would not result in exorbitant or unreasonable economic impacts.

As discussed in the General Comments section above, waterborne coatings that can meet the promulgated standards are available and in use in a sufficient number of cases to conclude that the technology is available for all uses except for inside spray for steel cans. Two existing plants have not been able to find a waterborne coating that performs properly for their particular applications and are using solvent-borne inside sprays with incineration to meet State and local emission standards. EPA's analysis indicates that there are no economic impacts to the industry if waterborne coatings are used. Waterborne coatings which comply with the standard are comparable in cost with waterborne coatings used to meet State and local regulations based on RACT; and both are less costly than the use of solvent-borne coatings with add-on controls. As noted above, two existing plants are currently meeting State and local standards by using solvent-borne coatings with incineration. These same controls could be used at new plants and, while additional costs may be required for fugitive capture to meet the NSPS and for a slightly larger incinerator, these represeent a small increment of the existing capture and incineration costs and would not affect plant viability or competition.

Energy Impact

One comment was made that the energy requirements in Tables 6–6, 7–18, and 7–22, draft EIS, do not take into account that ventilating air must be heated in winter.

Ventilating air must be heated in the winter whether or not NSPS are promulgated. The energy analysis is based on the incremental energy requirements between the base case and the emission control option under consideration. In all cases except one, the ventilating air requirements are significantly less than for the base case. End forming, the exception, has been excluded from the standards. Thus, any error introduced by not including the heating or ventilating air results in a lower energy savings than would actually be realized over the base case.

One commenter took exception to the statement in the preamble that the proposed standards would result in a net energy reduction because less coating per can would be used (based upon higher solids contents of waterborne coatings). Experience indicates that waterborne coatings require as much or more energy expenditure as solvent coatings. Further review or data collection concerning this issue was recommended. The commenter offered to submit data for both waterborne and solvent-based can coatings, upon EPA's request.

This comment was subsequently withdrawn by the commenter because appropriate inquiries to other canmakers led to the conclusion that the comment was not applicable to the industry as a whole. However, because the issue was raised, EPA considers that a general discussion of energy requirements is appropriate. It is assumed that the comment applies only to two-piece cans because the commenter's company makes only that type of can. Under some conditions, cure oven energy requirements for waterborne coatings for two-piece cans may be higher than for solvent-borne coatings. As discussed in Chapter 3 of the proposal BID, when waterborne coatings are used, exhaust air flow through the cure oven is based on considerations other than the lower explosive limit. Sufficient air must pass through the oven to clear the VOC and compounds that may be formed during the curing process. In general, air flows are about the same as when solvent-borne coatings are used.

In such a case the energy to heat and vaporize the water content of the coating would be greater than that required for an equivalent volume of VOC. However, energy required to heat and vaporize water or VOC is less than 10 percent of the total energy requirements when pin ovens are used. The greater portion of the energy requirements are for heating the air, heating the cans, and heating the pins. Similar considerations would apply to other than pin-type ovens.

In determining incremental energy impacts, both the base case and regulatory alternative energy requirements were based on the use of waterborne coatings. Because the energy impact is based on the difference between the base case and the alternatives under analysis and for the reasons cited above, the energy analyses are considered to be sufficiently accurate for standards development.

Environmental Impact

Two commenters stated that emission reductions will occur naturally as a result of conversion from three-piece to two-piece can production. Coating material used for the manufacture of two-piece cans is approximately 28 percent less than the coating material used for the manufacture of three-piece cans, regardless of whether the material used is conventional high solvent or RACT. Therefore, a net emission reduction results with the shift from three-piece cans to two-piece cans. This reduction far outweighs any reduction that will occur as a result of implementation of NSPS.

EPA agrees that there has been a significant reduction in VOC emissions as a result of the trend away from three-piece cans to two-piece cans. Emission data to date substantiate this. It is also true that reduction attainable through the promulgation of the beverage can surface coating NSPS will be much less than that achievable upon complete implementation of the RACT program. However, EPA is required under Section 111 of the Clean Air Act to promulgate NSPS for industries within source categories on the Priority List where, as in the case of this industry, application of control technology will achieve significant reduction beyond that achieved without NSPS. Application of BDT, which for this industry is the use of coatings with lower organic solvent content than RACT coatings, would achieve such a reduction. As a result, Section 111 requires EPA to promulgate standards reflecting such application.

Legal Considerations

Two canmakers were concerned that moving an existing plant to another site would subject the plant to NSPS or State new source emission limitations.

Movement of an affected facility to another site, in itself, is exempted from NSPS under § 60.14(e)(6). This exemption applies to 40 CFR 60 only. State and local regulations and other Federal regulations covering prevention of significant deterioration or new source review could apply.

Two commenters stated that the Agency's definition of an affected facility as any coating operation, as opposed to an entire line or an entire manufacturing plant, may not provide the same degree of latitude as the existing "bubble concept" and may limit methods of compliance and preclude the use of alternative compliance procedures based on total plant emissions. If the total facility emissions are equivalent to NSPS limitations using an alternate compliance plan, there is no detriment to the environment; therefore, an alternate compliance plan should be permissible. Particularly in a facility that would have a combination of NSPS and RACT limitations, an alternate compliance plan should be allowed. This would permit the facility to use the same materials for all lines, NSPS and RACT in combination. This plan would improve implementation of an air pollution control program.

The "bubble concept" refers to application of a standard to an entire plant rather than to individual emission points, although emission ceilings may concurrently be assigned to individual emission points. The term "affected facility" refers to the particular portion of a plant to which a standard applies. In this case the affected facility has been defined as a surface coating operation, which consists of a coating application station(s), flashoff area(s), and cure oven. The choice of the affected facility for any standard is based on the Agency's interpretation of the Clean Air Act, as amended, and judicial construction of its meaning. Under Section 111, the NSPS must apply to "new sources"; a "source" is defined as "any building, structure, facility, or installation which emits or may emit any air pollutant" [Section 111(a)(3)]. Most industrial plants, however, consist of numerous pieces or groups of equipment that emit air pollutants and that might be viewed as "sources." EPA uses the term "affected facility" to designate the equipment, within a particular kind of plant, that is chosen as the "source" covered by a given standard.

In choosing the affected facility, EPA must decide which pieces or groups of equipment are the appropriate units for separate emission standards in the particular industrial context involved. The Agency does this by examining the situation in light of the terms and purpose of Section 111. One major consideration in this examination is that the use of a narrower definition results in bringing replacement equipment under the NSPS sooner; if, for example, an entire plant were designated the affected facility, no part of the plant would be covered by the standard unless the plant as a whole were "modified." If, on the other hand, each piece of equipment were designated the affected facility, as each piece were replaced, the replacement piece would be a new source subject to the standard. Because the purpose of Section 111 is to minimize emissions by application of the best demonstrated control technology (considering cost, other health and environmental effects, and energy

requirements) at all new, modified, or reconstructed sources, the presumption is that a narrower designation of the affected facility is proper. This designation insures that new emission sources within plants will be brought under coverage of the standards as they are installed. This presumption can be overcome where the impacts atttributable to the narrower designation are unreasonable in the light of the emissions reduction resulting from the selection of that definition.

The Agency has determined that in these standards the selection of each coating operation as the affected facility would not result in unreasonable impacts. It is technologically and economically feasible to control each surface coating operation. Choosing a combination of surface coating operations or the whole plant as the affected facility would be inconsistent with the language and intent underlying Section 111 because this broader definition would delay NSPS coverage of new facilities within the plant. Bubbling emissions at NSPS-regulated facilities with emissions at RACT facilities could permit all NSPS-regulated facilities in a plant to achieve less than BDT-level control. This would be inconsistent with Section 111's requirement that emissions at NSPS-regulated facilities be controlled to the level reflecting application of BDT. Therefore, the Agency has selected each surface coating operation as the affected facility for these standards.

One commenter stated that EPA's banking policy provides a built-in incentive for industry to develop materials superior to RACT. Resulting reduction in emissions from existing plants will far outweigh any benefits that might result from the implementation of NSPS.

The NSPS program does not prevent existing plants from banking emissions. NSPS are emission limits for new, modified, and reconstructed affected facilities based on BDT. In accordance with Section 111, these standards insure at least a specified minimum level of control at new, modified, and reconstructed facilities, wherever located—including those for which banking and other economic incentives may not be sufficient to induce good control of VOC emissions in the absence of NSPS.

One commenter was concerned that the promulgation of NSPS would jeopardize the ongoing RACT program if a new line were added to an existing plant, which is very common in the can business. The new line would be governed by NSPS limitations. Different coatings would be required for use on the new line than on the old line. Maintaining inventory and regulating the use of the two different sets of coatings for the production of the same can would be unmanageable. If the plant used alternate compliance, a complicated calculation scheme would be needed to demonstrate compliance with both NSPS and RACT. The dual system of RACT and NSPS in a plant will not work and will lead to demise of one or another in terms of practicality. Either the entire facility will be switched to NSPS, or RACT materials will be incinerated on NSPS lines. This concept is contrary to the recent U.S. EPA policy of discouraging the use of afterburners.

EPA considers that the situation that would result from the addition of a new line subject to NSPS to an existing plant appears to be no different from the situation in existing plants that make more than one type of beverage can, each of which may require different types of coating. The same procedures used to maintain inventories and regulate the use of different coatings in the latter plant are considered to be applicable to the situation described in the comment.

The procedures outlined for determining compliance for plants using RACT coatings and in the draft regulation for plants using NSPS coatings are not incompatible and permit the use of RACT coatings on one line and NSPS coatings on another. Furthermore, in enacting Section 111, Congress recognized that to enhance air quality over the long run it is important that new sources within a plant achieve limits based on the best demonstrated technology, irrespective of the level of control at existing sources within the plant.

Compliance of the NSPS affected facilities in a can plant would be determined using volume of coatings, VOC content thereof, and diluent solvent used in the affected facility by the procedures presented in the proposed regulations. Compliance of that portion of the plant subject to RACT would be in accord with provisions of the applicable State and local regulations. The data required for these calculations are considered to be those that any prudent manufacturer would maintain even if these standards were not promulgated.

One commenter felt that the information needed by EPA to determine compliance and to calculate emission inventories could be done with annual reports as opposed to monthly compliance determinations. These reports would only need to list each coating used by the plant along with kilograms of VOC per litre of solids and actual usage amounts. Those plants required to run control equipment would also have to report the average percentage of VOC reduction by the equipment and the number of production hours that the control equipment was not running, which could be backed up by a simple chart record.

Annual compilations are not considered an acceptable basis for determining compliance. Such an approach would permit a wide fluctuation in the mass of VOC emitted to the atmosphere at any one time. All of the canmakers contacted during the development of the standards reported maintaining coating-usage data on at least a monthly basis. As stated in a subsequent section of this preamble, EPA has investigated alternatives for reducing recordkeeping and reporting burdens and has changed the requirement for immediate reporting of noncompliance to semiannual reporting.

The promulgated regulations do not require reporting the average percentage of VOC reduction if an incinerator was used, or the number of hours the control system was not operating. Where compliance is achieved through the use of incineration, the owner or operator is required to identify and report, semiannually, all 3-hour periods during which the operating temperature, when cans are being processed, is more than 28° C below the average temperatures of the device during the most recent performance test or, for catalytic incinerators, when the average temperature difference is less than 80 percent of that determined during the most recent performance test. The destruction efficiency of the control device determined during the most recent performance test is used in determining compliance during any calendar month.

Test Methods and Methodology

Two commenters questioned the relationship of the proposed standards and the use of Reference Method 24 for determining compliance. Recommendations were made that the proposed standards should include a "cushion" that would allow for differences in test findings resulting from variation of the three experimentally determined physical constants used to calculate VOC content of coatings. Upward readjustment of the proposed standards to at least RACT level is required to avoid capricious erroneous noncompliance findings.

EPA recognizes the potential variability in the results when Method 24 is used to analyze waterborne coatings. The promulgated regulation

requires that, when Method 24 data are used to determine VOC content of waterborne coatings for compliance determinations, they be adjusted as described in Section 4.4 of Method 24.

If the VOC level of a waterborne coating, based on formulation, is at or below the standard, there is less than one chance in 10,000 that the Method 24 adjusted results would show the VOC level to be above the standard. The Agency considers this risk insignificant compared to the usefulness of Method 24 in determining compliance.

Reporting and Recordkeeping

One commenter stated that the recordkeeping requirements are unnecessarily tedious and time consuming, ask for much nonessential information, and necessitate intimidating and complex calculations. Production people would be required to do day-to-day and even hour-to-hour monitoring. The recordkeeping requirements penalize manufacturers that must meet the standard using control equipment instead of compliance coatings. The Agency's estimate that the proposed requirements would cost the industry 12 person-years over the first 5 years of the standards is unrealistically low. The commenter added that his company has less than 10 percent of the nation's two-piece can business, and conservatively estimates a cost of 2.3 person-years over the first 5 years of the standards. Even if the Agency's estimate is correct, the requirements are unnecessarily involved and are another example of an inflationary, nonproductive expense imposed upon industry by a governmental agency.

EPA has been investigating alternative ways of reducing monitoring, recordkeeping and reporting burdens on owners and operators. The goal is to reduce all recordkeeping and reporting that is not essential to insuring proper operation and maintenance. After reviewing the requirements in the proposal, EPA determined that monitoring and compiling data are essential for both the owner or operator and EPA to insure proper operation and maintenance. A responsible owner or operator would need monitoring information compiled in a usable form to determine when adjustments in the control system are needed to insure that it is performing at its intended effectiveness level. Because EPA judges that monitoring and recordkeeping are essential for proper operation and maintenance, these requirements have not been changed since proposal. It was judged, however, that immediate reporting of noncompliance with the standards is not essential to EPA. Semiannual reporting is considered sufficient to enable EPA to discharge its enforcement responsibility. Therefore, after initial performance testing, the requirement to report immediately all instances of noncompliance, as required in the proposal package, has been changed to require only semiannual reports. Reports required under the general provisions of 40 CFR part 60 remain unchanged. States delegated the authority to enforce these standards remain free to impose their own reporting requirements in conjunction with this regulation.

EPA disagrees that day-to-day or hour-to-hour monitoring will be required. Compliance is determined on a monthly basis and requires data that any prudent manufacturer would normally maintain. For facilities using waterborne coatings, required data consist of the volume and VOC content of each coating and the volume and density of each diluent VOC solvent used during each calendar month. When an emission control system is used, the most recently determined overall reduction efficiency of the system also is required.

Recordkeeping provisions of the proposed standards require maintaining records of all data and calculations for at least 2 years. In addition, records of incinerator operating temperatures are required if incineration is used, as are data on daily solvent recovery if a solvent recovery system is used. Incinerator temperatures and daily solvent recovery data are considered as essential to the operation of these devices and would be generated, maintained, and examined, whether or not required by the standards.

Details of the estimate that 12 person-years would be required by industry during the first 5 years of the standard are contained in the Reports Impact Analysis (Docket Item II–1–53). The estimate of industry requirements during the first 5 years has been revised downward to 11 person years as a result of the changes between proposal and promulgation (Docket Item IV–J–2). In a subsequent discussion the commenter stated that the 2.3 person-years was a worst case estimate based on all existing facilities being modified or reconstructed during 1980–1985.

It is EPA's judgment that the estimates are based on best available data, that the estimates are realistic, and that the requirements are not inflationary.

Miscellaneous

One commenter felt that the draft EIS and the proposed preamble and regulation are much more complex and lengthy than necessary. Discussion of incineration and the three-piece can should be eliminated.

EPA considered that the material in the draft EIS and in the proposal preamble and regulation was necessary to present the technical basis and the rationale for the development of the proposed standards. The beverage can surface coating industry is complex, involving as many as eleven coating operations on five separate items. Discussion of each of these was considered necessary to determine the scope and level of the proposed standards. A discussion of incineration was considered essential because one canmaker had recently constructed two plants using solvent-borne coatings. Also inceneration is considered to be an affordable and reasonable alternative to the use of waterborne coatings.

Docket

The docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docket is a dynamic file, since material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to identify readily and locate documents so that they can intelligently and 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 certain materials noted in Section 307(d)(7)(A)] will serve as the record in case of judicial review.

Miscellaneous

The effective date of this regulation is August 25, 1983. Section 111 of the Clean Air Act provides that standards of performance or revisions thereof become effective upon promulgation and apply to affected facilities for which construction, reconstruction, or modification was commenced after the date of proposal (November 26, 1980).

As prescribed by Section 111, the promulgation of these standards was preceded by the Administrator's determination (40 CFR 60.16, 44 FR 49222, dated August 21, 1979) that these sources contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare. In accordance with Section 117 of the Act, publication of these promulgated standards was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies.

The standard requires that owners or operators of affected facilities submit three types of reports, those required under the General Provisions of 40 CFR Part 60, initial performance test reports, and semiannual reports of instances in which the VOC content of coatings used exceeds the allowable level established in the standard and instances in which incinerator operating temperatures vary significantly from those used to establish emission control system efficiencies where compliance is achieved through the use of incineration.

This regulation will be reviewed no later than four years from the date of promulgation as required by the Clean Air Act. This review will include an assessment of such factors as the need for integration with other programs, the existence of alternative methods, enforceability, improvements in emission control technology, and reporting requirements. The reporting requirements in this regulation will be reviewed as required under EPA's sunset policy for reporting requirements in regulations.

Section 317 of the Clean Air Act requires the Administrator to prepare an economic impact assessment for any new source standard of performance promulgated under Section 111(b) of the Act. An economic impact assessment was prepared for this regulation and for other regulatory alternatives. All aspects of the assessment were considered in the formulation of the standards to insure that cost was carefully considered in determining BDT. The economic impact assessment is included in the BID for the proposed standards.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is not major because it would result in none of the adverse economic effects set forth in Section 1 of the Order as grounds for finding a regulation to be major. There will be no increase in industrywide annualized costs as a result of this regulation. No significant increase in price is associated with the proposed standards; thus there would be no "major increase in costs or prices" specified as the second criterion in the Order. The economic analysis of the proposed standards' effects on the industry did not indicate any significant adverse effects on competition, investment, productivity, employment, innovation, or the ability of U.S. firms to compete with foreign firms (the third criterion in the Order).

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any comments from OMB to EPA and any EPA response to those comments are available for public inspection in the docket referenced in the address section of this preamble.

Information collection requirements contained in this regulation (Sections 60.493, 60.494, and 60.495) have been approved by OMB under the provision of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number 2060–0001.

List of Subjects in 40 CFR Part 60

Air pollution control, Aluminum, Ammonium sulfate plants, Asphalt, Cement industry, Coal copper, Electric power plants, Glass and glass products, Grains, Intergovernmental relations, Iron, Lead, Metals, Metallic minerals, Motor vehicles, Nitric acid plants, Paper and paper products industry, Petroleum, Phosphate, Sewage disposal, Steel, Sulfuric acid plants, Waste treatment and disposal, Zinc, Tires, Incorporation by reference, Can surface coating.

Dated August 18, 1983.

William D. Ruckelshaus,

Administrator.

PART 60—[AMENDED]

40 CFR Part 60 is amended by adding Subpart WW as follows:

Subpart WW—Standards of Performance for the Beverage Can Surface Coating Industry

Sec.

Authority: Secs. 111 and 301(a) of the Clean Air Act, as amended [42 U.S.C. 7411 and 7601(a)], and additional authority, as noted below.

§ 60.490 Applicability and designation of affected facility.

(a) The provisions of this subpart apply to the following affected facilities in beverage can surface coating lines: each exterior base coat operation, each overvarnish coating operation, and each inside spray coating operation.

(b) The provisions of this subpart apply to each affected facility which is identified in paragraph (a) of this section and commences construction, modification, or reconstruction after November 26, 1980.

§ 60.491 Definitions.

(a) All terms which are used in this subpart and are not defined below are given the same meaning as in the Act and Subpart A of this part.

(1) *Beverage can* means any two-piece steel or aluminum container in which soft drinks or beer, including malt liquor, are packaged. The definition does not include containers in which fruit or vegetable juices are packaged.

(2) *Exterior base coating operation* means the system on each beverage can surface coating line used to apply a coating to the exterior of a two-piece beverage can body. The exterior base coat provides corrosion resistance and a background for lithography or printing operations. The exterior base coat operation consists of the coating application station, flashoff area, and curing oven. The exterior base coat may be pigmented or clear (unpigmented).

(3) *Inside spray coating operation* means the system on each beverage can surface coating line used to apply a coating to the interior of a two-piece beverage can body. This coating provides a protective film between the contents of the beverage can and the metal can body. The inside spray coating operation consists of the coating application station, flashoff area, and curing oven. Multiple applications of an inside spray coating are considered to be a single coating operation.

(4) *Overvarnish coating operation* means the system on each beverage can surface coating line used to apply a coating over ink which reduces friction for automated beverage can filling equipment, provides gloss, and protects the finished beverage can body from abrasion and corrosion. The overvarnish coating is applied to two-piece beverage can bodies. The overvarnish coating operation consists of the coating application station, flashoff area, and curing oven.

(5) *Two-piece can* means any beverage can that consists of a body manufactured from a single piece of steel or aluminum and a top. Coatings for a two-piece can are usually applied after fabrication of the can body.

(6) *VOC content* means all volatile organic compounds (VOC) that are in a coating. VOC content is expressed in terms of kilograms of VOC per litre of coating solids.

(b) Notations used under § 60.493 of this subpart are defined below:

C_a = the VOC concentration in each gas stream leaving the control device and

entering the atmosphere (parts per million as carbon)
C_b = the VOC concentration in each gas stream entering the control device (parts per million as carbon)
D_c = density of each coating, as received (kilograms per litre)
D_d = density of each VOC-solvent added to coatings (kilograms per litre)
D_r = density of VOC-solvent recovered by an emission control device (kilograms per litre)
E = VOC destruction efficiency of the control device (fraction)
F = the proportion of total VOC emitted by an affected facility which enters the control device to total emissions (fraction)
G = the volume-weighted average of VOC in coatings consumed in a calendar month per volume of coating solids applied (kilograms per litre of coating solids)
H_e = the fraction of VOC emitted at the coater and flashoff areas captured by a collection system
H_h = the fraction of VOC emitted at the cure oven captured by a collection system
L_c = the volume of each coating consumed, as received (litres)
L_d = the volume of each VOC-solvent added to coatings (litres)
L_r = the volume of VOC-solvent recovered by an emission control device (litres)
L_s = the volume of coating solids consumed (litres)
M_d = the mass of VOC-solvent added to coatings (kilograms)
M_o = the mass of VOC-solvent in coatings consumed, as received (kilograms)
M_r = the mass of VOC-solvent recovered by emission control device (kilograms)
N = the volume-weighted average mass of VOC emissions to atmosphere per unit volume of coating solids applied (kilograms per litre of coating solids)
Q_a = the volumetric flow rate of each gas stream leaving the control device and entering the atmosphere (dry standard cubic meters per hour)
Q_b = the volumetric flow of each gas stream entering the control device (dry standard cubic meters per hour)
R = the overall emission reduction efficiency for an affected facility (fraction)
S_e = the fraction of VOC in coating and diluent VOC-solvent emitted at the coater and flashoff area for a coating operation
S_h = the fraction of VOC in coating and diluent solvent emitted at the cure oven for a coating operation
V_s = the proportion of solids in each coating, as received (fraction by volume)
W_o = the proportion of VOC in each coating, as received (fraction by weight).

§ 60.492 Standards for volatile organic compounds.

On or after the date on which the initial performance test required by § 60.8(a) is completed, no owner or operator subject to the provisions of this subpart shall discharge or cause the discharge of VOC emissions to the atmoshpere that exceed the following volume-weighted calendar-month average emissions:

(a) 0.29 kilogram of VOC per litre of coating solids from each two-piece can exterior base coating operation, except clear base coat;

(b) 0.46 kilogram of VOC per litre of coating solids from each two-piece can clear base coating operation and from each overvarnish coating operation; and

(c) 0.89 kilogram of VOC per litre of coating solids from each two-piece can inside spray coating operation.

§ 60.439 Performance test and compliance provisions.

(a) Section 60.8(d) does not apply to monthly performance tests and § 60.8(f) does not apply to the performance test procedures required by this subpart.

(b) The owner or operator of an affected facility shall conduct an initial performance test as required under § 60.8(a) and thereafter a performance test each calendar month for each affected facility.

(1) The owner or operator shall use the following procedures for each affected facility that does not use a capture system and a control device to comply with the emission limit specified under § 60.492. The owner or operator shall determine the VOC-content of the coatings from formulation data supplied by the manufacturer of the coating or by an analysis of each coating, as received, using Reference Method 24. The Administrator may require the owner or operator who uses formulation data supplied by the manufacturer of the coating to determine the VOC content of coatings using Reference Method 24 or an equivalent or alternative method. The owner or operator shall determine from company records the volume of coating and the mass of VOC-solvent added to coatings. If a common coating distribution system serves more than one affected facility or serves both affected and exiting facilities, the owner or operator shall estimate the volume of coating used at each facility by using the average dry weight of coating, number of cans, and size of cans being processed by each affected and existing facility or by other procedures acceptable to the Administrator.

(i) Calculate the volume-weighted average of the total mass of VOC per volume of coating solids used during the calendar month for each affected facility, except as provided under § 60.493(b)(1)(iv). The volume-weighted average of the total mass of VOC per volume of coating solids used each calendar month will be determined by the following procedures.

(A) Calculate the mass of VOC used ($M_o + M_d$) during the calendar month for the affected facility by the following equation:

$$M_o + M_d = \sum_{i=1}^{n} L_{ci} D_{ci} W_{oi} + \sum_{j=1}^{m} L_{dj} D_{dj}, \quad (1)$$

[$\Sigma L_{dj} D_{dj}$ will be 0 if no VOC solvent is added to the coatings, as received.] where n is the number of different coatings used during the calendar month and m is the number of different diluent VOC-solvents used during the calendar month.

(B) Calculate the total volume of coating solids used (L_s) in the calendar month for the affected facility by the following equation:

$$L_s = \sum_{i=1}^{n} L_{ci} V_{si}, \quad (2)$$

where n is the number of different coatings used during the calendar month.

(C) Calculate the volume-weighed average mass of VOC per volume of solids used (G) during the calendar month for the affected facility by the following equation:

$$G = \frac{M_o + M_d}{L^T{}_{2s}}. \quad (3)$$

(ii) Calculate the volume-weighted average of VOC emissions discharged to the atmosphere (N) during the calendar month for the affected facility by the following equation:

$$N = G. \quad (4)$$

(iii) Where the value of the volume-weighted average of mass of VOC per volume of solids discharged to the atmosphere (N) is equal to or less than the applicable emission limit specified under § 60.492, the affected facility is in compliance.

(iv) If each individual coating used by an affected facility has a VOC content equal to or less than the limit specified under § 60.492, the affected facility is in compliance provided no VOC-solvents are added to the coating during distribution or application.

(2) An owner or operator shall use the following procedures for each affected facility that uses a capture system and a control device that destroys VOC (e.g., incinerator) to comply with the emission limit specified under § 60.492.

(i) Determine the overall reduction efficiency (R) for the capture system and control device.

For the initial performance test, the overall reduction efficiency (R) shall be determined as prescribed in A, B, and C below. In subsequent months, the owner or operator may use the most recently determined overall reduction efficiency for the performance test providing control device and capture system operating conditions have not changed. The procedure in A, B, and C, below, shall be repeated when directed by the Administrator or when the owner or operator elects to operate the control device or capture system at conditions different from the initial performance test.

(A) Determine the fraction (F) of total VOC used by the affected facility that enters the control device using the following equation:

$$F = S_e H_e + S_h H_h, \quad (5)$$

where H_e an H_h shall be determined by a method that has been previously approved by the Administrator. The owner or operator may use the values of S_e and S_h specified in Table 1 or other values determined by a method that has been previously approved by the Administrator.

TABLE 1.—DISTRIBUTION OF VOC EMISSIONS

Coating operation	Emission distribution	
	Coater/ flashoff (S_e)	Curing oven (S_h)
Two-piece aluminum or steel can:		
Exterior base coat operation	0.75	0.25
Overvarnish coating operation	0.75	0.25
Inside spray coating operation	0.80	0.20

(B) Determine the destruction efficiency of the control device (E) using values of the volumetric flow rate of each of the gas streams and the VOC content (as carbon) of each of the gas streams in and out of the device by the following equation:

$$E = \frac{\sum_{i=1}^{n} Q_{bi} C_{bi} - \sum_{j=1}^{m} Q_{aj} C_{aj}}{\sum_{i=1}^{n} Q_{bi} C_{bi}}, \quad (6)$$

where n is the number of vents before the control device, and m is the number of vents after the control device.

(C) Determine overall reduction efficiency (R) using the following equation:

$$R = EF. \quad (7)$$

(ii) Calculate the volume-weighted average of the total mass of VOC per volume of coating solids (G) used during the calendar month for the affected facility using equations (1), (2), and (3).

(iii) Calculate the volume-weighted average of VOC emissions discharged to the atmosphere (N) during the calendar month by the following equation:

$$N = G \times [1-R]. \quad (8)$$

(iv) If the volume-weighted average of mass of VOC emitted to the atmosphere for the calendar month (N) is equal to or less than the applicable emission limit specified under § 60.492, the affected facility is in compliance.

(3) An owner or operator shall use the following procedure for each affected facility that uses a capture system and a control device that recovers the VOC (e.g., carbon adsorber) to comply with the applicable emission limit specified under § 60.492.

(i) Calculate the volume-weighted average of the total mass of VOC per unit volume of coating solids applied (G) used during the calendar month for the affected facility using equations (1), (2), and (3).

(ii) Calculate the total mass of VOC recovered (M_r) during each calendar month using the following equation:

$$M_r = L_r D_r. \quad (9)$$

(iii) Calculate overall reduction efficiency of the control device (R) for the calendar month for the affected facility using the following equation:

$$R = \frac{M_r}{M_o + M_d} \quad (10)$$

(iv) Calculate the volume-weighted average mass of VOC discharged to the atmosphere (N) for the calendar month for the afffected facility using equation (8).

(v) If the weighted average of VOC emitted to the atmosphere for the calendar month (N) is equal to or less than the applicable emission limit specified under § 60.492, the affected facility is in compliance.

(Approved by the Office of Management and Budget under control number 2060–0001)

§ 60.494 Monitoring of emissions and operations

The owner or operator of an affected facility that uses a capture system and an incinerator to comply with the emission limits specified under § 60.492 shall install, calibrate, maintain, and operate temperature measurement devices as prescribed below.

(a) Where thermal incineration is used, a temperature measurement device shall be installed in the firebox. Where catalytic incineration is used, temperature measurement devices shall be installed in the gas stream immediately before and after the catalyst bed.

(b) Each temperature measurement device shall be installed, calibrated, and maintained according to the manufacturer's specifications. The device shall have an accuracy the greater of ±0.75 percent of the temperature being measured expressed in degrees Celsius or ±2.5° C.

(c) Each temperature measurement device shall be equipped with a recording device so that a permanent continuous record is produced.

(Approved by the Office of Management and Budget under control number 2060–0001)

(Sec. 114 of the Clean Air Act as amended (42 U.S.C. 7414)

§ 60.495 Reporting and recordkeeping requirements.

(a) The owner or operator of an affected facility shall include the following data in the initial compliance report required under § 60.8(a).

(1) Where only coatings which individually have a VOC content equal to or less than the limits specified under § 60.492 are used, and no VOC is added to the coating during the application or distribution process, the owner or operator shall provide a list of the coatings used for each affected facility and the VOC content of each coating calculated fromdata determined using Reference Method 24 or supplies by the manufacturers of the coatings.

(2) Where one or more coatings which individually have a VOC content greater than the limits specified under § 60.492 are used or where VOC are added or used in the coating process, the owner or operator shall report for each affected facility the volume-weighted average of the total mass of VOC per volume of coating solids.

(3) Where compliance is achieved through the use of incineration, the ouner or operator shall include in the initial performance test required under § 60.8(a) the combustion temperature (or the gas temperature upstream and downstream of the catalyst bed), the

total mass of VOC per volume of coating solids before and after the incinerator, capture efficiency, and the destruction efficiency of the incinerator used to attain compliance with the applicable emission limit specified under § 60.492. The owner or operator shall also include a description of the method used to establish the amount of VOC captured by the capture system and sent to the control device.

(b) Following the initial performance test, each owner or operator shall submit for each semiannual period ending June 30 and December 31 a written report to the Administrator of exceedances of VOC content and incinerator operating temperatures when compliance with § 60.492 is achieved through the use of incineration. All semiannual reports shall be postmarked by the 30th day following the end of each semiannual period. For the purposes of these reports, exceedances are defined as:

(1) Each performance period in which the volume-weighted average of the total mass of VOC per volume of coating solids, after the control device, if capture devices and control systems are used, is greater than the limit specified under § 60.492.

(2) Where compliance with § 60.492 is achieved through the use of thermal incineration, each 3-hour period when cans are processed, during which the average temperature of the device was more than 28° C below the average temperature of the device during the most recent performance test at which destruction efficiency was determined as specified under § 60.493.

(3) Where compliance with § 60.492 is achieved through the use of catalytic incineration, each 3-hour period when cans are being processed, during which the average temperature of the device immediately before the catalyst bed is more than 28° C below the average temperature of the device immediately before the catalyst bed during the most recent performance test at which destruction efficiency was determined as specified under § 60.493 and all 3-hour periods, when cans are being processed, during which the average temperature difference across the catalyst bed is less than 80 percent of the average temperature difference across the catalyst bed during the most recent performance test at which destruction efficiency was determined as specified under § 60.493.

(c) Each owner or operator subject to the provisions of this subpart shall maintain at the source, for a period of at least 2 years, records of all data and calculations used to determine VOC emissions from each affected faciity in the initial and monthly performance tests. Where compliance is achieved through the use of thermal incineration, each owner or operator shall maintain, at the source, daily records of the incinerator combustion chamber temperature. If catalytic incineration is used, the owner or operator shall maintain at the source daily records of the gas temperature, both upstream and downstream of the incinerator catalyst bed. Where compliance is achieved through the use of a solvent recovery system, the owner or operator shall maintain at the source daily records of the amount of solvent recovered by the system for each affected facility.

(d) The requirements of this subsection remain in force until and unless EPA, in delegating enforcement authority to a State under Section 111(c) of the Act, approves reporting requirements or an alternative means of compliance surveillance adopted by such State. In that event, affected facilities within the State will be relieved of the obligation to comply with this subsection, provided that they comply with the requirements established by the State.

(Approved by the Office of Management and Budget under control number 2060-0001)

(Sec. 114 of the Clean Air Act as amended (42 U.S.C. 1714))

§ 60.496 Test methods and procedures.

(a) The reference methods in Appendix A to this part, except as provided in § 60.8, shall be used to conduct performance tests.

(1) Reference Method 24, an equivalent or alternative method approved by the Administrator, or manufacturers formulation for data from which the VOC content of the coatings used for each affected facility can be calculated. In the event of dispute, Reference Method 24 shall be the referee method. When VOC content of waterborne coatings, determined from data generated by Reference Method 24, is used to determine compliance of affected facilities, the results of the Method 24 analysis shall be adjusted as described in Section 4.4 of Method 24.

(2) Reference Method 25 or an equivalent or alternative method for the determination of the VOC concentration in the effluent gas entering and leaving the control device for each stack equipped with an emission control device. The owner or operator shall notify the Administrator 30 days in advance of any State test using Reference Method 25. The following reference methods are to be used in conjunction with Reference Method 25:

(i) Method 1 for sample and velocity traverses,

(ii) Method 2 for velocity and volumetric flow rate,

(iii) Method 3 for gas analysis, and

(iv) Method 4 for stack gas moisture.

(b) For Reference Method 24, the coating sample must be a 1-litre sample collected in a 1-litre container at a point where the sample will be representative of the coating material.

(c) For Reference Method 25, the sampling time for each of three runs must be at least 1 hour. The minimum sample volume must be 0.003 dscm except that shorter sampling times or smaller volumes, when necessitated by process variables or other factors, may be approved by the Administrator. The Administrator will approve the sampling of representative stacks on a case-by-case basis if the owner or operator can demonstrate to the satisfaction of the Administrator that the testing of representative stacks would yield results comparable to those that would be obtained by testing all stacks.

(Sec. 114 of the Clean Air Act as amended (42 U.S.C. 7414))

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federal register

Thursday
August 25, 1983

Part V

Environmental Protection Agency

Approval and Promulgation of Implementation Plans; Requirements for Preparation, Adoption, and Submittal; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 52

[AH-FRL 2406-5]

Requirements for Preparation, Adoption, and Submittal of Implementation Plans; Approval and Promulgation of Implementation Plans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposal of amendments to regulations.

SUMMARY: EPA here proposes amendments to its regulations concerning the construction of new stationary sources of air pollution and modifications to existing sources which appear at 40 CFR 51.24, 52.21, Appendix S to Part 51, 51.18(j) and 52.24. The amendments relate to: (1) Fugitive emissions, (2) federal enforceability, (3) the requirements for health and welfare equivalence for netting under the definition of "major modification," (4) the definition of "significant," (5) the innovative control technology waiver in the regulations for prevention of significant deterioration ("PSD"), (6) secondary emissions, (7) the crediting of source shutdowns and curtailments as offsets in nonattainment areas, and (8) banking of offsets under 40 CFR Part 51, Appendix S. In addition, EPA gives guidance on; (1) The obligation of a state to cure a violation of a PSD increment for particulate matter, (2) the issuance of a non-PSD permit to a project that would cause or contribute to a violation of a PSD increment, and (3) technology transfer for determinations of "lowest achievable emission rate" for purposes of nonattainment preconstruction review.

EPA is proposing these amendments and giving this guidance in order to meet the terms of a settlement agreement between EPA and a number of industries and trade associations challenging the relevant EPA regulations. *Chemical Manufacturers Ass'n v. EPA*, D.C. Cir. No. 79-1112 (settlement agreement entered into February 22, 1982).

DATES: The period for initial comment on the proposed amendments closes on October 11, 1983. A public hearing on the proposed amendments will be held on September 29, 1983, at 10 a.m. EPA agreed in the settlement agreement not to extend the period for initial comment beyond 60 days. EPA intends not to do so. EPA, however, will hold the public docket for this rulemaking open for 30 days after the close of the initial comment period for the submission of written rebuttal and supplementary information.

ADDRESSES: *Comments.* Comments should be submitted (in triplicate, if possible) to: Central Docket Section (A-130), Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, Attention: Docket No. A-82-23.

Public hearing. Room 5353, Waterside Mall, 401 M Street, SW., Washington, D.C.

Docket. EPA has established a docket for this rulemaking, Docket No. A-82-23, in accordance with Section 307(d) of the Clean Air Act, 42 U.S.C. 7607(d). The docket is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section, West Tower Lobby, Gallery I, 401 M Street, SW., Washington, D.C. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Kirt Q. Cox, New Source Review Section, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711; 919-541-5591; FTS-629-5591.

SUPPLEMENTARY INFORMATION:

I. Introduction

In August 1980, EPA extensively revised its regulations concerning the preconstruction review of new and modified stationary sources under the Clean Air Act in response to *Alabama Power Company v. Costle*, 636 F.2d 323 (D.C. Cir., 1979). See 45 FR 52676. Five sets of regulations resulted from those revisions. One set, 40 CFR 51.24 (the "Part 51 PSD regulations"), specifies the minimum requirements that a PSD permit program must contain in order to warrant approval by EPA as a revision to a state implementation plan ("SIP"). Another set, 40 CFR 52.21 (the "Part 52 PSD regulations"), delineates the federal PSD permit program, which currently applies in most states as part of the SIP. Another set, 40 CFR 51.18(j), specifies the elements of an approvable state permit program for preconstruction review for nonattainment purposes. It elaborates on Section 173 of the Act, 42 U.S.C. 7503. The fourth set, 40 CFR Part 51, Appendix S, embodies the "Emissions Offset Interpretative Ruling," which EPA revised previously in January 1979 (44 FR 3274). The fifth set, 40 CFR 52.24, embodies the construction moratorium for certain nonattainment areas.

In the fall of 1980, numerous organizations petitioned the Court of Appeals for the D.C. Circuit to review various provisions of those PSD and nonattainment regulations. Subsequently, the court consolidated those petitions into *Chemical Manufacturers Association ("CMA") v. EPA* (No. 79-1112), a collection of challenges to the 1979 revisions to the Offset Ruling.[1]

In June 1981, EPA began negotiations with the industry petitioners to settle the *CMA* case. In Feburary 1982, EPA entered into a comprehensive settlement agreement with those petitioners. Subsequently, the court granted a stay of the case pending implementation of the agreement.

In Exhibit A of the agreement, EPA committed to propose certain amendments relating to: (1) Fugitive emissions, (2) federal enforceability, (3) the requirement for health and welfare equivalence for netting under the definition of "major modification," (4) the definition of "significant," (5) the innovative control technology waiver for PSD purposes, (6) secondary emissions, (7) the crediting of source shutdowns and curtailments in nonattainment areas, and (8) banking of offsets under the Offset Ruling.[2] EPA also committed to give certain guidance on the following three topics when it proposed those amendments: (1) The obligation of a state to cure a violation of a PSD increment for particulate matter, (2) the issuance of a non-PSD permit to a project that would cause or contribute to a violation of a PSD increment, and (3) technology transfer for determination of "lowest achievable emission rate" ("LAER") for purposes of nonattainment preconstruction review.

The purpose of this notice is to fulfill the commitment EPA made in the settlement agreement to propose those amendments and give that guidance. Although the current senior management of EPA did not make that commitment, it has concluded that EPA should still honor it. These proposals will give the litigants and others a full opportunity to register their views in a public forum. This process, moreover, will require EPA to state a final position on the issues and explain it. The settlement agreement, however, does not bind EPA to any particular result when it takes final action, although it does bind EPA to take such action. The current senior management of EPA intends therefore, to review the comments carefully with an open mind, to take a new look at the

[1] The court also consolidated into *CMA* various petitions for review of further revisions to the Offset Ruling that EPA promulgated in September 1980 (45 FR 59874).

[2] EPA made commitments to propose other amendments. Notices relating to those amendments will appear in the **Federal Register** in due course.

proposals, and to make an independent judgment on their merits.

The balance of the notice first discusses each of the proposed amendments. It then gives guidance on the three topics listed above. Finally, it focuses on certain miscellaneous matters.

II. Proposed Amendments

A. Fugitive Emissions

1. *Background.* The five sets of PSD and nonattainment regulations aim their substantive requirements primarily at new "major stationary sources" and "major modification." [3] In addition, they define "major" in terms of rates of emissions.[4] The emissions of some new projects are largely "fugitive" in origin, that is, they would not pass, and could not resonably be expected to pass, through a stack or other functionally equivalent opening. Whether the substantive PSD or nonattainment preconstruction review requirements apply to a new project at all can depend, therefore, on whether its fugitive emissions are included in quantifying its emissions rates for the purpose of determining whether the project is "major." This notice refers to any such determination as a threshold applicability determination.

Four of the five sets of regulations [5] aim their substantive requirements at a new "major stationary source" or "major modification" only with respect to certain pollutants that the project would emit in "major" or "significant" amounts, depending on the regulations in question.[6] The regulations define "significant," as well as "major," in terms of rates of emissions.[7] Whether the substantive PSD or the nonattainment preconstruction review requirements apply to a new "major" project with respect to a pollutant it would emit can depend, therefore, on whether fugitive emissions of the pollutant are included in determining whether the project would emit the pollutant in "major" or "significant" amounts. This notice refers to any such determination as a pollutant applicability determination.

2. *Alabama Power.* The forerunner of the current PSD regulations required fugitive emissions to be included in any threshold applicability determination, to the extent that they were reasonably quantifiable. *See, e.g.,* 40 CFR 52.21(b)(1)–(3) (1980) (codifying 43 FR 26380, 26403–04 (June 19, 1978)). In establishing that requirement, EPA had assumed that the definitions of "major emitting facility" and "modification" in Section 169 of the Act, 42 U.S.C. 7479, exclusively govern the content of their counterparts in the PSD regulations. Since Section 169 does not distinguish between fugitive and non-fugitive emissions, EPA concluded that fugitive emissions are as eligible for inclusion in threshold applicability determinations as non-fugitive emissions.

In *Alabama Power,* however, the D.C. Circuit held that Section 302, 42 U.S.C. 7602, also controls the content of those regulatory definitions in one critical respect. Section 302 provides in pertinent part that:

> When used in this Act:
>
> * * * * *
>
> (j) *Except as otherwise expressly provided,* the terms "major stationary source" and "major emitting facility" mean any stationary facility or source of air pollutants which directly emits, or has the potential to emit, one hundred tons per year or more of any air pollutant *(including any major emitting facility or source of fugitive emissions of any such pollutant, as determined by rule by the Administrator).* [Emphasis added.]

According to the court, nothing in Section 169 expressly displaces the rulemaking requirement in the parenthetical of Section 302(j). 636 F.2d at 370. As a result, the court held, EPA may require the inclusion of fugitive emissions in threshold applicability determinations for a particular project only if it has first established through rulemaking that fugitives are to be included for that class of projects. *Id.* at 369.

Unfortunately, the court did not specifically list what factors it thought EPA had to consider in such a rulemaking. It did say, however, that:

> EPA's regulation of fugitive emissions has been of special concern to the mining and forestry industries which contend, without serious opposition, that they are incapable of meeting the strict limitations on the emission of particulate matter set by the PSD provisions. . . .
>
> * * * * *
>
> The legislative history of this rulemaking provision [Section 302(j)] is sparse, but *it may well define a legislative response to the policy considerations presented by the regulation of sources where the predominant emissions are fugitive in origin, particularly fugitive dust.* Whatever the motivation of the "rule" provision of 302(j), its existence is unmistakable. Even if the origin of this provision is fortuitous, the provision may be welcomed as serendipitous, *for it gives EPA flexibility to provide industry-by-industry consideration and appropriate tailoring of coverage.* [*Id.* at 369 (emphasis added).]

The forerunner of the current PSD regulations also required fugitive emissions to be included in any pollutant applicability determination. *See, e.g.,* 40 CFR 52.21(b)(1)–(3), (i)(1) (1980). Although that requirement was not at issue in *Alabama Power,* the D.C. Circuit nevertheless indicated that it would have upheld the requirement. It stated that:

> [t]he terms of section 65, which detail the preconstruction review and permit requirements for each new or modified "major emitting facility" *apply with equal force* to fugitive emissions and emissions from industrial point sources. . . .
>
> *EPA is correct that a major emitting facility is subject to the requirements of section 165 for each pollutant it emits irrespective of the manner in which it is emitted.* However, a source emitting large quantities of fugitive emissions may remain outside the definition of major emitting facility and thus may not be subject to the requirements of section 165. [*Id.* at 369 (emphasis added).]

3. Revisions in Response to Alabama Power. In response to the court's interpretation of Section 302(j), EPA proposed amendments to both the PSD and nonattainment regulations that would have excluded fugitive emissions from threshold applicability determinations except as to 30 listed caegories of sources. *E.g.,* 44 FR 51924, 51948 (September 5, 1979). Twenty-eight of the categories corresponded generally to the categories in Section 169(1); the remaining two categories encompassed any source subject to an emissions standard under Sections 111 or 112 of the Act, 42 U.S.C. 7411 or 7412. Surface coal mines were not among the 30 categories. *Id.* at 51931. EPA explained that it was proposing to require the inclusion of fugitive emissions as to the 30 categories because emissions from sources in those categories deteriorate air quality regardless of how they emanate and because the Agency's experience in quantifying fugitive

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[3] For example, the Part 52 PSD regulations require only new "major stationary sources" and "major modifications" that would be located in "clean air" areas to have a PSD permit before construction begins. 40 CFR 52.21(i)(1982)

[4] For example, the Part 52 PSD regulations define "major stationary source" as any stationary source with the "potential to emit" 100 tons per year or more of any pollutant subject to regulation under the Act or 250 tons per year or more of any such pollutant, depending on the nature of the source in question. 40 CFR 52.21(b)(1)(1982).

[5] The construction moratorium, 40 CFR 52.24, simply restricts the construction of a project; it does not require the application of control technology and assessments of air quality impact for the various emissions from the project.

[6] For example, the Part 52 PSD regulations require an applicant for a PSD permit for a "major stationary source " to show that the source would have "best available control technology"("BACT") for each pollutant regulated under the Act that the source would emit in "significant" amounts. 40 CFR 52.21(j)(1982).

[7] For example, the Part 52 PSD regulations provide that emissions of sulfur dioxide are "significant" if they equal or exceed 40 tons per year. 40 CFR 52.21(b)(23)(i)(1982).

emissions from such sources was in general grater than its experience in quantifying fugitive emissions from other sources. *Id.*

During the comment period, various industry representatives contended that: (l) Section 302(j) obliges EPA to determine that reasonably satisfactory methods for the measurement, modeling and control of fugitive emissions [8] from a particular category of sources exist before EPA requires those emissions to be included in threshold applicability determinations for any source in that category, and (2) EPA had failed to do that. 45 FR 52692 (col. 2). Indeed, some contended that EPA had promulgate such methods in the form of regulations. *Id.* at 52690 (col. 3).

In its response to comments, EPA disagreed with those contentions. It pointed out that, according to the D.C. Circuit, Congress intended the substantive PSD requirements to be applied "with equal force" to the fugitive and non-fugitive emissions of any project that would be "major" by virtue of its non-fugitive emissions, even if EPA has yet to determine that there are reasonably satisfactory measurement, modeling, or control methods for the fugitive emissions. *Id.* at 52691 (*quoting* 636 F.2d at 369). Thus, Congress consigned any problems of measurement, modeling and control in those cases to each individual permit proceeding for resolution by the permitting authority. EPA reasoned that, if Congress intended to do that, then it must have intended to consign such problems to the permitting authority also in the case of projects that would be "major" only if their fugitive emissions were counted. *Id.* at 52691, 52692. Hence, the Agency took the position that Section 302(j) obliges it simply to afford the public with an opportunity to oppose the inclusion of fugitive emissions as to a particular category and did not focus comment on the specific grounds for such opposition. Thus, concerns *other* than the availability or adequacy of methods of measurement, modeling and control could have impacted this rulemaking. *Id.* at 52690 (col. 3), 52692 (col. 2).

EPA did not specify what other grounds might exist. But conceivable candidates are adverse economic or social impacts. Thus, EPA implied that it read Section 302(j) to require it to consider any such impacts, if a commenter raised them, and furthermore to determine that the benefits of inclusion outweighed those adverse impacts.

On the basis of this response to comments, EPA, in August 1980, promulgated the substance of the amendments it had proposed. *E.G.*, 45 FR 52739. It put the changes into a different form, however. The new provisions on their face require fugitive emissions to be included in threshold applicability determinations for *any* project, but then exempt from the relevant PSD or nonattainment requirements any project that (1) would be "major" only if fugitive emissions were included and (2) does *not* belong to one of 30 categories. *E.g.*, 40 CFR 52.21(b)(4), (i)(4) (vii)(1981).

4. *Industry Challenges to the Post-Alabama-Power Revisions.* In December 1980, the American Mining Congress and various individual mining companies (collectively, "AMC") petitioned EPA for reconsideration of the new PSD regulations. In Part 1 of the petition, AMC asked EPA to reconsider the provisions which on their face require the fugitive emissions of a mining operation to be included in threshold applicability determinations. AMC pointed out that, even though the regulations would exempt a mining operation that would be "major" only if fugitive emissions were taken into account from the PSD permit requirements, nevertheless they could affect such an operation adversely in other ways.[9] AMC also observed that the preamble to the regulations strongly indicates that EPA did not intend the regulations to affect such an operation in those ways. *See* Petition for Reconsideration of Regulations Relating to the Prevention of Significant Deterioration of Air Quality, Part 1 (December 1, 1980) (hereinafter, "AMC Petition for Reconsideration").

In a letter dated January 19, 1981, EPA granted Part 1 of the AMC petition. The Agency confirmed that it intended to establish that any project which would be "major" only if fugitive emissions were taken into account is not to be considered "major" for *any* PSD purpose, unless the project belongs to one of the 30 listed categories. EPA agreed to amend the regulations to conform them to that intention.

Subsequently, in a brief filed in the *CMA* case, AMC and other industry organizations (collectively, the "industry petitioners") challenged the provisions which require a project that would be "major" only if its fugitive emissions were taken into account to be considered "major" if it belongs to one of the 30 categories. They contended, primarily on the basis of the *Alabama Power* opinion, that the Act required EPA, before it established those provisions, to consider the problems of measuring, modeling and controlling fugitive emissions that are peculiar to each category and then to provide—in the words of that opinion—"appropriate tailoring of coverage." They also contended that the Act required the Agency to consider, on an industry-by-industry basis, the social, economic, health and welfare impacts of including fugitive emissions for applicability purposes. Indeed, they suggested that EPA could decline to require the inclusion of fugitive emissions as to a particular category on the grounds that growth in that industry was important to the economy and that the emissions posed low risks to human health and welfare. Finally, the industry petitioners asserted that EPA entirely failed to meet those requirements of the Act. See Petitioners Brief on Fugitive Emissions and Certain Other Issues, at 12–19 (February 11, 1981) (hereinafter, "Fugitive Emissions Brief").[10]

5. *New EPA Interpretations of Section 302(j).* After reexamining the parenthetical in Section 302(j) in response to the industry challenges, EPA now sees two closely related interpretations of that provision that appear defensible and worth regulatory consideration, in addition to the interpretation on which the existing rules are based. One is that the parenthetical obliges EPA, before it may require the inclusion of fugitive emissions in threshold applicability determinations for a particular Clean Air Act program and a particular category of sources, only to: (1) Identify those problems the sources would encounter in that program that are specifically due to the fugitive nature of their emissions and (2) determine that reasonable solutions to those problems exist. For the PSD and nonattainment new source review programs and some source categories, those problems may

[8] The phrase "measurement of fugitive emissions" refers in this notice to the quantification of the rate at which pollutants emanate "fugitively" from a particular activity at a source, for instance, the rate at which particulate matter emanates from an unpaved road at a surface mine due to truck traffic. The pharase "modeling of fugitive emissions" refers to the prediction through mathematical models of the concentrations of a pollutant in the ambient air that would result from fugitive emissions of the pollutant.

[9] For example, such an operation would consume increment even before the baseline date, if construction on it commenced after January 6, 1975. *See* 40 CFR 52.21(b)(13)(ii)(*a*) (1981).

[10] More recently, the American Mining Congress and others stated largely these positions, although in different terms and emphasis, in a letter dated August 5, 1982, in which they commented on an earlier draft of this **Federal Register** notice. A copy of that letter appears in the docket for this rulemaking.

include problems of measurement, modeling, and control.

The argument for this interpretation runs as follows: The parenthetical plainly requires EPA to make a determination of some sort before it may require the inclusion of fugitive emissions in any threshold applicability determination, whether for the purposes of PSD or nonattainment new source review or some other Clean Air Act program that applies only to "major" projects. While Congress failed in the Act and the legislative history to state explicitly what determination it intended EPA to make, one can nevertheless discern from the focus and effect of the parenthetical what Congress must have intended. The parenthetical distinguishes between sources solely on the basis of how their emissions emanate, that is, whether they are fugitive or not; it ignores both the nature of the sources and of the pollutants they emit. In addition, the parenthetical has the effect of exempting sources whose emissions for all regulated pollutants are predominantly fugitive from preconstruction review and other Clean Air Act programs until EPA lifts the exemption through rulemaking. One might argue this shows that Congress thought that companies with sources of predominantly fugitive emissions could face problems in connection with those programs that stemmed entirely from the fugitive nature of the emissions and, moreover, that those problems were serious enough to warrant protection against them for as long as they might persist. Thus, on this basis, the determination that Congress must have intended EPA to make, with respect to a particular category of sources and a particular program, is that reasonable solutions exist for the problems the sources would encounter in the program that are endemic to the fugitive nature of their emissions.

The second interpretation is that EPA, before it may require the inclusion of fugitive emissions in threshold applicability determinations, need determine only that reasonable solutions exist for the problems of *measurement* that are endemic to the fugitive emissions from those sources. That is, techniques must exist for determining whether the source's fugitive emissions, when added to its stack emissions, would equal or exceed the applicable threshold for classification as a major stationary source or major modification. The definitional sections in which the parenthetical operates—Sections 302(j), 169(l) and 169A(g) (7)—all designate benchmarks for deciding whether a source is "major" for the purposes of various Clean Air Act programs. This strongly suggests that Congress was concerned only with the problems stemming from the fugitive nature of emissions that companies would face in threshold applicability determinations—namely, measurement problems—and not also with whatever modeling and control problems the source might encounter in the various Clean Air Act programs, such as PSD or nonattainment new source review.[11]

6. *Choice of Interpretations.* EPA has concluded preliminarily—subject to comment and further deliberation—that these two new interpretations are stronger than either the one EPA espoused in the preamble to the August 1980 amendments or the one industry petitioners advocate in their brief. EPA, in not previously emphasizing consideration of the availability of reasonable methods of measurement, modeling and control, relied on the assumption that Congress would have treated all sources of fugitive emissions identically, whether or not they were already subject to review on account of their non-fugitive emissions. That assumption, however, is not necessarily true. For instance, a major hurdle that a company would face in attempting to obtain a permit for a source of fugitive emissions is having to show that the source would not cause or contribute to concentrations in excess of the applicable NAAQS or PSD increments. If no reasonably accurate methods of measurement and modeling for the fugitive emissions were in existence, then the company would have the burden, at least initially, of developing such methods itself or showing that their development would be impossible or too costly. Contrary to the premise of EPA's earlier argument, Congress may well have been willing to let a company bear this burden if its source would be subject to review anyway because of non-fugitive emissions, but not if the source would not be subject to review if fugitive emissions were ignored. While this is a difference of degree only, it is nevertheless arguably large enough to be a reasonable basis for a difference in treatment.

Industry, in asserting that EPA must determine that the benefits of preconstruction review for a particular category outweigh the costs, impliedly claimed that Congress sought through the parenthetical in Section 302(j) to shield sources of predominantly fugitive emissions because of the value of their product to the Nation or the relative harmlessness of their emissions. Although EPA recognizes that the *Alabama Power* opinion can be viewed as supporting this claim, it nevertheless is inclined to disagree with it. If Congress had intended to shield any sources at all for those reasons, it would not have distinguished between sources on the basis of whether their emissions are predominantly fugitive. There is simply no correlation between the value of a source's product or the harmfulness of the pollutants it emits, on the one hand, and the way those pollutants emanate, on the other. There are, moreover, many sources of predominantly non-fugitive emissions whose product Congress probably would have regarded as being as valuable as that of any source of predominantly fugitive emissions. Yet Congress did not seek to protect them.

EPA also has rejected preliminarily a fifth interpretation that surfaced recently. This interpretation is that the parenthetical in Section 302(j) merely requires EPA to identify those sources that are substantial emitters of fugitive emissions. The Natural Resources Defense Council and other environmental groups espoused this interpretation in a letter to EPA dated September 14, 1982, a copy of which appears in the docket for this rulemaking. EPA disagrees with the interpretation because it would make the parenthetical in Section 302(j) nearly pointless; under such a test the rulemaking that parenthetical clause calls for would add little to what is common knowledge anyway.

EPA solicits comment on the proper interpretation of Section 302(j) and, in particular, on which of the five interpretations outlined above is the strongest. Commenters should take into account a recent decision of the Court of Appeals for the D.C. Circuit, namely, *Duquesne Light Co. v. EPA*, 698 F.2d 456 (D.C. Cir. 1983). In that decision, the court upheld EPA's Section 302(j) rulemaking for inclusion of fugitive emissions in applicability determinations in EPA's noncompliance penalty regulations.

7. *Proposed Amendments.* In light of its new interpretations of Section 302(j), EPA has concluded preliminarily that it probably erred in requiring the inclusion

[11] EPA does not view Section 302(j) under either of these two interpretations as requiring it to state in regulatory form the operating mechanics of the methods of measurement, modeling or control upon which it relies in making a Section 302(j) determination. Nevertheless, any method that underlies a proposal to require inclusion would of course be fully disclosed and subject to the notice and comment process as part of the basic Section 302(j) listing proceeding.

of fugitive emissions in threshold applicability determinations for the 30 listed categories, since it did not identify any problems the sources in those categories would encounter in PSD and nonattainment review that are endemic to their fugitive emissions or determine that reasonable solutions for those problems exist. EPA, therefore, is here proposing amendments to the PSD and nonattainment regulations that would delete those requirements. Another purpose of those amendments is to fulfill the commitment EPA made to AMC in January 1981 to clarify that any project that would be "major" only if fugitive emissions were taken into account is not to be considered "major" for any PSD purpose, unless EPA has gone through the necessary rulemaking.

The amendments would add a new paragraph to the PSD and nonattainment definitions of "major stationary source" that would exclude from that category any source which would be "major" only if its fugitive emissions were counted, unless EPA has gone through the necessary rulemaking. Specifically, the new paragraph would provide that the "fugitive emissions of a stationary source shall not be included in determining for any of the purposes of [the regulations in question] whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources: [Reserved]." This formulation would have no effect on pollutant applicability determinations; fugitive emissions from a source that is "major" by virtue of its non-fugitive emissions would still have to be counted in any such determination.

The amendments would also add a similar paragraph to the PSD and nonattainment definition of "major modification." It would provide that "[a]ny net increase in fugitive emissions from a change at a stationary source shall not be included in determining for any of the purposes of [the regulations in question] whether the change is a major modification, unless the source belongs to one of the following categories of stationary sources: [Reserved]."

8. *Crediting of Decreases in Fugitive Emissions.* In general, the first step in determining whether a proposed physical change or change in method of operation at a plant amounts to a "major modification" for PSD or nonattainment purposes is to sum any increases and decreases in emissions that would result directly from the alteration at the unit or units subject to the alteration. If the sum of those increases and decreases is not "significant", then the alteration cannot be a "major modification." *See, e.g.*, 40 CFR 52.21(b)(2)(i), (b)(3)(i)(*a*) (1982); 45 FR 52698 (col. 3).[12] The second step is to sum any "creditable" [13] increases and decreases in emissions that will have occurred elsewhere at the plant contemporaneously with the alteration. *See, e.g.*, 40 CFR 52.21(b)(3)(i)(*b*). The final step is to total the sums from the first two steps. If the result equals or exceeds the relevant threshold, then the alteration is a "major modification"; otherwise, it is not.

The proposed amendment to the definitions of "major modification" would allow decreases in fugitive emissions to be included in both the first and second steps of a threshold applicability determination for a plant alteration, but only to the extent that the decreases exceeded any increases in fugitive emissions. The examples in the following footnote illustrate this point.[14]

EPA tentatively has concluded that the exclusion of decreases in fugitive emissions from threshold applicability determinations might be inconsistent with Congressional intent. For instance, the *CMA* settlement agreement contemplates the proposal of an amendment that would require both the first and second steps of a threshold applicability determination for a plant alteration to exclude any decreases, as well as increases, in fugitive emissions, unless EPA had gone through the necessary rulemaking.[15] That amendment, however, could result in a company having to obtain a permit, but not having to satisfy any substantive requirements, since the pollutant applicability determination would include all increases and decreases in fugitive emissions. For instance, in Examples C and D in the footnote the company would have to get a permit because non-fugitive emissions would total 50 tpy, but it would not have to satisfy any substantive requirements because the total of all increases and decreases would be less then zero. Since Congress could not have intended to create that possiblility, EPA has decided not to propose the provision contemplated by the settlement agreement or any provision like it.

Furthermore, under its tentative interpretation of the parenthetical in Section 302(j), EPA can see no reason to disallow credit for decreases in fugitive emissions in either the first or second steps of a threshold applicability determination for a plant alteration. The basic aim of Section 302(j) with respect to PSD and nonattainment new source review is to prevent increases in fugitive emissions from triggering applicability of the substantive PSD or nonattainment requirements until EPA has gone through the necessary rulemaking. Allowing credit for decreases in fugitive emissions, but disallowing it for an increase in fugitive emissions of the

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[12] On their face, the relevant definitions do not expressly state that an alteration must result by itself in a "significant" net increase in emissions in order to amount to a "major modification." EPA, however, has interpreted those definitions to provide as much. *See* Memorandum, Director, EPA Division of Stationary Source Enforcement, to Chief, Technical Analysis Section, EPA Region VII (January 22, 1981).

[13] Not all contemporaneous increases and decreases may be taken into account. The PSD and nonattainment regulations specify the precise increases and decreases that may be credited. *See, e.g.*, 40 CFR 52.21(b)(3)(iii)–(vi) (1982).

[14] *Example A.* Suppose that a company proposes an alteration to a unit at its plant that would cause: (1) Non-fugitive emissions of volatile organic compounds ("VOC") and (2) fugitive emissions of VOC from the unit to increase by 500 tpy. Suppose further that EPA has not gone through the necessary rulemaking to include fugitive emissions in threshold applicability determinations for the category of sources to which the plant belongs. Under the proposed amendment, the alteration would not amount to a "major modification," since the increase in fugitive emissions must be ignored and the "significance" level for VOC is 40 typ. *See, e.g.*, 40 CFR 52.21(b).

Example B. Suppose that the same company proposes a separate alteration at the same plant that would cause: (1) Non-fugitive VOC emissions from a unit to increase by 500 tpy and (2) fugitive VOC emissions from the unit to decrease by 475 tpy. Under the proposed amendment, the alteration would not amount to a "major modification," since the net increase in emissions from the alteration itself would be 25 tpy.

Example C. Suppose that the company proposes another alteration to its plant that would cause: (1) Non-fugitive VOC emissions from a unit to increase by 50 tpy, (2) fugitive VOC emissions from one portion of the unit to decrease by 25 tpy, and (3) fugitive VOC emissions from another portion to increase by 20 tpy. Under the proposed amendment, the alteration might amount to a "major modification," since it would result by itself in a 45 tpy net increase in non-fugitive VOC emissions. The net non-fugitive emissions, as explained earlier, are determined by subtracting any *net* decrease in fugitive emissions from the increase in non-fugitive emissions. Any contemporaneous and otherwise creditable changes in VOC emissions elsewhere at the plant would still have to be taken into account, however.

Example D. Suppose with respect to the alteration in Example C that the only contemporaneous and otherwise creditable change elsewhere at the plant was a decrease in fugitive emissions of 100 tpy. Under the proposed amendent, the alteration would not amount to a major modification, "since there would be no net increase in non-fugitive emissions.

Example E. Suppose that a creditable 100 tpy increase in fugitive VOC emissions occurred after the decrease in Example D, but before the alteration. Under the proposed amendment, the alteration then would amount to a "major modification."

[15] Specifically, the amendment, if it were promulgated, would add a paragraph to the definitions of "major modification" which would provide that "[i]ncreases and decreases in fugitive emissions shall not be included in determining for any of the purposes of this section whether a change at a stationary source would result in a significant net emissions increase, unless the source belongs to one of the following categories of stationary sources: [Reserved]."

same pollutant at the same plant, would not disserve that aim.

EPA recognizes that to credit net decreases in fugitive emissions, but not net increases, is at least superficially anomalous. For that reason, EPA requests close scrutiny of its analysis here and comment on whether any other pattern of crediting is justifiable.

9. Future Rulemaking on Fugitive Emissions. If EPA were to delete the current requirement for including fugitive emissions in threshold applicability determinations before it re-established that requirement through Section 302(j) rulemaking, some environmentally significant projects that would be subject to PSD or nonattainment new source review at present would escape that review entirely. To avoid this, EPA plans, if it is still inclined to delete the current requirement after reviewing comments that respond to this notice, to withhold final deletion until it completes the necessary rulemaking to re-establish the requirement as to at least some of the 30 categories presently listed. Specifically, if after reviewing the comments EPA still adheres to one of its two new interpretations, then its next step would be to propose one or more new listings on the basis of whatever advance findings that the new interpretation requires. The choice of interpretation, the findings and the new requirement would then all be subject to comment. Ultimately, EPA would formally adopt one interpretation, make the necessary findings, and promulgate the requirement.

EPA solicits comment on whether it should follow this plan of action and, if so, as to which sources it should withhold deletion.

B. Federal Enforceability

1. *Background.* As noted above, each of the five sets of PSD and nonattainment regulations aim their substantive requirements at new "major stationary sources." Each set defines "major stationary source" as any source that would have the "potential to emit" certain amounts of air pollutants. *E.g.*, 40 CFR 52.21(b)(1) (1982). Each then defines "potential to emit" as the maximum capacity of a stationary source to emit a pollutant under its physical and operational design," but adds that any limitation on the capacity of a source to emit a pollutant is to be treated as part of its design only if the limitation is federally enforceable". *E.g. id.* § 52.21(b)(4). The regulations define "federally enforceable" as "enforceable by the Administrator."*E.g., id.* § 52.21(b)(17). They add that the limitations that are "enforceable by the Administrator" include limitations contained in: (1) A SIP, (2) a construction permit issued under the SIP, (3) a standard of performance promulgated under Section 111 of the Act ("NSPS"), or (4) an emissions standard for hazardous pollutants promulgated under Section 112 ("NESHAPS"). *E.g., id.* In practice, EPA has declined so far to consider any other limitation as being "federally enforceable."

In effect, those definitions require one, in calculating the "potential to emit" of a proposed source for a particular pollutant, to assume that the source would emit the pollutant at the maxumum rate that the source could physically emit it, unless the source would be subject to a limitation on its operation that EPA could enforce directly. For example, suppose a company plans to operate a proposed source only 16 hours per day. Suppose further that the source would emit a particular pollutant in "major" amounts if it were operated 24 hours per day at its maximum physical capacity, but not if it were operated only 16 hours per day at that capacity. Under the definitions of "potential to emit" and "federal enforceability,"one must assume, notwithstanding the company's plans, that it would operate the source 24 hours per day, unless the company has established a specific prohibition against operation of the source in excess of 16 hours per day either in a SIP construction permit or in a SIP revision.

Each of the five sets of regulations also aims its substantive requirements at "major modifications," a term which, as described earlier, includes any "significant net emissions increase" at a major stationary source. The accounting system for determining such significant increases parallels the one described above for determining whether new sources exceed their own size thresholds.[16] *E.g.,id.* § 52.21(b)(2). Specifically, the regulations define a "net emissions increase" as the amount by which the sum of (1) the increase in "actual" emissions from the proposed change and (2) any contemporaneous and otherwise creditable increases and decreases in "actual" emissions at the source would exceed zero. *E.g., id.* § 52.21(b)(3).

Since a proposed new unit at a source has yet to produce emissions, each set of regulations provides that the "actual" emissions of any such change equals its "potential to emit." *E.g., id.* § 52.21(b)(21)(iv). The definition of "potential to emit", as noted above, contains a requirement for federal enforceability . In addition, each set of regulations provides that the "actual" emissions of a unit may be presumed to equal any "source-specific allowable emissions" for the unit. *E.g., id.* § 52.21(b)(21)(iii). The definition of "allowable" emissions, like the definition of "potential to emit," is articulated in part in terms of federal enforceability. *E.g., id.*, § 52.21(b)(16). Finally, each of the regulations provides that a contemporaneous decrease in emissions is creditable only to the extent that it "is *federally enforceable* at and after the time that actual construction on the particular change begins. "*E.g., id.* § 52.21(b)(3)(vi)(*b*) (emphasis added).

2. *Industry Challenges to the Federal Enforceability Requirement.* Several parties have petitioned the D.C. Circuit in *CMA* to review the requirement for federal enforceability in the definitions of "potential to emit" and "net emissions increase." Some of them have also petitioned EPA to reconsider the requirement. They point out that in general each SIP already prohibits construction of a new "major stationary source" or "major modification" without a PSD or nonattainment permit. Accordingly, any company that builds a project that emits, or has the potential to emit, pollution in excess of the applicable thresholds without first obtaining a permit would be in violation of the law and therefore subject to enforcement action by EPA. For this reason, the petitioners assert, there is no need for EPA to require companies to obtain legal limitations that are separately enforceable by EPA in order to avoid the need for a PSD or nonattainment permit. The petitioners also pointed out that, to obtain the necessary limitation in a SIP construction permit or SIP revision, a company would have to apply to the state agency for the change and then await whatever public procedures and EPA scrutiny that were required. As a result, a company could experience substantial expense and delay just in obtaining the necessary limitation. *See* Fugitive Emissions Brief, at 50–53; AMC Petition for Reconsideration, at 32–34.

3. *EPA Reconsideration and Stay of the Requirement.* In July 1981, EPA announced that it had decided in response to those objections to reconsider the federal enforceability requirement and to formulate a

[16] For PSD purposes, pollutants subject to this review are (1) the pollutants for which a national ambient air quality standard ("NAAQS"), NSPS, or NESHAPS exists and (2) their precursors. *E.g.*, 40 CFR 52.21(b)(2)(i), (b)(23)(i) (1982). For nonattainment purposes, they are the pollutants for which a NAAQS exists and their precursors. *See* 45 FR 52711 (col. 3); *E.g.*, 40 CFR 51.18(j)(1) (x).

rulemaking proposal on the issue. 46 FR 36698 (July 15, 1981). In addition, the agency stayed the requirement for 90 days and solicited comment on whether to extend the stay. Subsequently, EPA stated that it did not plan to extend the stay. 46 FR 61613 n.1 (December 17, 1981).

4. *EPA Response to Industry Challenges.* EPA preliminarily agrees that the federal enforceability requirement is unnecessary to some extent and will consider deleting it. One of the purposes behind the requirement was to obtain corroboration, in the case of a new unit, that any voluntary limitation on its capacity to emit a pollutant is in fact part of its physical and operational design and, in the case of a modification, that the company in fact does intend to reduce actual emissions at the source in question. Another purpose was to assure that someone with strong enforcement capability had the legal and practical means of holding a company to its commitment. 45 FR 52701 (col. 3); *id.* at 52688 (col. 1 col. 2). EPA still adheres to those purposes. However, EPA now inclines to the view that a requirement for both enforceability by any federal, state or local governmental entity and discoverability by EPA and any other person would serve those purposes adequately. EPA has no reason to believe either: (1) That a company would take a limitation that is enforceable by a state or local agency any less seriously than it would take a limitation that is enforceable by EPA or (2) that the enforcement leverage of state and local governments is materially smaller than EPA's. EPA, moreover, would retain the ability to enforce the prohibition against construction without a permit that exists generally in each SIP.

5. *Proposed Amendments.* EPA, therefore, is proposing (1) to delete the word "federally" in the definitions of "potential to emit" and "net emissions increase" in the PSD and nonattainment regulations and (2) to put a definition of "enforceable" in place of the definition of "federally enforceable." "Enforceable" would be defined as "enforceable under federal, state or local law and discoverable by the Administrator and any other person." EPA would regard as "enforceable" under this definition not only the presently accepted terms in a SIP revision or SIP construction permit, but also any concrete limitation in an operating permit or non-SIP air pollution permit that is enforceable legally and practically under state or local law. EPA would regard as "discoverable" any enforceable limitation on emissions that is in writing, on file with the relevant permitting authority, and accessible to the public.

EPA is also proposing to delete the work "federally" in the definition of "allowable emissions," so that the allowable emissions of a source would be the lowest level allowed by any enforceable limit on operations, not just the lowest level allowed by federally enforceable limits. The regulations require the "allowable emissions" of a new project to be taken into account in assessing its impact on air equality. *E.g.,* 40 CFR 52.21(k) (1982). The primary purpose of this change is to ensure that any limitation on emissions that is enforceable by a state or local agency shall be included in that assessment. The regulations also allow credit for decreases in emissions under the definition of "net emissions increase" only to the extent that the "old level of actual emissions or the old level of *allowable emissions*, whichever is lower, exceeds the new level of actual emissions." *Id.* §.52.21(b)(3)(vi)(*a*) (emphasis added). Hence, another purpose of the change is to clarify that a limitation that is enforceable only by a state or local agency sets the baseline under that provision.

EPA is further proposing to amend the exemptions which appear in the definition of "major modification" for certain increases in hours of operation or production rate and for certain switches in fuel or raw material. The relevant provisions currently lift the exemption as to such an increase or switch if a "federally enforceable" condition established after a certain date in a SIP construction permit would bar the increase or switch. *E.g.,* 40 CFR 52.21(b)(2)(iii)(*e*) (*1*) and (*f*) (1982). The amendments EPA is proposing would also lift the exemption as to such an increase or switch whenever an "enforceable" condition established after the effective date of the amendments would bar the increase or switch. At least one purpose of the current provisions is to buttress limitations on such increases and switches in SIP construction permits by making such an increase or switch a violation not only of a permit, but also of the prohibition against construction without a permit in the relevant regulations. The proposed amendments would merely extend that purpose to any parallel limitations outside of SIPS and SIP construction permits.

6. Enforceability of External Offsets. Finally, EPA is proposing to delete the term "federally" in 40 CFR 51.18(j)(3)(ii)(*e*) (1982), which provides that "[a] 11 emission reductions claimed as offset credit [17] shall be federally enforceable," EPA sought through that provision to embody the last sentence of Section 173 of the Act, which provides that "[a]ny emission reductions required as a precondition of the issuance of a permit . . . shall be *legally binding* before such permit may be issued." 42 U.S.C. 7503 (emphasis added). The purpose of the proposed deletion is to establish that an emission reduction may be regarded as "legally binding" even if it is not embodied in a SIP revision or SIP construction permit. A limitation in a bare stipulation, however, could never make an emission reduction "legally binding," since the prohibition against construction without a permit would provide no enforcement leverage against a source that is not constructing itself but providing an offset that allows others to construct.

C. Health and Welfare Equivalence

1. *Background.*

As noted above, the five sets of PSD and nonattainment regulations define "major modification," roughly, as any change at a source that would result in a "signficant net emissions increase" in any one of certain pollutants. "Net emissions increase," in turn, is defined as the amount by which the sum of: (1) The increase in emissions from the proposed change, and (2) any creditable increases and decreases elsewhere at the source would exceed zero. *E.g.,* 40 CFR 52.21(b)(3)(i)(1982). The regulations restrict the creditability of some decreases in emissions. One provision, in particular, allows credit for a reduction only to the extent that it has approximately the same qualitative significance for public health and welfare as the increase from the proposed change. *E.g., id.* §52.21(b)(3)(vi)(*c*).

2. *Industry Challenge.* Several of the industry petitioners in *CMA* have challenged that restriction on the creditability of emission reductions. They contend primarily that EPA lacked authority to create the restriction. *See* Petitioner's Brief on Health and Welfare Equivalence Restriction Issue, at 30–34 (February 12, 1981).

3. *EPA Response.* In *Alabama Power,* the D.C. Circuit held that EPA may apply, and may obligate the states to apply, the PSD permit requirements to a proposed change at a source only if the

[17] A fundamental requirement of nonattainment new source review is, roughly, that the applicant show that its project would be accompanied by emission reductions elsewhere that would "offset" the relevant emissions from the project. *See, e.g.* Section 173(1), 42 U.S.C. 7503(1).

change amounts to a "modification" as defined in Section 111(a)(4a).[18] 636 F.2d at 399, 400–03. The court further held that a change at a source amounts to a "modification" only if, together with contemporaneous changes at the source, it would result *quantitatively* in a significant net increase in the emissions of the pollutant in question. *Id.* at 401. Hence, the court concluded that "[w]here there is no net increase from contemporaneous changes within a source, . . . PSD review, whether procedural of substantive, cannot apply." *Id. at 403.* That principle applies to the relevant nonattainment requirements as well, since the definition of "modification" for nonattainment purposes takes its content from Section 111(a)(4), too. *See* § 171(4), 42 U.S.C. 7501(4). Thus, EPA may not require the application of the PSD or nonattainment requirements to a change at a source, if the change, together with contemporaneous changes, would *not* result quantitatively in a net increase in emissions of the pollutant in question.

As the industry petitioners contend, however, EPA has violated that prohibition by restricting the creditability of a contemporaneous decrease in emissions according to the health and welfare significance of the decrease. Because of that qualitative restriction, the requirements of the PSD or nonattainment regulations could apply to a change at a source, even if a contemporaneous decrease in emissions would offset the increase from the change quantitatively.

While the Congress gave EPA considerable discretionary rulemaking powers under Section 301 to implement the Act, it did not intend that EPA develop qualitative tests which would be inconsistent with Section 111 (a)(4). Congress expressly gave EPA, not source applicants, the job of determining the effects of air pollution on public health and welfare, *See, e.g.* §§ 108, 109, 112, 42 U.S.C. 7408,7409, 7412. That job requires substantial time, money, manpower and scientific expertise. It is extremely unlikely that Congress intended to authorize EPA to require companies to perform that job on their own, particularly in the context of preconstruction review. In fact, there is absolutely no suggestion in the Act or its legislative history that Congress intended to complicate preconstruction review in that way. EPA does believe, however, that it has Section 301 rulemaking authority to create netting tests which act to limit the quantitative availability of certain emissions reductions *(e.g.* limit credit for decreases which are otherwise required by the SIP to make any of the required demonstrations relating to the attainment and maintenance of increments and standards). Thus, while the Agency would not develop a health and welfare equivalence criterion, it can restrict netting credit for a particular emissions reduction already required by the plan in order to avoid double counting of this decrease.

Finally, EPA has concluded preliminarily that, even if it had the authority to impose the restriction, the wording of it is unlawfully vague. It provides a prospective applicant with too little indication as to exactly what it must do.

4. *Proposed Amendments.* In view of these conclusions, EPA is proposing to delete the restriction as it currently appears in the PSD and nonattainment new source review regulations. EPA is also proposing, however, to add a new definitional provision that in general would exclude certain organic compounds from the term "volatile organic compounds" as that term is used in the PSD and nonattainment regulations.[19] The compounds are those that EPA has determined to be negligibly photochemically reactive and hence not precursors of ozone. *See* 42 FR 35314 (July 8, 1977); 44 FR 32043 (June 4, 1979); 45 FR 32424 (May 16, 1980); and 45 FR 48941 (July 22, 1980). They are, therefore, not pollutants which are "subject to regulation under the Act" within the meaning of the PSD and nonattainment regulations. The purpose of the proposed provision is to clarify that increases and decreases in emissions of those compounds are to be ignored completely in any applicability determination.

D. Definition of "Significance"

1. *Background.* In revising the PSD regulations in August 1980, EPA introduced provisions which use the term "significant." One of those provisions is the definition of "major modification," which, as noted above, defines that term as any change at a major stationary source that would result in a "significant net emissions increase" in any one of certain pollutants. The other provisions require an applicant for a PSD permit to meet certain requirements for control technology and air quality impact assessments for each pollutant regulated under the Act that the proposed project would emit in a "significant" amount. *E.g.*, 45 FR 52741 (§ 52.21(j)).

In revising the PSD regulations, EPA also introduced a definition of "significant." The first paragraph of that provision defines "significant" in terms of rates of emissions. For example, a rate of 40 tons per year or more is "significant" for sulfur dioxide; 25 tpy for particulate matter. *E.g.*, 45 FR 52737 (§ 52.21(b)(23)(i)). Another paragraph of the definition, however, provides:

> Notwithstanding [the first paragraph], "significant" means any emissions rate or any net emissions increase associated with a major modification which would construct within 10 kilometers of a Class I area and have an impact on such area equal to or greater than 1 ug/m^3 (24-hour average). [*E.g.*, 45 FR 52739 (§ 52.21(b)(23)(iii)).]

2. *Industry Challenges.* In *CMA*, certain industry petitioners have challenged the paragraph quoted above. They contend that EPA, in promulgating it, violated Section 165(e)(3)(A) of the Act, which prohibits the agency from requiring "the use of any automatic or uniform buffer zone or zones" respecting the assessment an applicant must perform of existing air quality within the impact area of its proposed project. 42 U.S.C. 7475(e)(3)(A). *See* Fugitive Emissions Brief, at 54; AMC Petition for Reconsideration, at 35–36.

3. *EPA Response.* EPA agrees that this contention has some force. The threshold of one microgram per cubic meter effectively requires almost any company that would locate a project of significant size within 10 kilometers of a Class I area to perform an analysis of existing air quality for virtually each one of the pollutants regulated under the Act that the project would emit in significant amounts. Thus, the definition arguably creates a virtually uniform applicability zone respecting air quality analyses.

4. *Proposed Amendments.* As a result, EPA is proposing to delete the paragraph in question from both the Part 51 and Part 52 PSD regulations. EPA, however, is not proposing to substitute a new provision. The agency has no reason to believe at this time that the *de minimis* levels in the first paragraph do not provide adequate protection for Class I areas. EPA solicits comment on whether such reason exists and, if so, what new provision it should substitute in the event it decides to finally promulgate the requirement in the form proposed.

[18] Section 111(a)(4) provides that "modification" means "any physical change in. or change in the method of operation of, a stationary source *which increases the amount of any air pollutant emitted by such source* or which results in the emission of any air pollutnat not previously emitted. 42 U.S.C. 7411(a)(4) (emphasis added.)

[19] It would not exclude a compound if it were subject to an NSPS or NESHAP.

E. Innovative Control Technology Waiver

1. *Background and Industry Challenge.* In revising the PSD regulations in August 1980, EPA established for the first time a procedure for granting innovative control technology waivers of certain PSD requirements, which the agency patterned after the innovative control technology waiver in Section 111. *See* 45 FR 52735, 52741. The regulations, however, entirely disallow such a waiver if a proposed project would "impact any Class I area." *E.g.*, 40 CFR 52.21(v)(2)(iv)(*b*).

In *CMA*, certain industry petitioners, including AMC, challenge that disallowance provision. They contend primarily that the provision is arbitrary because it disallows the waiver even if an impact is "insignificant or temporary." Fugitive Emissions Brief, at 55.

2. *EPA Response.* EPA agrees preliminarily that the current formulation of the waiver is overly stringent with respect to Class I areas. Under the current PSD regulations, an applicant whose project would affect a Class I area can nevertheless get a PSD permit, if the applicant shows that the project would not cause or contribute to a violation of an increment for the area and the Federal Land Manager fails to show that the project would adversely impact any air quality related values of the area. *E.g.*, 40 CFR 52.21(p)(3) (1982). In fact, even an applicant whose project would *violate* a Class I increment might be able, nevertheless, to get a permit through special variance procedures in subsections (p)(4)–(7) of the regulations. In contrast, an applicant whose project under an innovative control technology waiver would merely *affect* a Class I area cannot get the waiver under any circumstances.

EPA, in creating this disallowance, sought to counterbalance an exemption that the waiver provision extends to applicants. Under subparagraph (v)(2)(iii), an applicant does not have to show that the proposed project would not cause or contribute to an increment violation while operating under the waiver. 45 FR 52727. As a result, but for the disallowance, a project under a waiver could violate a Class I increment or adversely affect an air quality related value. EPA agrees, however, that the waiver provision can be refined to exempt an applicant from providing most of the air quality impact analysis that it would otherwise have to provide with respect to the waiver period and still protect Class I areas fully.

3. *Proposed Amendments.* Hence, EPA is proposing to delete the current disallowance provision and to insert another provision that would allow the permitting authority to grant a waiver only if the provisions relating to Class I areas (*i.e.*, subsection (p)) have been satisfied with respect to *all* periods during the life of the source or modification. Obviously, this provision would expand the circumstances in which a waiver is available, but at the price of additional demonstrations for some applicants.

F. Secondary Emissions

1. *Background.* The 1978 version of the Part 52 PSD regulations provided in Section 52.21(l) that, to get a permit, an applicant had to show among other things, that the proposed project would neither cause nor contribute to a violation of a PSD increment or NAAQS. 43 FR.26407. The preamble to the regulations added that an applicant, in making that showing, generally had to include any quantifiable "secondary emissions" of the proposed project.[20] 43 FR 26403. The 1978 Part 51 PSD regulations echoed those requirements; it required any state PSD program to contain a provision equivalent to section 52.21(l). A definition of "secondary emissions" did not appear in the Part 51 or Part 52 regulations or in the preambles to them.

In revising the PSD regulations in August 1980, EPA retained, in the form of new Sections 52.21(k) and 51.24(k), the requirement for a demonstration that a proposed project would neither cause nor contribute to a violation of a PSD increment or NAAQS. 45 FR 52741, 52734. The agency, however, added a parenthetical to those provisions which expressly required the inclusion of "secondary emissions." It also put a definition of that term into both sets of regulations. Now, "secondary emissions" means:

> Emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of this section, secondary emissions must be specific, well defined, quantifiable and impact the same general area as the stationary source or modification. Secondary emissions include emissions from any offsite support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel. [*E.g.*, 40 CFR 52.21(b)(18) (1981), as amended 47 FR 27554 (June 25, 1982).]

An example of an "offsite support facility" is a strip mine owned by one company that would be located next to a proposed power plant owned by another and that would supply only the power plant. Another example is a quarry owned by one company that would be located next to a proposed cement plant owned by another and that would supply only the cement plant.

2. *Industry Challenges.* In *CMA*, certain industry petitioners have challenged the requirement that an applicant must include "secondary emissions" in assessing air quality impacts for PSD purposes. They argue that EPA exceeded its authority in establishing the requirement. *See* Fugitive Emissions Brief, at 48–50; AMC Petition for Reconsideration, at 29–32. Specifically, they assert that the relevant statutory provision, section 165(a)(3), required an applicant to include only those emissions that would come directly from the proposed project, since the key language of that section refers only to the "emissions from the construction or operation *of such facility.*"[21] 42 U.S.C. 7475(a)(3) (emphasis added).

3. *EPA Response.* EPA is inclined to conclude that a change in this requirement would be legally defensible, but it does not agree that an applicant need include only the emissions of its proposed project in its air quality impact assessment. Section 165(a)(3) also provides that an applicant must show that the proposed project "will not cause or *contribute* to, air pollution" in violation of a PSD increment or NAAQS. *Id.* (emphasis added). In order to determine whether a proposed project would contribute to a violation, one must take into account, not only the emissions from the project itself, but also the emissions from projects whose operation would coincide with it and whose emissions are reasonably quantifiable. Such projects are those

[20] In view of the restrictions on indirect source review in Section 110(a)(5) of the Act, the agency added that the applicant could ignore any "secondary emissions" from motor vehicles or aircraft. 43 FR 26403 n.9. EPA recently added vessels to that list, so that vessel emissions are now to be ignored as well. *See* 47 FR 27554 (June 25, 1982).

[21] Section 165(a) provides, in relevant part, as follows:

> (a) No major emitting facility on which construction is commenced after the date of the enactment of this part, may be constructed in any area to which this part applies unless—
>
> * * * * *
>
> (3) the owner or operator of such facility demonstrates that emissions from construction or operation of such facility will not cause, or contribute to, air pollution in excess of [42 U.S.C. 7475(a).]

which are already in operation or which, while not yet in operation, nevertheless have a construction permit. If those co-located and contemporaneous projects were ignored, it would be impossible to determine that the proposed project would not contribute to a violation of an increment or NAAQS.

While the "contribute" language thus persuades EPA that Congress intended the emissions from other projects to be taken into account, it does not persuade the agency that Congress also intended "secondary emissions" to be taken into account. Unlike the emissions from projects in operation or with permits, "secondary emissions" are arguably not reasonably quantifiable. The rate of emissions from an "offsite support facility" and their air quality impact will depend on a host of factors that will be largely unpredictable at the time an applicant is preparing its application. For a proposed strip mine, for instance, the probable unknowns will include the geographical distribution of haul roads, the type of digging equipment, the pattern of blasting, the number and size of hauling trucks, and the rate and method of coal extraction. EPA's current requirements appear to force a prospective applicant to assume the worst or attempt to prove that the "secondary emissions" in question are not reasonably quantifiable. The former approach may lead the applicant to impose constraints on the project artificially, not because of a reasonable prospect of real air quality degradation. The latter approach, on the other hand, may prove expensive and in the end fruitless. Congress arguably could not have intended to impose these burdens on applicants.

4. *Proposed Amendments.* As a result, EPA is proposing to delete the provisions in sections 51.24(k) and 52.21(k) which currently require the inclusion of "secondary emissions" in air quality impact assessments in PSD permit applications.[22] In addition, EPA is proposing to delete the second and last sentences in the PSD definition of "secondary emissions," since both would become superfluous with the exclusion of "secondary emissions" from such assessments. EPA is not proposing, however, to delete the definition altogether, since the PSD definition of "potential to emit" contains the useful clarification that "[s]econdary emissions do not count in determining the potential to emit of a stationary source." 40 CFR 51.24(b)(4), 52.21(b)(4) (1982).

EPA is also proposing deletions in the Offset Ruling that would parallel the proposed deletions in the PSD regulations. Finally, EPA is proposing to delete only the second and last sentence of the definition of "secondary emissions" in 40 CFR 51.18(j) and 52.24. Those two sets of nonattainment new source review regulations do not contain provisions that expressly require the inclusion of "secondary emissions" in air quality impact determinations.

G. Offset Credit for Source Shutdowns and Curtailments

1. *Background.* At the core of the Offset Ruling is the "offset" requirement: an applicant for a permit for a "major" project that would be located in an area that is nonattainment for a pollutant for which the project is major must show that the emissions of the pollutant from the project will be offset by sufficient creditable reductions in emissions elsewhere so as to assure reasonable further progress toward attainment and a net air quality benefit.[23] See 40 CFR Part 51, Appendix S, § IV.A. (1981).

The Ruling also contains elaborate rules for determining the creditability of emissions reductions. *Id.* § IV.C. One of those rules restricts the creditability of reductions that come from the permanent shutdown or curtailment of a source.[24] It provides in relevant part that a reduction from a shutdown or curtailment that occurred *before* the date of the application is creditable only if: (1) The shutdown or curtailment occurred after August 7, 1977 and (2) the proposed project is a replacement for the loss in productive capacity.[25] *Id.* § IV.C.3. n.9. The purpose of this restriction, according to EPA, was "to ensure that an offset relates to the current air quality problem . . . ." 44 FR 3280.[26]

The other EPA regulation governing nonattainment new source review—Section 51.18(j)—basically reflects the same "offset" requirement. *See* 40 CFR 51.18(j)(2) (1981) (referencing Section 173). Section 15.18(j) also contains elaborate rules for determining offset creditability, including one that imposes the same restrictions on reductions from pre-application shutdowns and curtailments that the Offset Ruling imposes. *Id.* §51.18(j)(3)(ii)(*c*).

2. *Industry Challenge.* In *CMA*, certain industry petitioners challenge the restriction in the Offset Ruling and Section 51.18(j) on the creditability of reductions from shutdowns and curtailments that occur before the date of application, but after August 7, 1977. they contend that EPA, by refusing to allow offset credit for such reductions except in the narrow circumstances of a replacement, has violated the intent of Congress and acted arbitrarily or capriciously. *See* Brief for Industry Petitioners on Source Shutdown and Curtailment (February 12, 1981).

3. *EPA Response.* EPA agrees preliminarily that the restriction in Section 51.18(j) contradicts Section 173. Section 173 provides that "[t]he permit program required [for nonattainment areas] *shall provide* that permits to construct and operate *may be issued*" if certain requirements are met, including an offset requirement. 42 U.S.C. 7503 (emphasis added). While this provision primarily tells each state that its SIP must contain a nonattainment permit program if it has a nonattainment area, it also tells EPA that it must approve any permit program that contains the requirements that Section 173 describes. *See Id.* § 7410(a)(2). The offset requirement that Section 173 describes would require an applicant to show only that sufficient emission reductions will have been obtained by the time the proposed project begins to operate so as to assure reasonable further progress toward attainment. *See* 42 U.S.C. 7503 (1) (A)–(B). As a result, an applicant could satisfy that requirement by pointing to reductions from pre-application shutdowns and curtailments that the state did not take into account in formulating its attainment strategy, *even if* the proposed project would not replace the lost productive capacity. By contrast, an applicant could satisfy the Section 51.18 requirement by pointing to such reductions, *only if* the proposed project would replace that capacity. Plainly, the Section 51.18 requirement would not recognize some of the shutdowns and curtailments that the Section 173 requirement would recognize. Section 51.18, therefore, purports to bar EPA from approving offset provisions that Section 173 requires it to approve. Thus, it contradicts Section 173.

EPA also agrees preliminarily that the restriction as it appears in the Offset

[22] It should be noted that this deletion would not affect the current rule that any actual increase in emissions at an offsite support facility which occurs after the applicable baseline date would consume increment. *E.g.*, 40 CFR 52.21(b)(13)(ii)*(b)* (1982).

[23] The Offset Ruling applies in only a few circumstances. In general, the construction moratorium, or preconstruction review programs approved as meeting the requirements of Section 173, have supplanted it.

[24] This provision appeared in the original Offset Ruling. 41 FR 55529 (December 21, 1976). EPA repromulgated it with some refinement when it revised the Ruling in January 1979. 44 FR 3284.

[25] This rule also provides that a reduction from a shutdown or curtailment that occurs *after* the date of application is creditable only if (1) the work force has been notified of the shutdown or curtailment and (2) the shutdown or curtailment is legally enforceable. *Id* § IV.C.3.

[26] In September 1980, EPA declined to revise the restriction in response to comments opposing it. *See* 45 FR 59876–77.

Ruling sets forth a rule that is undesirable. There arguably is no need to disallow offset credit for a reduction from a shutdown or curtailment so long as the reduction, together with any other reductions that the applicant may offer, would produce a net air quality benefit and reasonable progress toward attainment.

4. *Proposed Amendment.* In light of those conclusions, EPA is proposing to delete the challenged restriction from the relevant provisions in Section 51.18(j) and the Offset Ruling. EPA is also proposing to delete the restriction that relates to notification of the workforce. EPA can see no rational basis or authority for that restriction, since the notification has no bearing on air quality. Finally, EPA is proposing to change the dates in the current provisions from August 7, 1977 to "a reasonable date specified in the plan", in the case of Section 51.18, and to December 21, 1976 (the date of original promulgation of the Offset Ruling), in the case of the Ruling. The purpose of that change is to maximize the flexibility a permitting authority would have for granting offset credit. EPA specifically solicits comment, however, on whether there should be any time restrictions at all.

H. Banking of Offsets

The Offset Ruling contains a provision, subparagraph IV.C.5., which affirms that a permitting authority may give offset credit under the Ruling for past, "banked" reductions and which sets some boundaries on the circumstances under which it may grant this credit. The third and last sentences of that subparagraph also contain guidance on the approvability under Section 173 of a permit program that would give credit for "banked" offsets. Since adding that guidance to the Offset Ruling in January 1979, EPA has issued regulatory guidance on banking for purposes of nonattainment new source review in the form of Section 51.18(j) (3) and policy guidance in the form of the proposed Emissions Trading Policy, 47 FR 15076 (April 7, 1982). This newer guidance renders the guidance in the Offset Ruling superfluous. To avoid confusion, EPA is proposing here to delete the third and last sentences.

EPA currently is reconsidering other provisions that govern offset credit in the Offset Ruling and Section 51.18(j) in response to the objections to them raised by industry in *CMA* and in light of the proposed Emissions Trading Policy. EPA expects in the near future to propose amendments to those provisions.

III. Guidance

A. Obligation to Cure Increment Violations

EPA is currently reevaluating the NAAQS for particulate matter and expects to conduct rulemaking to revise it. EPA may propose not only new concentration levels for the NAAQS, but also in effect a new definition of "particulate matter" that would exclude particles above a size to be determined after further analysis of the relevant scientific information. The CMA settlement agreement specifies that when EPA proposes a new size cutoff for "particulate matter" for purposes of the NAAQS, it will also propose (1) a new size cutoff or PSD purposes that would remain in effect indefinitely (the "permanent PSD cutoff") and (2) an interim size cutoff for PSD purposes that would remain in effect until EPA takes final action on the permanent PSD cutoff.

Before EPA takes final action on the permanent PSD cutoff, one or more violations of a PSD increment for particulate matter may be discovered. If a violation of a PSD increment is discovered, the state has an obligation under 40 CFR 51.24(a)(3) (1981) to adopt such revisions to its SIP as would be necessary to cure the violation and to submit them to EPA for approval within 60 days afer discovery of the violation or within such longer period as EPA may determine after consultation with the state. In view of the possible promulgation of a new cutoff for particulate matter for purposes, EPA will postpone, until it takes final action on a permanent PSD cuttoff, the time by which a state must submit a SIP revision to cure a violation of an increment for particulate matter, if the state requests such a postponement. It should be noted, however, that the continued existence of an increment violation would pose a possibly insurmountable barrier to the issuance of a PSD permit to a project that would contribute to the violation.

B. Issuance of Non-PSD SIP Permits

SIPs contain a basic permit program that stands independent of any other permit program in the SIP and consist only of the requirements outlined by 40 CFR 51.18(a)-(i) (1982). Such a program would not contain any provisions relating to PSD increments. Under such a program the permitting authority may issue a permit even if modeling shows that the project in question would cause or contribute to a violation of a PSD increment for particulate matter or sulfur dioxide. Of course, if the project were subject independently to the PSD regulations in the SIP, it would have to have a PSD permit. To obtain a PSD permit, the owner or operator would have to show that the project would not cause or contribute to an increment violation.

C. Transfer of Technology for LAER

In revising the Offset Ruling in January 1979 and in providing guidance to the states for the preparation of SIP revisions to meet the requirements of Section 173, EPA stated that "in determining the lowest achievable emission rate (LAER), the reviewing authority may consider transfer of technology from one source type to another where such technology is applicable." 44 FR 3280' 44 FR 20379 (April 4, 1979). EPA interprets that statement as saying merely that the Agency would not disapprove a SIP revision that required technology transfer for LAER determinations. EPA was not attempting to say that it would approve a SIP revision which sought to incorporate the Section 173 requirements only if the revision required technology transfer. To the contrary, an express prohibition against technology transfer in the revision would not be grounds for disapproval.

IV. Miscellaneous

EPA solicits comment on the amendments it is proposing here. The initial period for the submission of written comment closes on October 11, 1983. EPA will not grant an extension of this initial comment period except upon an application showing some extraordinary cause. In the *CMA* settlement agreement, the agency committed to make good faith best efforts to take final action on the proposals here within 150 days from the date of this **Federal Register** notice. Any extension of the initial comment period would diminish EPA's ability to take final action within that period. EPA, in any event, currently plans not to extend the initial comment period beyond 60 days, since it committed not to do so in the settlement agreement. EPA will hold the public docket for this rulemaking open for 30 days after the close of the initial comment period for the submission of written rebuttal and supplementary information. All written comments and information should be submitted (in triplicate, if possible) to: Central Docket Section (A–130), Environmental Protection Agency, 401 M Street, S.W., Washington, D.C.20460. Attention: Docket A–82–23.

EPA has established a docket for this rulemaking, Docket No. A–82–32. The docket is an organized and complete file

of all significant information submitted to or otherwise considered by EPA during this proceeding. The contents of the docket will serve as the record in the case of judicial review under Section 307(b) of the Act, 42 U.S.C. 7607(b). The docket is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section, West Tower Lobby, Gallery I, 401 M Street, SW., Washington, D.C. A reasonable fee may be charged for copying.

EPA will hold a public hearing on the proposed amendments on September 29, 1983, at 10:00 a.m., in Room 5353, Waterside Mall, 401 M Street, SW., Washington, D.C. The hearing will be informal. A panel of EPA staff will hear the oral presentations. There will be no cross-examination and no requirement that any person be under oath. Each member of the panel may seek clarification or amplification of any presentation. The presiding officer of the panel may set a time limit for each presentation and may restrict any presentation that would be irrelevant or repetitious. A transcript of each hearing will be made and placed in the rulemaking docket.

Any person who wishes to speak at the hearing should as soon as possible send written notice of this to EPA, giving name, address, telephone number, and the length of the presentation. Anyone stating that his or her presentation would be longer than 20 minutes should also state why it need be longer. Each notice should be sent to Kirt Q. Cox, at the address given at the beginning of this notice. EPA will develop a schedule for presentations based on the notices it receives. Anyone who fails to submit a notice, but wishes nevertheless to speak at the hearing, should so notify the presiding officer immediately before the hearing. The presiding officer will decide whether, when, and for how long the person may speak. Each speaker should bring extra copies of his or her presentation for the convenience of the hearing panel, the hearing reporter, the press, and other participants. The hearings will be open to the public.

Under Exective Order 12291, EPA must judge whether an action it proposes to take would be a "major rule" and therefore subject to the requirement of a Regulatory Impact Analysis. The amendments EPA is proposing here would not constitute a "major rule," primarily because they would relieve current regulatory burdens.

The requirement for performing an economic impact assessment in Section 317 of the Act, s42 U.S.C. 7617, does not apply to the amendments EPA is proposing here. Section 317 applies only to "revisions which the Administrator determines to be substantial revisions." The proposed amendments are not substantial revisions, because they relieve current regulatory burdens and the Act requires them.

The proposed amendments have been submitted to the Office of Management and Budget for review under Executive Order 12291. Any comments from that office on the amendments and any EPA responses have been placed in the docket for this proceeding.

Pursuant to the provisions of 5 U.S.C. 605(b), EPA hereby certifies that the proposed amendments will not have a significant impact on small entities.

List of Subjects

40 CFR Part 51

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

40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

Authority: Sections 101(b)(1), 160–169, 171–178, and 301(a) of the Clean Air Act as amended (42 U.S.C. 7401(b)(1), 7410, 7470–79, 7501–08 and 7601(a)); section 129(a) of the Clean Air Act Amendments of 1977 (Pub. L. No. 95–95, 91 Stat. 685 (August 7, 1977)).

Dated: August 15, 1983.

Alvin L. Alm,

Deputy Administrator.

A. Requirements for State PSD Plans

§ 51.24 [Amended]

Section 51.24 of Title 40 of the Code of Federal Regulations, as amended at 47 FR 27554 (June 25, 1982), is proposed to be amended as follows:

1. By adding a new paragraph (b)(1)(iii) to read as follows: "(iii) The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this section whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources: [Reserved].";

2. By adding to paragraph (b)(2)(iii)(*e*)(*1*) an "(*i*)" after "prohibited" and the following clause just before the semicolon at the end of the paragraph: ", or (*ii*) under any enforceable condition which was established after [the effective date of this clause]";

3. By adding to paragraph (b)(2)(iii)(*f*) an "(*1*)" after "prohibited" and the following clause at the end of the paragraph: ", or (*2*) under any enforceable condition which was established after [the effective date of this clause].";

4. By adding a new paragraph (b)(2)(iv) to read as follows: "(iv) Any net increase in fugitive emissions from a change at a stationary source shall not be included in determining for any of the purposes of this section whether the change is a major modification, unless the source belongs to one of the following categories of stationary sources: [Reserved].";

5. By deleting "federally" in paragraph (b)(3)(vi)(*b*), deleting the "; and" at the end of the paragraph, and putting a period in its place;

6. By deleting paragraph (b)(3)(vi)(*c*);

7. By deleting "federally" in the second sentence of paragraph (b)(4);

8. By deleting "federally" wherever it appears in paragraph (b)(16);

9. By revising paragraph (b)(17) to read as follows: "(17) 'Enforceable' means enforceable under federal, state or local law and discoverable by the Administrator and any other person.";

10. By deleting the second and last sentences of paragraph (b)(18);

11. By deleting paragraph (b)(23)(iii) [relating to Class I areas];

12. By adding a new paragraph (b) (29) to read as follows: "Volatile organic compounds' excludes each of the following compounds, unless the compound is subject to an emissions standard under Sections 111 or 112 of the Act: Methane; ethane; methylene chloride; 1,1,1trichloroethane (methyl chloroform); trichlorotrifluoroethane (CFC–113) (Freon 113); trichlorofluoromethane (CFC–11); dishlorodifluoromethane (CFC–12); chlorodifluoromethane (CFC–22); trifluormethane (FC–23); dichlorotetrafluoroethane (CFC–114); and chloropentafluoroethane (CFC–115).";

13. By deleting paragraph (i)(4)(ii) and redesignating paragraph (i)(4)(iii) as (i)(4)(ii);

14. By deleting the parenthetical in paragraph (k); and

15. By deleting paragraph (s)(2)(iv)(*b*), redesignating paragraph (s)(2)(iv)(*c*) as (s)(2)(iv)(*b*), and revising paragraph (s)(2)(v) to read as follows: "The provisions of subsection (p) of this section (relating to Class I areas) have been satisfied with respect to all periods

during the life of the source or modification.".

B. New Source Review for PSD Purposes

§ 52.21 [Amended]

Section 52.21 of Title 40 of the Code of Federal Regulations, as amended at 47 FR 27554 (June 25, 1982), is proposed to be amended as follows:

1. By adding a new paragraph (b)(1)(iii) to read as follows: "(iii) The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this section whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources: [Reserved].";

2. By adding to paragraph (b)(2)(iii)(*e*)(*1*) an "(*i*)" after "prohibited" and the following clause just before the semicolon at the end of the paragraph: ",or (*ii*) under any enforceable condition which was established after [the effective date of this clause]";

3. By adding to paragraph (b)(2)(iii)(*f*) an "(*1*)" after "prohibited" and the following clause at the end of the subparagraph: ", or (*2*) under any enforceable condition which was established after [the effective date of this clause].";

4. By adding a new paragraph (b)(2)(iv) to read as follows: "(iv) Any net increase in fugitive emissions from a change at a stationary source shall not be included in determining for any of the purposes of this section whether the change is a major modification, unless the source belongs to one of the following categories of stationary sources: [Reserved].":

5. By deleting "federally" in paragraph (b)(3)(vi)(*b*), deleting the "; and" at the end of the paragraph, and putting a period in its place;

6. By deleting paragraph (b)(3)(vi)(*c*);

7. By deleting "federally" in the second sentence of paragraph (b)(4);

8. By deleting "federally" wherever it appears in paragraph (b)(16);

9. By revising paragraph (b)(17) to read as follows: "(17) 'Enforceable' means enforceable under federal, state or local law and discoverable by the Administrator and any other person.";

10. By deleting the second and last sentences of paragraph (b)(18);

11. By deleting subparagraph (b)(23)(iii) [relating to Class I areas];

12. By adding a new paragraph (b)(29) to read as follows: " 'Volatile organic compounds' excludes each of the following compounds, unless the compound is subject to an emissions standard under Sections 111 or 112 of the Act: methane; ethane; methylene chloride; 1,1,1 – tricholoroethane (methyl chloroform); trichlorotrifluoroethane (CFC–113) (Freon 113); trichlorofluoromethane (CFC–11); dichlorodifluoromethane (CFC–12); chlorodifluoromethane (CFC–22); trifluoromethane (FC–23); dichlorotetrafluoroethane (CFC–114); and chloropentafluoroethane (CFC–115).";

13. By deleting paragraph (i)(4)(vii) and redesignating paragraph (i)(4)(viii) as (i)(4)(vii);

14. By deleting the parenthetical in paragraph (k); and

15. By deleting paragraph (v)(2)(iv)(*b*), redesignating paragraph (v)(2)(iv)(*c*) as (v)(2)(iv)(*b*), and revising paragraph (v)(2)(v) to read as follows: "The provisions of paragraph (p) of this section (relating to Class I areas) have been satisfied with respect to all periods during the life of the source or modification.".

C. State Plans for New Source Review for Nonattainment Purposes

§ 51.18 [Amended]

Section 51.18 of Title 40 of the Code of Federal Regulations, as amended at 46 FR 50766 (October 14, 1981) and 47 FR 27554 June 25, 1982), is proposed to be amended as follow:

1. By deleting "federally" in the second sentence of subparagraph (j)(1)(iii);

2. By adding a new paragraph (j)(1)(iv)(*c*) to read as follows: "(*c*) The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this subsection whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources: [Reserved].";

3. By adding to paragraph (j)(1)(v)(*c*)(*5*)(*i*) an "(*A*)" after "prohibited" and the following clause just before the semicolon at the end of the paragraph: ", or (*B*) under any enforceable condition which was established after [the effective date of this clause]";

4. By adding to paragraph (j)(1)(v)(*c*)(*6*) an "(*i*)" after "prohibited" and the following clause at the end of the subparagraph: ", or (ii) under any enforceable condition which was established after [the effective date of this clause].";

5. By adding a new paragraph (j)(1)(v)(*d*) to read as follows: "(*d*) Any net increase in fugitive emissions from a change at a stationary source shall not be included in determining for any of the purposes of this subsection whether the change is a major modification, unless the source belongs to one of the following categories of stationary sources: [Reserved].";

6. By deleting "federally" in paragraph (j)(1)(vi)(*e*)(*2*);

7. By deleting paragraph (j)(1)(vi)(*e*)(*4*);

8. By deleting the second and last sentences in paragraph (j)(1)(viii);

9. By deleting "federally" wherever it appears in paragraph (j)(1)(xi);

10. By revising paragraph (j)(1)(xiv) to read as follows: "(xiv) 'Enforceable' means enforceable under federal, state or local law and discoverable by the Administrator and any other person.";

11. By adding a new paragraph (j)(1)(xix) to read as follows: " 'Volatile organic compounds' excludes: methane; ethane; methylene chloride; 1,1,1-tricholoroethane (methyl chloroform); trichlorotrifluoroethane (CFC–113) (Freon 113); trichlorofluoromethane (CFC–11); dichlorodifluoromethane (CFC–12); chlorodifluoromethane (CFC–22); trifluoromethane (FC–23); dichlorotetrafluoroethane (CFC–114); and chloropentafluoroethane (CFC–155).";

12. By revising paragraph (j)(3)(ii)(*c*) to read as follows: "(*c*) Emissions reductions achieved by shutting down an existing source or permanently curtailing production or operating hours below baseline levels may be credited, provided that the shutdown or curtailment occurred after a reasonable date specified in the plan.";

13. By deleting "federally" from paragraph (j)(3)(ii)(*e*); and

14. By deleting paragraph (j)(4) and renumbering paragraph (j)(5) as (j)(4).

D. Emission Offset Interpretative Ruling

Appendix S

Appendix S of Part 51 of Title 40 of the Code of Federal Regulations, as amended at 46 FR 50766 (October 14, 1981) and 47 FR 27554 (June 25, 1982), is proposed to be amended as follows:

1. By deleting "federally" in the second sentence of subparagraph II.A.3;

2. By adding a new paragraph II.A.4(iii)to read as follows: "(iii) The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this Ruling whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources: [Reserved].";

3. By adding to paragraph II.A.5(iii)(*e*)(*1*) an "(*i*)" after "prohibited" and the following clause just before the semicolon at the end of the

subparagraph: ", or (ii) under any enforceable condition which was established after [the effective date of this clause]";

4. By adding to paragraph II.A.5(iii)(*f*) an"(*1*)" after "prohibited" and the following clause at the end of the paragraph: ", or (*2*) under any enforceable condition which was established after [the effective date of this clause].";

5. By adding a new paragraph II.A.5(iv) to read as follows: "(iv) Any net increase in fugitive emissions from a change at a stationary source shall not be included in determining for any of the purposes of this Ruling whether the change is a major modification, unless the source belongs to one of the following categories of stationary sources: [Reserved].";

6. By deleting "federally" in paragraph II.A.6(v)(*b*);

7. By deleting the "; and" in paragraph II.A.6(v)(*c*) and putting a period in its place;

8. By deleting paragraph II.A.6(v)(*d*);

9. By deleting the second and last sentences of paragraph II.A.8.;

10. By deleting "federally" wherever it appears in paragraph II.A.11.;

11. By revising paragraph II.A.12. to read as follows: "(12) 'Enforceable' means enforceable under federal, state or local law and discoverable by the Administrator and any other person.";

12. By adding a new paragraph II.A.20. to read as follows: " 'Volatile organic compounds' excludes: methane; ethane; methylene chloride; 1,1,1-tricholoroethane (methyl chloroform); trichlorotrifluoroethane (CFC–113) (Freon 113); trichlorofluoromethane (CFC–11); dichlorodifluoromethane (CFC–12); chlorodifluoromethane (CFC–22); trifluoromethane (FC–23); dichlorotetrafluoroethane (CFC–114; and chloropentafluoroethane (CFC–115).";

13. By deleting paragraphs II.D.—II.G.;

14. By revising paragraph IV.C.3. to read as follows: "3. *Operating hours and source shutdown.* A source may be credited with emissions reductions achieved by shutting down an existing source of permanently curtailing production or operating hours below baseline levels (see initial discussion to this Section C), provided that the shutdown or curtailment occurred after December 21, 1976. Emission offsets that involve reducing operating hours or production or source shutdowns must be legally enforceable, as in the case for all emission offset situations.";

15. By deleting footnote 9; and

16. By deleting the third and last sentences of paragraph IV.C.5.

E. Restrictions on Construction for Nonattainment Areas

§ 52.24 [Amended]

Section 52.24 of Title 40 of the Code of Federal Regulations, as amended at 46 FR 50766 (October 14, 1981) and 47 FR 27554 (June 25, 1982), is proposed to be amended as follows:

1. By deleting "federally" in the second sentence of paragraph (f)(3f);

2. By adding a new paragraph (f)(4)(iii) to read as follows: "(iii) The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this section whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources: [Reserved].";

3. By adding to paragraph (f)(5)(iii)(*e*)(*1*) an "(*i*)" after "prohibited" and the following clause just before the semi-colon at the end of the paragraph: ", or (*ii*) under any enforceable condition which was established after [the effective date of this clause]";

4. By adding to paragraph (f)(5)(iii)(*f*) an "(*1*)" after "prohibited" and the following clause at the end of the paragraph: ", or (*2*) under any enforceable condition which was established after [the effective date of this clause].";

5. By adding a new paragraph (f)(5)(iv) to read as follows: "(iv) Any net increase in fugitive emissions from a change at a stationary source shall not be included in determining for any of the purposes of this section whether the change is a major modification, unless the source belongs to one of the following categories of stationary sources: [Reserved].";

6. By deleting "federally" in paragraph (f)(6)(v)(*b*);

7. By deleting paragraph (f)(6)(v)(*d*);

8. By deleting the second and last sentences in paragraph (f)(8);

9. By deleting "federally" wherever it appears in paragraph (f)(11);

10. By revising paragraph (f)(12) to read as follows: "(12) 'Enforceable' means enforceable under federal, state or local law and discoverable by the Administrator and any other person.";

11. By adding a new paragraph (f)(18) to read as follows: " 'Volatile organic compounds' excludes: methane; ethane; methylene chloride; 1,1,1-trichloroethane (methyl chloroform); trichlorotrifluoroethane (CFC–113) (Freon 113); trichlorofluoromethane (CFC–11); dichlorodifluoromethane (CFC–12); chlorodifluoromethane (CFC–22); trifluoromethane (FC–23); dichlorotetrafluoroethane (CFC–114); and chloropentafluoroethane (CFC–115)."; and

12. By deleting paragraph (h) and renumbering the succeeding subsections accordingly.

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Thursday
August 25, 1983

Part VI

Department of Health and Human Services

Public Health Service

Proposed Regulations on Confidentiality of Alcohol and Drug Abuse Patient Records

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 2

Confidentiality of Alcohol and Drug Abuse Patient Records

AGENCY: Public Health Service, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes editorial and substantive changes in the "Confidentiality of Alcohol and Drug Abuse Patient Records" regulations. This proposal was prompted by the Department's commitment to make its regulations more understandable and less burdensome. The proposal clarifies and shortens the regulations and the proposed substantive changes will ease the burden of compliance.

DATES: Comments must be received on or before October 24, 1983.

ADDRESS: Submit written comments to: Judith T. Galloway, Legal Assistant, Alcohol, Drug Abuse, and Mental Health Administration, Room 13C-06. Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Comments will be available for public inspection at this location between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except for Federal holidays.

FOR FURTHER INFORMATION CONTACT: Judith T. Galloway (301) 443-3200.

SUPPLEMENTARY INFORMATION: The "Confidentiality of Alcohol and Drug Abuse Patient Records" regulations, 42 CFR Part 2, were promulgated on July 1, 1975 (40 FR 27802) and became effective August 1, 1975. The regulations implement two Federal statutes applicable, respectively, to alcohol abuse patient records (42 U.S.C. 290dd-3) and drug abuse patient records (42 U.S.C. 290ee-3).

Prompted by its experiences in interpreting and implementing the confidentiality regulations the Department of Health and Human Services on January 2, 1980 published a notice in the **Federal Register** (45 FR 53) announcing its intention to make editorial and substantive changes in the regulations. The notice invited public comment on fifteen substantive issues and on any other substantive or editorial aspect of the regulations. Approximately 450 comments were received in response to the notice.

Summary of Proposed Changes

Editorial Changes

The regulations would be substantially shortened by the following editorial changes: (1) Deletion of all "Basis and Purpose" sections, those explanatory sections which follow each substantive section of the current regulations; (2) deletion of §§ 2.3 and 2.5, a reference to previous regulations and discussion of format which are no longer needed; (3) deletion of § 2.22, a section on former employees which is legally unnecessary; and (4) the combining of other sections. In addition each of the sections would be rewritten for clarity and conciseness.

Substantive Changes

The following major substantive changes are proposed: (1) Limitation of the applicability of the regulations to federally assisted programs specializing in the diagnosis, treatment or referral for treatment of alcohol or drug abuse patients; (2) a new requirement that programs give notice to each patient of the applicability and effect of the Federal confidentiality regulations; (3) the setting forth of a sample written consent form; (4) the elimination of the impediment in the regulations to a patient's access to his or her own records; (5) the elimination of those sections governing disclosures with written consent in specific circumstances, other than disclosures to central registries and in connection with criminal justice referrals, in favor of a section which permits any disclosure to which the patient has consented by signing the required written statement; and (6) elimination of the prohibition on the entry of a court order authorizing the disclosure of subjective information regarding a patient.

These and other proposed changes in the regulations are reviewed in detail in the discussion which follows.

Substantive Issues Listed in the Notice of Decision To Develop Regulations

(a) Should the regulations be amended to permit patient access to his or her records for the purpose of making copies and disclosures as the patient sees fit?

The 174 affirmative responses[1] were justified on grounds that the patient has a "right" to access, that access will permit a truly informed consent to disclose information, that access will facilitiate correction of erroneous records, and that access will encourage more accurate recordkeeping practices. Many of the affirmative responses were qualified. They favored access but only if treatment has been completed, the program retains discretion to prevent access, the staff can review the record and partially limit the disclosure, or if the patient has access only to objective data.

Negative responses [1] totaled 290. Those responses were justified on grounds that clinical discretion in permitting access is vital to the patient's well-being, that patient access would interfere with treatment or be harmful to the patient, that the patient would use poor judgment in disclosing the record to third parties, that patient access would result in censored or inaccurate recordkeeping, and that patient access would create an additional administrative burden on the program.

Section 2.23 of the proposed regulations states that the regulations do not prohibit giving a patient access to his or her records, including the opportunity to inspect and copy any records that the program maintains about the patient. It also provides that written consent or other authorization is not required by these regulations for such access. This proposed change in the current regulations reflects the trend toward a right of patient access to medical records and is based upon experience under the access provisions of the Privacy Act (5 U.S.C. 552a) indicating that patient access to medical records has not proved harmful. A number of States have statutes providing for direct patient access to physician or hospital medical records and access is guaranteed by case law in other States. On the Federal level the Privacy Act of 1974 required direct access under most circumstances and the Privacy Protection Study Commission, established under that Act has recommended that:

> [U]pon request, an individual who is the subject of a medical record maintained by a medical-care provider, or another responsible person designated by the individual, [should] be allowed . . . access to the medical record including an opportunity to see and copy it. "Personal Privacy in an Information Society, The Report of the Privacy Protection Study Commission" 298 (July 1977).

The purpose of the proposed change is not to grant a patient right of access but only to provide that the regulations do not restrict such a right of access. Consistent with the conclusion of the Privacy Protection Study Commission that no solution to the problem of patient access is acceptable so long as it risks leaving the ultimate discretion to release or not to release in the hands of

[1] The affirmative and negative categories for the public comments on the fifteen issues listed in the Notice of Decision To Develop Regulations are not precise measures because of the difficulty in categorizing qualified responses as either affirmative or negative. Furthermore, the total of the comments on a particular issue do not necessarily reflect the total number of those submitting comments, because some commenters did not respond to each issue and others made more than one response to certain issues.

the patient's physician (Report at 297), the proposed change would keep the confidentiality regulations from being cited as a legal basis for such an exercise of discretion by alcohol and drug abuse programs.

(b) Should the regulations be amended to require that a program give notice to each patient of the existence and effect of Federal law and regulations which protect the confidentiality of alcohol and durg abuse patient records? Should the notice requirement be extended to any applicable State laws and regulations on confidentiality?

Affirmative responses totaled 318. Those responses were justified primarily on grounds that patients have a "right" to know about laws that affect them and that patient knowledge of these laws will strengthen the therapeutic relationship. Many of the affirmative responses were qualified. They dealt with whether the notice should be limited to the Federal alcohol and drug abuse confidentiality requirements, the content of the notice to the patient, and with how the notice should be delivered.

Negative responses totaled 92. Many of those responses were justified on grounds that notice is unnecessary because current regulations permit notice if a program wishes to inform patients, and that requiring a notice in every case would be too expensive and time consuming. Some were against a notice requirement because it would confuse patients. Others feared a notice requirement would lead to additional litigation for failure to notify.

A new § 2.22 has been added requiring that the patient be notified of the existence and effect of the Federal statutes and regulations which protect the confidentiality of alcohol and drug abuse patient records. No requirement for notification of the existence and effect of State law is proposed, as this is considered to be a matter of concern primarily to each State. Of course, each program is free to notify patients of any applicable State law and any program policy concerning confidentiality not inconsistent with Federal or State law.

The proposed regulations require that when a patient is admitted (or as soon after as the patient is capable of rational communication) that the patient be told of the existence and effect of the Federal statutes and regulations protecting the confidentiality of alcohol and drug abuse patient records and that the patient be given a notice in writing. A sample notice is included in the text of the regulations to assist programs in complying with the notification requirement.

Notice to each patient at the outset that the program must maintain the confidentiality of patient records will provide an incentive for the patient to be frank and open in the therapeutic relationship. By stating the limits on the confidentiality protections, the notice will lessen the potential for subsequent misunderstandings and may deter criminal acts on program premises or against program personnel, since no confidentiality protections are afforded in that instance.

A disadvantage of this approach is that it will require additional paperwork: namely, written notice to the patient. The Department believes a written notice is the most effective, reliable means of informing patients of the confidentiality protections for alcohol and drug abuse patient records. The sample notice is included in the proposed regulations as an aid to compliance with the regulations and not as a required form. What is required is that the elements described in § 2.22(b) be communicated to each patient. Communication of the information in the sample form would accomplish that purpose, but a program may communicate the required information in any manner that will provide each patient with written notice of the elements in § 2.22(b).

(c) Should the regulations be amended to apply only to specialized alcohol or drug abuse treatment and rehabilitation programs?

Affirmative responses totaled 178. The most frequent justification for applying the regulations only to specialized programs was that the regulations are costly, time consuming and confusing for application by general medical care facilities, some of which deal with small numbers of alcohol and drug abuse patients. Some responses indicated that application of the regulations to general medical care facilities is unnecessary because those facilities generally abide by some standard of confidentiality already, for example, a standard imposed by State law.

Negative responses totaled 205. The most frequent justification for a broad application of the regulations was that drug and alcohol abuse patient records are sensitive and should be protected regardless of the nature of the provider. Some commenters suggested confusion would result from trying to distinguish "specialized" programs from general medical care facilities.

Under § 2.12 of the proposed regulations and the proposed new definition of the term "program" the confidentiality restrictions would apply only to alcohol or drug abuse patient records maintained by federally assisted individuals or organizational entities which "specialize" in alcohol or drug abuse referral, treatment, or diagnosis for referral or treatment by holding themselves out as providers of one or more of those services. Thus, for example, the confidentiality protections would apply to an alcohol or drug abuse treatment unit within a general hospital but, in the absence of specialized personnel, would not apply to alcohol or drug abuse treatment provided in a hospital emergency room or a general hospital ward.

It is believed that the proposed change will: (1) Simplify administration of the regulations without significantly affecting the incentive to seek treatment provided by the confidentiality protections, and (2) lessen the adverse economic impact of the current regulations on a substantial number of small entities. In enacting the drug abuse confidentiality statute Congress stated that the purpose of the confidentiality protections was to encourage entry into treatment by ensuring that the records of treatment would not be publicly disclosed. Given the short-term, emergency (sometimes involuntary) nature of much of the alcohol and drug abuse treatment provided by hospital emergency rooms and other providers which do not "specialize" in the care of alcohol or drug abusers, it is questionable whether the application of the confidentiality protections to these providers has any significant effect on the decision to seek treatment. Furthermore, it is questionable whether this brief, episodic treatment is the type of treatment that Congress intended to encourage through enactment of the confidentiality regulations.

The proposed limitation on the current broad applicability of the regulations will lessen the costs of compliance. These costs are greater for general medical care providers because of the difficulties in determining the applicability of the confidentiality restrictions to the records of a patient who is treated for ailments in addition to alcohol or drug abuse or ailments which have a causal relationship to the alcohol or drug abuse.

(d) Should the regulations be amended to permit an auditor or program evaluator to redisclose patient identifying information obtained from a referring program for the purpose of evaluating that program's client referral mechanism?

Affirmative responses totaled 59. The justification most often given was that facilitating audit and evaluation of the patient referral mechanism will enhance program quality. Other affirmative responses were qualified, urging that

any redisclosure by an auditor or program evaluator for the purpose of evaluating the patient referral mechanism be accompanied by safeguards against redisclosure.

The most frequent rationale among the 224 negative responses was that permitting redisclosure of patient identifying information by auditors/evaluators for the purpose of evaluating a program's referral mechanism would result in a breach of confidentiality and loss of program credibility. Other negative responses indicated that disclosure of patient identity is not necessary to assess the effectiveness of a program's client referral mechanism. Some commenters suggested that patient consent be obtained before an auditor/evaluator rediscloses patient identifying information.

The proposed regulations do not alter the present prohibition on redisclosure by auditor/evaluators. An auditor/evaluator may use patient identifying information only to carry out an audit or evaluation purpose or to investigate or prosecute the program for criminal activities, as authorized by a court order entered under § 2.65, and may not disclose that information except back to the program from which it was obtained. These restrictions are consistent with the statutory provisions governing the redisclosure of patient identifying information by auditors and evaluators and provide a simple means of insuring the confidentiality of patient identifying information which is disclosed to auditors or evaluators.

It has been suggested that these restrictions on redisclosure make it impossible to conduct an adequate evaluation of a program's patient referral mechanism. It appears that this criticism is based upon a misunderstanding of what constitutes "patient identifying information" and of the effect of the regulatory restrictions upon those programs to which a patient has been referred. As is made clear by the proposed definitions in § 2.11 of "disclosure," "Patient" and "patient identifying information" and the proposed § 2.13(c), the regulations do not restrict a communication of information which does not identify a named individual as an alcohol or drug abuser or a recipient of alcohol or drug abuse services. Thus, there is no restriction on an auditor inquiring of a facility to which a patient has been referred, "Was John Doe admitted for treatment or services on or about [a certain date]?" if that inquiry does not in any way identify the individual as an alcohol or drug abuser or a recipient of alcohol or drug abuse services. Since the statutes and § 2.53 of the proposed regulations (§ 2.52 of the current regulations) permit disclosures without patient consent for audit and evaluation activities the program is permitted to provide patient identifying information in response to the auditor's inquiry. Thus, if the auditor's inquiry can be made without identifying an individual as an alcohol or drug abuser or a recipient of alcohol or drug abuse services, current regulations permit evaluation of a program's referral mechanism.

(e) Should the regulations be amended to permit a patient to consent to disclosure of information by means of a more general consent form?

The 153 affirmative responses stated that a more general consent form would provide flexibility and convenience and be more likely to conform with State requirements, with State hospital association guidelines, or with the form used for all other patients of a facility. It was also stated that a general, unqualified consent to disclosure given when the patient is admitted allows the facility to make a disclosure without having to recontact a patient who has left treatment to obtain a consent for a particular purpose, perhaps unforeseen at the time of admission. Some general medical care facilities were concerned that the use of a special form for alcohol and drug abuse patients calls attention to them.

Negative responses totaled 240. Many respondents expressed satisfaction with the required elements for written consent and some suggested adoption of the format for all patients. A frequent justification for the retention of the specific requirements in § 2.31 was that they inform the patient specifically of what he or she is consenting to have disclosed. Others preferred retention of the present consent requirements because a more general form would lead to the release of additional, unnecessary, or unrequested information.

The proposed regulations retain the present requirement for a specific written consent. Section 2.31 has been changed only for editorial purposes and to add a sample consent form to aid programs in tailoring their consent forms to the requirements of § 2.31.

The primary advantage of retaining the specific elements required by § 2.31 is that of providing each patient with specific information on the disclosures that he or she is consenting to and thereby providing each patient with a greater degree of control over the disclosures. The report of the Privacy Protection Study Commission supports the Department's position and recommends the requirements of § 2.31 as a model for consent forms relating to all medical records.

The primary disadvantage of requiring that each written consent contain all the elements in § 2.31 is that it may be difficult for a general medical care facility to obtain a consent conforming to § 2.31 where a patient is initially admitted for a problem unrelated to alcohol or drug abuse, but is later treated, diagnosed, or referred for treatment for alcohol or drug abuse.

The Department believes these difficulties are minimized, if not eliminated, by the proposed limitation of the regulations to programs specializing in the provision of alcohol or drug abuse treatment or referral for treatment, or diagnosis for these purposes. These programs should be able to readily obtain a conforming consent prior to treating a patient for alcohol or drug abuse.

(f) Should the regulations be amended to facilitate reimbursement by making the written consent requirements less stringent for disclosures to third party payers and funding sources?

Affirmative responses totaled 165. These responses emphasized that the failure to obtain a consent conforming to § 2.31 (either because the patient chooses not to consent or because the program is unable to locate the patient) results in increased costs to all patients flowing from the program's inability to be reimbursed by a third party payer. Some responses were qualified: they favored less stringent consent requirements for third party payers but only if the third party payers were prohibited from redisclosing the information without getting the patient's consent.

Negative responses totaled 179. These responses indicated that the present requirements do not present an unreasonable burden in obtaining reimbursement from third party payers. Some also expressed a lack of confidence in the standards of confidentiality maintained by third party payers, making "informed consent" to release information an important goal.

The proposed regulations continue in effect the requirement for a § 2.31 written consent in making disclosures to a third party payer because the Department does not believe the requirement is unduly burdensome and because there is insufficient justification for treating third party payers differently from other recipients of disclosure. However it is noted that other changes in Subpart C will simplify all disclosures

with patient consent because the standard for permitting release of information with patient consent will be constant: the presence of each element required for consent under § 2.31 and a determination that the information disclosed is necessary to carry out the purpose for which the consent was given.

(g) Should the regulations be amended to extend to family members the liberal disclosure provision allowed for a patient's legal counsel?

Affirmative responses totaled 101. Some favored extension of the "short form" written consent procedures in § 2.35 of the current regulations to family members because it would be helpful to the patient's therapy. Others believed that if a patient is given access to his or her own records (see issue (a)) the patient should be able to give a general "short form" consent to a disclosure to any person, including family members. Others felt that only immediate family members or family members involved in the patient's treatment should be able to receive patient information pursuant to such a consent.

Negative responses totaled 228. Some were against this change because they believe an attorney's responsibility toward a client and a family's relationship with the patient are not comparable: The attorney is bound by professional ethics to act in the patient's best interest and has a "need to know" whereas the family lacks objectivity and may even be a part of the patient's problem. A few responses did not favor special procedures for lawyers or family but urged uniformity in the process for disclosing any information with patient consent.

The proposed regulations eliminate the need for consideration of this issue by deleting § 2.35 of the current regulations and establishing a uniform process for disclosures with written consent. The proposed §§ 2.31 and 2.33 would permit any disclosure to which the patient has consented by signing a written statement as required by the regulations, with special rules being retained only for disclosures to central registries and disclosures in connection with criminal justice referrals.

(h) Should there be any prohibition on redisclosure by the recipient of a disclosure made with written patient consent?

Affirmative responses totaled 278. Almost half of these responses were without comment or indicated satisfaction with the present regulations. Many stated that without the prohibition on redisclosure in § 2.32 of the current regulations the requirement for patient consent to a disclosure becomes meaningless. Some noted that the required notice to recipients of the prohibitions on redisclosure serves to inform the recipient of the confidential nature of the information when the recipient might not otherwise be sensitive to the need for confidentiality.

Negative responses totaled 45. Several of these were based on a belief that a prohibition on redisclosure is unenforceable. Other negative responses stated that a prohibition on redisclosure interferes with treatment, can cause unnecessary delays for patients, makes referrals cumbersome, and interferes with third party reimbursement.

Paragraph (d) § 2.12 of the proposed regulations retains the restrictions on redisclosure and use by the recipient of a disclosure made with written patient consent and §2.32 modifies the notice requirement for clarity and to reflect the prohibition in the authorizing statutes on use of alcohol and drug abuse patient records to criminally investigate or prosecute a patient.

The primary advantage of continuing the prohibition on redisclosure by recipients of a disclosure with patient consent is that it assures a greater measure of confidentiality for patient identifying information. It is particularly important to control redisclosures in view of proposed § 2.33 which drops the limitations in the current regulations on the categories of individuals and organizations to which disclosures may be made with patient consent and on the circumstances under which those disclosures may be made. Because it is frequently not easily ascertainable by a program whether a recipient of a redisclosure is in fact subject to these regulations, the proposal to require that the statement prohibiting redisclosure accompany all disclosures made with patient consent provides certainty for the programs and assures that all recipients of a disclosure with patient consent are put on notice concerning the prohibition on redisclosure.

With regard to the concern that the restriction on redisclosure is unenforceable, the Department notes that the confidentiality statutes restrict disclosure and use of the records themselves, rather than restricting disclosure and use by particular categories of persons holding the records (see §§ 2.12(d) and 2.12–1(g) of the current regulations) and that the regulations restrict redisclosure only if actual notice is given to the recipient of the record (see generally § 2.32–1(a) of the current regulations). In most cases, the actual notice of the prohibitions on redisclosure leads to voluntary compliance thus making it unnecessary to enforce the restriction through punitive measures. The proposed requirements for the content of the notice ensure uniformity and are not burdensome in that the statement is concise enough to be made a part of a disclosure form or to be stamped on the information to be released.

(i) Should the regulations be amended to permit disclosures with written consent to employers and employment agencies which are necessary to evaluate potential hazards created by a patient's employment even though that information may result in that patient being denied employment or advancement?

While § 2.38 of the current regulations permits disclosures concerning potential hazards to employers and employment agencies with patient consent, those disclosures are permitted only if a program has reason to believe that the information will be used to rehabilitate the patient and not to deny the patient employment or advancement. Many of the 231 affirmative responses urged that programs be relieved of the responsibility to making this determination about the use of the information. Some urged that disclosures be permitted to protect the safety and welfare of others, as well as the patient. Other responses stated that as a matter of right the patient should be able to take resonsibility for allowing a disclosure to the employer/employment agency without requiring the program to hold certain beliefs about how the recipient will use the information. Some responses urged that the patient be informed of the possible negative results of a disclosure to an employer/employment agency.

Negative responses total 122. Several of these comments feared that the proposed change would result in employment discrimination against the patient contrary to policies intended to prohibit discrimination against the handicapped. Some were concerned that the proposed change would result in a patient's being judged in terms of his or her treatment record rather than on the basis of his or her capacity to perform the job. Many responses urged that the program retain the right to exercise its own clinical judgement as to whether a particular disclosure should be made.

The proposed regulations simplify all of Subpart C—Disclosures with Patient's Consent, including the section dealing with employers and employment agencies, to permit disclosure to any individual or organization named in the consent (with some additional requirement for disclosures to central registries and in connection with

criminal justice referrals). The standard for permitting release of information with patient consent will be constant: a valid consent under § 2.31 and a determination that the information disclosed is necessary to carry out the purpose for which the consent was given (§ 2.31(a)). However, the regulations do not require that any disclosures be made by a program (see § 2.3(b)(1)).

An employer/employment agency may use the information which has been disclosed with patient consent to the detriment of the patient. However, this potential also exists under the present regulations because a program's belief about the intentions of an employer or employment agency may be inaccurate. Furthermore, if a program foresees such a detrimental use, there is nothing in the proposed regulations which would restrict a refusal to disclose.

(j) Should the regulations be amended to remove the prohibition on the entry of a court order authorizing the disclosure of communications by a patient to personnel of the program?

Affirmative responses totaled 72. The most frequent comment in favor of this change was that the responsibility of the court should encompass all types of patient information. Others said that the prohibition on courts authorizing the disclosure of "Communications" is unnecessary because the statutes require courts to find "good cause" for authorizing disclosure of patient information and that this good cause finding protects the patients against unreasonable disclosures. One response suggested that in addition to being unnecessary, the prohibition on disclosure of communications is unsupported by the statute. Some responses wondered how communications may be distinguished from any other information about the patient.

Negative responses totaled 214. More than half of these were submitted without comment. Many suggested that patients would be cautious about discussing information vital to therapy if a court could authorize a disclosure of a patient's communication to his or her counselor. Some suggested that communications are not reliable information anyway because they are subjective statements and are expressions of feelings or emotions of a temporary nature subject to misinterpretation. Some suggested that the amendment would not aid law enforcement but would cause programs to instruct patients not to discuss issues which could prove harmful to the patient, such as criminal activity.

The proposed regulations delete the provisions of § 2.63 which limit the scope of a court order to objective data. The Department sees no reasonable rationale for offering greater protection to communications and other subjective information obtained in the course of treatment. It is irrational and inequitable to restrict the courts in authorizing the disclosure of communications when there is no such restriction on disclosures to which a patient consents nor on those disclosures which are permitted without patient consent. Furthermore, the confidentiality statutes do not contemplate such a limitation in providing that disclosures may be made if "authorized by an appropriate order of a court of competent jurisdiction granted after application showing good cause therefor."

From a practical point of view, the greatest advantage offered by elimination of the requirement that court orders may only authorize the disclosure of objective data is that it simplifies compliance with the regulations. There is no longer a need to make a distinction between the objective and subjective data in a patient's record. Another practical result is that the likelihood of a confrontation between programs and the courts on this issue is diminished.

A disadvantage in allowing a court to authorize disclosure of all information in a patient's record is that the disclosure of communications may be especially harmful to the patient if they involve admissions of criminal acts. However, Congress authorized the courts to balance the public interest in disclosure against the patient's interest in confidentiality in making its finding of good cause to issue an order removing the prohibition on disclosure. Any potential harm arising from the disclosure is best minimized through the statutory mandate that the courts impose appropriate safeguards against unauthorized disclosure, rather than through an inflexible, general prohibition which prevents courts from assessing good cause in certain instances.

(k) Should the procedures and criteria for entry of an authorizing court order be less detailed in order to simplify compliance by affected parties including the courts, law enforcement agencies, and programs?

Affirmative responses totaled 117. Several respondents suggested that simplification of the procedures would result in improved relationships among the affected parties. Other responses urged that the court order provisions be amended to allow hospitals and programs, upon service of a subpoena, to give the sealed records to the court for a determination of whether the disclosure should be authorized, thus relieving hospitals and programs of the burdens of appearing at a hearing and presenting evidence or arguments. A few responses suggested elimination of the requirement that a fictitious name be used to apply for a court order in favor of a requirement that the record of the proceedings be sealed from public scrutiny.

Negative responses totaled 139. Many negative respondents were satisfied that both client and program are protected by the detailed procedures and criteria. Others thought that a more general standard would cause confusion in interpretation and lead to a misuse of power. Some responses indicated that this portion of the regulations needs clarification, not substantive change.

The procedures and criteria for the entry of authorizing court orders have been rewritten for clarity and limited substantive changes have been made. A paragraph providing that the proceedings be conducted in the judge's chambers or in some other manner to avoid disclosure in the court order process has been added to each of the sections. Consistent with an interpretation of the current provisions, this paragraph states that the judge may examine the patient records referred to in the application for the order. In the section on orders authorizing disclosure and use of records to criminally investigate or prosecute patients, child abuse and neglect and the sale of illicit drugs have been added to the list of examples of crimes that cause or directly threaten loss of life or serious bodily injury. Again, this is consistent with interpretations of the current regulations.

Proposed procedures for the entry of orders authorizing a program to enroll or employ undercover agents and informants to criminally investigate employees or agents of a program will expedite the entry of those orders and eliminate burdensome requirements, but more restrictive criteria for the entry and content of such orders will insure that the action is based upon good cause.

(l) Should the regulations be amended to permit the disclosure of the patient status of an individual who commits or threatens to commit a crime on program premises or against program personnel?

The 222 affirmative responses reasoned that crimes must be reported and the offender prosecuted in order to protect program personnel and other patients and insure the efficient operation of the program. Some affirmative responses stipulated that the disclosure be limited in some way, e.g., to the circumstances of the criminal act.

The 69 negative responses were justified primarily on grounds that the program could make an adequate report to the police without disclosing patient status, and that relaxing the restriction would violate the patient's right to confidentiality and diminish basic trust in the program.

Section 2.12(c)(5) of the proposed regulations specifies that the restrictions on disclosure of information are not applicable to communications to law enforcement officers which: (1) Are directly related to the commission (or a threatened commission) of a crime on program premises or against program personnel, and (2) are limited to the circumstances surrounding the criminal threat or conduct. In addition, § 2.22 requires that the notification to patients of the confidentiality protections state that information related to a patient's commission (or a threatened commission) of a crime on the premises of the program or against personnel of the program is not protected under the regulations.

This change is intended to put patients on notice that there are limits to the behavior that will be tolerated in the treatment setting and to safeguard patients and program personnel against criminal acts. This approach may deter patients from engaging in criminal conduct because they will be put on notice that reports to law enforcement officers of actual or threatened crimes on program premises or against program personnel are not restricted in any way by these regulations.

The change makes it possible for program personnel to cooperate fully with law enforcement officials. Under the current regulations program personnel face the dilemma of being able to report crimes or threats of crime on program premises or against program personnel, but being unable to provide the officials useful information once they have responded to the request for assistance. This has led to failures to report, a disregard for the confidentiality restrictions and strained relations between programs and law enforcement personnel.

(m) Should the regulations be amended to permit the disclosure to law enforcement officials of the presence at a facility of a named individual without an authorizing court order?

Affirmative responses totaled 92. Many of these respondents considered any conflict between the requirements of State and Federal law (as implemented by these regulations) to be burdensome and wanted to eliminate this conflict by permitting acknowledgement of a patient's presence to law enforcement officials if permitted under State law. Some felt that an arrest or search warrant should be sufficient to authorize disclosure of the presence of a patient, while others felt that disclosure should be authorized in any situation involving suspected criminal behavior by a patient.

Negative responses totaled 194. Many felt that the patient's right to confidentiality would be violated if court order requirements were eliminated with regard to law enforcement inquiries concerning the presence of a named individual. Some simply expressed confidence that the courts are in the best position to balance the need for disclosure against the potential harm to the patient and the program-patient relationship. Others expressed concern that disclosure of a patient's presence to law enforcement officials would lead to harassment of patients, and eventually would undermine patient trust in the program. Several respondents suggested that law enforcement authorities have (and should use) means for locating persons other than by making inquiries to drug abuse treatment programs.

The proposed regulations continue the restriction in the current regulations upon the disclosure to anyone of information which would identify a patient as an alcohol or drug abuser either directly, by reference to other publicly available information, or through verification of such an identification by another person. However, § 2.13(c) has been added to clarify those conditions under which a program may acknowledge the presence of a patient. A more complete discussion of this issue appears under the heading "Implicit disclosures," which follows. In addition the proposed regulations add the Department's interpretation that the law and regulations do not restrict a disclosure that an identified individual is not and never has been a patient.

The greatest advantage to leaving the regulations as they are with respect to this issue is that patient confidentiality is preserved and the routine use by law enforcement officials of programs to locate persons under investigation is precluded. Continuation of the current provision preserves the intent of the authorizing statutes to encourage alcohol and drug abusers to seek treatment and to rely on the courts to weigh relevant factors and determine whether "good cause" exists before making a disclosure of patient identifying information. In terms of a patient's incentive to seek or continue treatment an acknowledgement of presence to law enforcement officials can be as damaging as a disclosure of written records.

(n) Should the regulations be amended to remove the absolute prohibition on use of informants and undercover agents to investigate patients?

Affirmative responses totaled 35. These responses were justified on grounds that the prohibition confers rights on patients which are greater than those enjoyed by other citizens, and that the prohibition protects persons engaged in illegal conduct. A few affirmative responses were qualified, for example: That consent to investigate the patient by a law enforcement official first be obtained from the program director; that the prohibition be removed from alcohol programs only.

Negative responses totaled 227. These responses were justified most frequently on grounds that the programs are not intended to serve a law enforcement objective and that covert investigations are inherently destructive to a therapeutic relationship based on mutual trust. Many of the respondents argued that patient uncertainty about the use of informants and undercover agents to investigate them would have a negative impact on the effectiveness of not only programs where agents are placed but on all alcohol and drug abuse treatment programs.

The proposed regulations retain the absolute prohibition on the issuance of a court order to allow programs to enroll as a patient or employee undercover agents or informers to investigate patients.

This prohibition maintains the mutual trust essential to a therapeutic relationship by ensuring that patients are not made more vulnerable to investigation and prosecution because of their association with a treatment program than they would be if they had not sought treatment.

While the prohibition may interfere with some law enforcement investigations, it is believed that the effect will be minimal given the availability of other investigative avenues, and that this minimal interference is outweighed by the statutory purpose of encouraging alcohol and drug abusers to seek treatment by ensuring the privacy of the treatment relationship.

(o) Should the regulations continue to prohibit absolutely the disclosure and use of patient records for investigation or prosecution of nonserious crimes which are not committed on program premises or against personnel of the program?

Affirmative responses totaled 199. These responses supporting no change in the current regulations were justified on grounds that treatment objectives are

hampered by the intrusion of law enforcement personnel and that a patient's right to confidentiality outweighs societal benefits derived from use of patient records to investigate or prosecute crimes which are not serious.

Negative responses totaled 65. These responses were justified on grounds that a patient's medical status should not be a shield against pursuit of the societal interest in prosecuting any type of crime. Some of the negative responses were qualified, noting that there is no accepted criteria for distinguishing "serious" from "nonserious" crimes and that in certain situations (for example, suspected child abuse) programs should be free to cooperate with or even initiate an investigation.

Section 2.64 of the proposed regulations permits a court to authorize disclosure and use of patient records to investigate or prosecute any crime which "causes or directly threatens loss of life or serious bodily injury, such as homicide, rape, kidnaping, armed robbery, assault with a deadly weapon, child abuse and neglect, or the sale of illicit drugs." This proposal clarifies which crimes are covered, but the standard of confidentiality in the current regulations would be retained. This retention is based on the Department's determination that the public interest in the investigation and prosecution of crimes which do not cause or threaten loss of life or serious bodily injury or which are not committed, or threatened to be committed on program premises or against program personnel, does not outweigh the need to encourage treatment by ensuring confidentiality, given the availability of other avenues of investigation and other sources of evidence.

Other Substantive Amendments

Strict Construction of Regulations

Section 2.3(b)(3) of the proposed regulations states that the regulations are to be construed strictly in favor of the potential violator in the same manner as a criminal statute. The provision gives notice of the conclusion reached in a December 14, 1977 Opinion from the Office of Legal Counsel, United States Department of Justice, 1 Opinions Of The Office Of Legal Counsel 280 (GPO #270–000–00801–1, 1980), on the basis of the decision of the United States Supreme Court in *M. Krause & Bros.* v. *United States,* 327 U.S. 614, 621–622, 66 S.Ct. 705–08 (1946).

Definitions

The proposed regulations eliminate several of the current definitions because they are considered unnecessary and in some cases confusing, and clarify all the remaining definitions.

The definition of "funding source" has been shortened, clarified and incorporated into the definition of "third party payer." The definition of "service organization" has been incorporated into the definition of "qualified service organization."

The paragraph in the current regulations on "communications not constituting disclosure," which is not a definition, has been moved to the applicability section.

A definition of "disclose" or "disclosure" has been added to clarify what kinds of communications are restricted by the regulations.

As discussed above in connection with issue (c), the term "program" has been redefined to limit the extent to which the regulations apply to general medical care facilities. Applicability is limited to alcohol or drug abuse diagnosis, treatment or referral performed in units of the facility identified for that purpose or performed by staff identified as having the primary function of providing those services.

Applicability

In addition to limiting applicability to specialized alcohol and drug abuse programs (as defined in proposed § 2.11), and exempting from the regulatory restrictions limited communications from the program personnel to law enforcement officers regarding crimes on program premises or against program personnel (see § 2.12(c)(5)), the following provisions of proposed § 2.12, Applicability, are intended to reflect current provisions and interpretations of the statutes and regulations:

(1) The restrictions on use of patient information to initiate or substantiate any criminal charges against a patient or to conduct any criminal investigation of a patient in paragraphs (a)(2) and (d)(1) give notice of the prohibitions on use of patient information appearing in 42 U.S.C. 290ee-3(c) and 42 U.S.C. 290dd-3(c). In addition, the provisions of paragraph (d) make clear that the restriction on use applies to information obtained by undercover agents or informants and that it bars, among other things, the introduction of any patient information as evidence in a criminal proceeding. See *State* v. *Bethea,* 241 S.E. 2d 869 (N.C. Ct. App. 1978); *Armenta* v. *Superior Court of Santa Barbara County,* 61 Cal. App. 3d 584, 132 Cal. Rpt. 586 (1976).

(2) The exceptions to the applicability of the regulations in proposed paragraph (c), including: communications within a program needed to provide alcohol or drug abuse diagnosis, treatment or referral; communications between a program and a qualified service organization (appearing in § 2.11(p) of the current regulations); and the Veterans Administration and Armed Forces exceptions which appear in the current § 2.12(b).

(3) Paragraph (d) stating the applicability of the regulations to recipients of disclosures.

(4) The explanation of the scope of coverage of the regulations in paragraph (e). This explanation is based upon opinions of the Department's Office of the General Counsel interpreting the provisions of the current regulations. The opinions issued during the years 1975–1978 have been published in a booklet (DHHS Pub. No. (ADM) 81–1013, printed 1980) which may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. Copies of opinions issued in later years may be obtained from the National Institute on Drug Abuse or the National Institute on Alcohol Abuse and Alcoholism (see addresses in the proposed § 2.5).

Implicit disclosures

The prohibition in § 2.13(e) of the current regulations against implicit and negative disclosures has been very difficult to interpret and apply. Some of those subject to the regulations have mistakenly concluded that a hospital having both alcohol and drug abuse patient records and other types of medical records would have to handle all the records in compliance with the alcohol and drug abuse confidentiality regulations, since responding to requests for alcohol and drug abuse patient records in a different manner would implicitly disclose the alcohol or drug abuse problem of the patient. The proposed change in § 2.13(c)(2) attempts to resolve this situation by permitting, but not requiring, programs to inform inquiring parties of the restrictions of the confidentiality regulations if in doing so they do not affirmatively reveal that the regulations apply to the records of an identified patient. To some extent this permits an implicit disclosure that an individual is an alcohol or drug abuse patient. However, the Department believes that this resolution is a reasonable compromise given the limited harm which could be caused by such an implicit disclosure (it certainly could not be cited as reliable evidence since it would be based upon a supposition) and the basic unfairness and potential disruptive effect of failing to cooperate with an inquiring party. In

the absence of knowledge of the regulations the inquiring party could not seek a court order under Subpart E authorizing the program to make a disclosure and if the inquiring party is a law enforcement official a failure to cite the regulations might result in a disruptive search of the premises.

Disclosures of the Records of Deceased Patients for Cause of Death Inquiries

Section 2.16(b)(1) of the current regulations permitting disclosures of the records of deceased patients without consent has been expanded in proposed § 2.15(b) to include "the disclosure of patient identifying information relating to the cause of death of a patient under laws . . . permitting inquiry into the cause of death." This change responds to a number of complaints from coroners that the requirement for written consent by a personal representative or next of kin in the current regulations unreasonably interferes with their obligation under State and local laws to make inquiries into the cause of death of patients. In many cases no personal representative has been appointed and a family member cannot be located; thus, the cause of death inquiry cannot proceed unless the coroner is able to obtain a court order under Subpart E of the regulations authorizing the program to disclose the deceased patient's records. The Department believes these difficulties in pursuing an important obligation under State and local laws justify a change in the current regulations, particularly since there is a lesser necessity for protecting the confidentiality of alcohol or drug abuse records relating to a deceased patient.

Undercover Agents and Informants—Restriction applies only to programs

Section 2.19(b) (2) and (3) of the current regulations seeks to impose penalties upon law enforcement officials who take action directed toward the placement of undercover agents or informants in programs. These provisions have been removed from the proposed regulations because they represent an unnecessary expansion of the statutory restriction on the use of patient records to criminally investigative or prosecute patients. The clearly stated restriction in the proposed regulations on the use of any information obtained by an undercover agent or informant should be sufficient to deter law enforcement officials who seek to place undercover agents or informants in programs. Furthermore, this change is consistent with the strict construction standard applicable to a statute imposing a criminal penalty (see proposed § 2.3(b)(3)).

Disclosures With Written Consent, Subpart C

This subpart has been revised substantially to: (1) Eliminate most of the sections setting forth special rules for disclosure with written consent in certain circumstances and (2) set forth a sample consent form containing each of the elements required under § 2.31. With the exception of the sections pertaining to disclosure with written consent to central registries and in connection with criminal justice referrals, the Department believes that the current provisions of Subpart C impose compliance burdens which are disproportionate to the confidentiality protection afforded. Sufficient protection is provided through the specificity of the consent form (see § 2.31) and the requirement that all disclosures under the regulations be limited to that information which is necessary to carry out the purpose of the disclosure (see § 2.13(a)). This approach is consistent with the recommendations of the Privacy Protection Study Commission regarding the confidentiality of records in medical care relationships. (See recommendation 11 and recommendation 13 of the Report of the Commission at 313, 315.)

Special rules for disclosures to prevent multiple enrollments in detoxification and maintenance treatment programs (proposed § 2.34) and for disclosures to elements of the criminal justice system which have referred patients (proposed § 2.35) have been retained because these types of disclosure necessitate some adjustment of the basic written consent procedures in order to insure maximum protection for patients. Under § 2.34 the timing, content and use of the patient information is strictly limited in accordance with the purpose of the disclosure. Under § 2.35 a disclosure in connection with a criminal justice referral can be made only to those having a need for the information in connection with their duty to monitor the patient's progress. On the other hand, the rules in § 2.35 regarding duration of consent and revocation of consent are more lenient than those which generally apply in order to facilitate the exchange of information and the monitoring of a patient's progress. These changes will encourage referrals for treatment from the criminal justice system by simplifying the confidentiality restrictions without lessening the protections afforded.

Disclosures Without Consent, Subpart D

Section 2.51 Medical emergencies. Paragraph (a) would be amended to provide specifically that a bona fide medical emergency exists if any individual is suffering from a condition which poses an immediate threat to his or her health and which requires immediate medical intervention.

Paragraph (c) "Incapacitated persons," would be deleted because it does not add anything to the basic provision permitting disclosures to medical personnel to the extent necessary to meet a bona fide medical emergency. While the incapacity of the patient may be a factor in determining whether such an emergency exists, incapacity does not per se constitute an emergency.

Paragraph (d) "Notification of family or others," would be deleted based upon the Department's conclusion that by permitting notification of family or others without patient consent, it exceeds the statutory authority for disclosures to "medical personnel to the extent necessary to meet a bona fide medical emergency."

Because the statute permits a disclosure only to medical personnel, a requirement that the program make a reasonable effort to verify the medical personnel status of any proposed recipient would be added and the current requirement for documentation of oral disclosures would be expanded to include the health care facility affiliation of the medical personnel and the details of the attempt to verify their status.

The special rule permitting disclosures to medical personnel of the Food and Drug Administration for the purpose of notifying patients or their physicians of potential dangers arising from the manufacture, labeling or sale of a product under FDA jurisdiction has been retained becaue this situation constitutes a bona fide medical emergency which might not be recognized as such in the absence of explicit notice in these regulations.

Section 2.52 Research Activities. This section of the proposed regulations combines, shortens, and to some extent changes the provisions governing disclosures for research purposes in § 2.52 and § 2.53 of the current regulations.

The current § 2.52 attempts to define "qualified personnel," but ultimately leaves it to the program to determine whether those personnel have "training and experience . . . appropriate to the nature and level of work in which they are engaged." In addition the current § 2.53(a) creates some confusion by stating that where research is performed by a State or Federal governmental agency the minimum qualifications of

personnel performing that function may be determined by the agency. To resolve these problems the determination of whether an individual is qualified to conduct the research would be left to the program director. The Department believes that program directors are qualified to make this determination and that the requirement for such a determination reflects reality in that qualifications for conducting research cannot be defined with sufficient specificity to avoid the exercise of some discretion on the part of the program.

Paragraph (b)(3), of the current § 2.52 providing for a redisclosure to avoid a substantial risk to the health and well-being of any patient, would be deleted. The basis for this provision is uncertain in light of the clear statutory prohibition on any redisclosure of patient identifying information. Furthermore, if some contacting of patients is necessary in order to avoid such a substantial threat, it appears that this could be carried out through the program, or would be permissible because it would not involve the communication of patient identifying information (see the definition of "disclosure" in proposed § 2.11).

§ 2.53 Audit and evaluation activities. This proposed section is patterned primarily after the current § 2.54. The current § 2.53 and § 2.55 would be eliminated. The Department believes that these sections are unnecessary and confusing because they repeat matters which are addressed in other statutes and regulations, impose restrictions upon those conducting the audit or evaluation activities beyond what is necessary to insure protection of the alcohol or drug abuse patient records and provide special treatment for one class of audit and evaluation activities with no compelling justification.

Proposed § 2.53 is intended to provide protections for alcohol and drug abuse patient records which can be readily complied with in all audit and evaluation situations. While the proposed section simplifies the current regulatory provisions, it provides greater protection for alcohol and drug abuse patient records. Under the current § 2.54 any individual may copy or remove patient records in the course of audit or evaluation activities if he complies with the regulatory requirements. Under the proposed § 2.53, records containing patient identifying information may be copied or removed from program premises only by those individuals "paid to perform the audit or evaluation activity by a Federal, State, or local governmental agency which provides financial assistance to the program or is authorized by law to regulate its activities." If copying or removal of patient identifying information is not involved, the proposed § 2.53 permits a disclosure of patient identifying information to any person who is determined by the program director to be qualified to conduct the audit or evaluation activities as well as to auditors paid by governmental agencies which assist or regulate the program. Whether or not records are copied or removed, the auditor or evaluator must agree in writing to comply with the limitations on disclosure and use in paragraph (c) of the proposed § 2.53. If patient identifying information is copied or removed, the auditor or evaluator must also agree in writing to maintain the patient identifying information in accordance with the security requirements under the proposed § 2.16 and to destroy all patient identifying information upon completion of the audit or evaluation.

This proposal simplifies and lessens the burden of the retention period provisions in the current § 2.54, but does not lessen the confidentiality protections since the security requirements and the restrictions on disclosure and use apply while the copies of the records are held by the auditor or evaluator.

Substantive Amendments Suggested in Comments but Not Proposed

The public comments suggested several substantive amendments beyond those addressed in the Notice of Decision to Develop Regulations. These suggested amendments are not proposed for the following reasons.

Changes not permitted by the authorizing statutes

Several comments suggested amendments which would not be authorized under the statutes protecting the confidentiality of alcohol abuse patient records (42 U.S.C. 299dd-3) and drug abuse patient records (42 U.S.C. 290ee-3). Examples of these suggested amendments include: (1) A request that the regulations allow disclosures without consent among various institutions involved in the referral of patients (the statutes permit disclosures without written consent only to meet bona fide medical emergencies, for the purpose of conducting scientific research, management audits, financial audits or program evaluation, or if authorized by an appropriate order of a court of competent jurisdiction); (2) suggestions that the regulations impose a penalty upon anyone seeking to obtain patient records by fraudulent means (all the restrictions in the statutes apply to persons responsible for maintaining the records, not those seeking them and, as noted above, the statutes must be strictly construed); (3) a suggestion that the regulations be applied to other medical records (the authorizing statutes are clearly limited to alcohol and drug abuse patient records).

Amendments based upon misinterpretation of the current regulations

It was requested that the provisions governing qualified service organization agreements, § 2.11 (m), (n) and (p)(2) of the current regulations, be amended to permit the disclosure of information identifying the patient. Patient identifying information can, under the current regulations, be disclosed under a qualified service organization agreement. It was also urged that general hospitals be permitted to reveal that an individual is a patient in the hospital unless doing so would identify the individual as an alcohol or drug abuser. Section § 2.13(f) of the current regulations permits such a disclosure. Another comment suggested that the provisions of the current regulations governing disclosures without consent for the purpose of conducting research, audit or evaluation be amended to permit the research, audit and evaluation reports to be released in summary form without patient identifying information. The current § 2.52 permits such a disclosure.

Disclosures to protect health or safety

Several comments sought amendments which would permit disclosures without consent in situations where the patient's condition might endanger the health or safety of others, e.g., an intoxicated bus driver. The Department also notes that the recommendations of the Privacy Protection Study Commission regarding confidentiality of all medical records would permit disclosures without consent "to a properly identified recipient pursuant to a showing of compelling circumstances affecting the health and safety of an individual." (Report at 306).

However, the statutes authorizing these regulations strictly limit disclosures without consent and would permit such a disclosure in a situation where health or safety is threatened only if: (1) Authorized by an appropriate order of a court of competent jurisdiction based upon a finding of good cause, or (2) the disclosure is made to medical personnel to the extent necessary to meet a bona fide medical emergency. Thus, the Department may

not permit by regulation disclosures of patient records beyond these limited disclosures permitted by the statutes. Nevertheless, by defining disclosures to include only communications which would identify a patient as an alcohol or drug abuser, the regulations permit providers of alcohol or drug abuse treatment to warn of potential threats to health or safety if this is done in a way that does not identify an individual as an alcohol or drug abuse patient.

Child Abuse and Neglect Reporting

A number of comments requested changes in the regulations to permit alcohol and drug abuse treatment personnel to comply with State child abuse and neglect reporting laws. Many of these comments misconstrue the extent to which the current regulations restrict this reporting and do not take cognizance of the Department's interpretation of the current regulations to allow child abuse and neglect reporting to the greatest extent possible.

The authorizing statutes do not categorically except disclosures in connection with the reporting of child abuse and neglect from the restrictions on the disclosure and use of alcohol and drug abuse patient records. Thus, the Department cannot by regulation abrogate the statutory restrictions where a disclosure is made in connection with the reporting of child abuse or neglect. However, it is the policy of the Department to encourage providers of alcohol and drug abuse services to report instances of child abuse and neglect where this can be done in conformity with the statutory confidentiality protections.

Accordingly, under the proposed regulations, child abuse and neglect may be reported as follows:

(1) A report may be made pursuant to a court order authorizing disclosure for noncriminal purposes (see proposed § 2.63) or authorizing disclosure and use for the criminal investigation or prosecution of patients (see proposed § 2.64). The proposed regulations at § 2.64(d)(1) list specifically child abuse and neglect as a crime for which a court order may be issued under § 2.64. (See the preamble discussion of issue (o)).

The proposed regulations further expand the potential for reporting child abuse and neglect prusuant to a court order by removing the limitation which now exists in § 2.63 on the scope of a court order. Under the existing regulations, a court order is restricted to objective data and may not extend to communications by a patient to personnel of a program, such as a statement by the patient that the patient is abusing or neglecting a child. The proposed regulations delete the provisions of § 2.63 which limit the scope of a court order to objective data. (See the preceding discussion of issue (j)).

(2) A report may be made if it does not identify a patient as an alcohol or drug abuser. Neither the current regulations (see § 2.11(p)(3)) nor the proposed regulations (see proposed § 2.12(a)(1)(i)) restrict communications which do not identify a patient as an alcohol or drug abuser either directly, by reference to other publicly available information or through verification of such an identification made by another person.

(3) A report may be made if the patient consents in writing in accordance with § 2.31. The proposed regulations eliminate those sections governing disclosures with written consent in specific circumstances, other than disclosures to central registries and in connection with criminal justice referrals, in favor of a section which permits any disclosure to which the patient has consented by signing the required written statement (see proposed § 2.33, the preamble discussion titled "Disclosures With Written Consent, Subpart C" and the preceding discussions of issues (f), (g), and (i)). As a consequence, the proposal eliminates the requirement that a program must determine that "disclosure will not be harmful to the patient" before disclosing information with the patient's consent under § 2.40 of the current regulations. Thus, if a patient consents to the reporting of child abuse or neglect under §§ 2.31 and 2.33, the proposed regulations would permit that reporting without a finding that the disclosed may not be used for purposes of a criminal investigation or prosecution of the patient unless an authorizing court order is obtained under proposed § 2.64 because under subsection (c) of the authorizing statutes and §§ 2.12 (a)(2) and (d)(1) of the proposed regulations a court order is required in order to use a patient record for those purposes.

(4) A report may be made pursuant to a qualified service organization agreement (see § 2.11(n)) of the current regulations and § 2.11 of the proposed regulations). The Department encourages under the current regulations and would continue to encourage under the proposed regulations, providers of alcohol and drug abuse services which are subject to the regulations to enter into "qualified service organization agreements" with child protective agencies, so the providers may comly with both the confidentiality regulations and the child abuse reporting laws. (For a discussion of this issue under the current regulations, see Alcohol Health and Research World, Fall 1979, p. 31 *et. seq.*). Such an agreement permits the provider of alcohol and drug abuse services to disclose patient information to the child abuse protective agency, even though the patient has not consented (see § 2.11(p)(2) of the current regulations and § 2.12(c)(4) of the proposed regulations).

Under a "qualified service organization agreement" the child abuse protective agency must handle the information obtained from the alcohol or drug abuse provider in compliance with the confidentiality regulations. Thus, the agency may disclose information which would identify the patient as an alcohol or drug abuser only with the patient's consent in accordance with Subpart C of the regulations, without patient consent in the limited circumstances described in Subpart D, or under an authorizing court order entered in accordance with Subpart E.

If a child abuse protective agency wants to use the information obtained under the qualified service organization agreement for the purpose of investigating or prosecuting any criminal child abuse or neglect charges against the alcohol or drug abuse patient it must obtain an authorizing court order under § 2.65 of the current regulations or § 2.64 of the proposed regulations. In order to clarify that child abuse or neglect may be found to be a crime directly threatening loss of life or serious bodily injury for which an authorizing order may be issued, child abuse and neglect is listed as an example of such a crime under § 2.64(d)(1) of the proposed regulations.

To clarify and facilitate use of the Department's policy recommending that providers of alcohol and drug abuse services enter into qualified service organization agreements with child protection agencies, the proposed § 2.11 defines a "qualified service organization" so that it includes provision of services "to prevent or treat child abuse or neglect, including training on nutrition and child care, and individual and group therapy."

(5) A report may be made to medical personnel if it is done for the purpose of treating the child for a medical emergency (see proposed § 2.51). The proposed regulations limit a medical emergency to those conditions which pose an immediate threat to health and which require immediate medical intervention. They also clarify that a medical emergency may be that of any individual, not solely that of the patient.

Proposed § 2.13 limits any disclosure to that information which is necessary to carry out the purpose of the disclosure—in this case to treat a condition which immediately threatens the health of a child. Thus, proposed § 2.51 would permit alcohol and drug abuse treatment personnel to report to medical personnel patient identifying information if the medical personnel have a need for the information to treat an abused or neglected child in a bona fide medical emergency; that is, to treat a child with a condition which immediately threatens the child's health and which requires immediate medical intervention. If the threat to the child's health is not immediate and does not require immediate medical intervention, other permitted disclosures may serve to protect the child's health, such as a court ordered disclosure, a report which does not disclose that a patient is an alcohol or drug abuser, or a disclosure with patient consent.

Economic Impact of Regulatory Requirements

Not a Major Rule Under E.O. 12291

The Department has determined that this rule is not a "major rule" under Executive Order 12291. Overall costs to general medical care facilities will be reduced as a result of the decision to apply the regulations only to specialized alcohol and drug abuse treatment programs. Furthermore, cost to specialized programs will be reduced somewhat by the simplified rules, although not significantly since the proposal would continue to require strict confidentiality standards.

Thus a regulatory analysis is not required because the proposed regulation will not:

(1) Have an annual effect on the economy of $100 million or more;

(2) Impose a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or

(3) Result in 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.

No Significant Impact on a Substantial Number of Small Entities

Subsequent to the January 1980 Notice of Decision to Develop Regulations the Department indicated in its Semi-Annual Agenda of Regulations that under the Regulatory Flexibility Act, Pub. L. 96-354, a regulatory flexibility analysis would be prepared in connection with this proposed amendment of the confidentiality regulations. That determination was based on the probability that the regulations would continue to apply to all entities performing alcohol or drug abuse prevention functions which are federally assisted, regulated, or conducted. However, this Notice of Proposed Rulemaking reflects a decision to limit applicability to providers of alcohol or drug abuse diagnosis, treatment or referral who hold themselves out as such. Based on that decision, it has been determined that the proposed regulations will not have a significant economic impact on a substantial number of small entities. By reason of the proposed change in applicability: (1) The regulations will no longer apply to general medical care providers which render alcohol or drug abuse services incident to their general medical care functions, thus the number of small entities affected will be less than substantial; and (2) the economic impact will be less than significant because that impact arises primarily from the costs of determining that the records of a general medical care patient are subject to the regulations and thereafter treating those records differently than all other general medical care records. It is anticipated that providers to whom these rules are applicable will realize a small savings through an overall reduction in the complexity of the rules.

Information Collection Requirements

Sections 2.22, 2.31(a) and 2.51(c)(2) of this proposed rule contain information collection requirements. As required by section 3504(h) of the Paperwork Reduction Act of 1980, we have submitted a copy of this proposed rule to the Office of Management and Budget (OMB) for its review of these information collection requirements. Other organizations and individuals desiring to submit comments on the information collection requirements should direct them to the agency official designated for this purpose whose name appears in this preamble, and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building (Room 3208), Washington, D.C. 20503, ATTN: Desk Officer for HHS.

List of Subjects in 42 CFR Part 2

Alcohol abuse, Alcoholism, Confidentiality, Drug abuse, Health records, Privacy.

Dated: November 5, 1982.

Edward N. Brandt, Jr.,

Assistant Secretary for Health.

Approved: July 6, 1983.

Margaret M. Heckler,

Secretary.

It is proposed to revise 42 CFR Part 2 as follows:

PART 2—CONFIDENTIALITY OF ALCOHOL AND DRUG ABUSE PATIENT RECORDS

Subpart A—Introduction

Sec.

Subpart B—General Provisions

Subpart C—Disclosures With Patient's Consent

Sec.

Subpart D—Disclosures Without Patient Consent

Subpart E—Court Orders Authorizing Disclosures and Use

Authority: Sec. 408 of Pub. L. 92–255, 86 Stat. 79, as amended by sec. 303(a), (b) of Pub. L. 93–282, 88 Stat. 137, 138; sec. 4(c)(5)(A) of Pub. L. 94–237, 90 Stat. 244; sec. 111(c)(3) of Pub. L. 94–581, 90 Stat. 2852; sec. 509 of Pub. L. 96–88, 93 Stat. 695; sec. 973(d) of Pub. L. 97–35, 95 Stat. 598; and transferred to sec. 527 of the Public Health Service Act by sec. 2(b)(16)(B) of Pub. L. 98–24, 97 Stat. 182 (42 U.S.C. 290ee–3) and sec. 333 of Pub. L. 91–616, 84 Stat. 1853, as amended by sec. 122(a) of Pub. L. 93–282, 88 Stat. 131; and sec. 111(c)(4) of Pub. L. 94–581, 90 Stat. 2852 and transferred to sec. 523 of the Public Health Service Act by sec. 2(b)(13) of Pub. L. 98–24, 97 Stat. 181 (42 U.S.C. 290dd–3).

Subpart A—Introduction

§ 2.1 Statutory authority for confidentiality of drug abuse patient records.

The restrictions of these regulations upon the disclosure and use of drug abuse patient records were authorized by section 408 of the Drug Abuse Prevention, Treatment, and Rehabilitation Act (21 U.S.C. 1175). That section was recently transferred by Pub. L. 98–24 to section 527 of the Public Health Service Act. As a result of the transfer, in the future the provision will be codified at 42 U.S.C. 290ee–3. For the present it remains at 21 U.S.C. 1175 which is set forth below:

§ 1175. Confidentiality of patient records

(a) Disclosure authorization

Records of the identity, diagnosis, prognosis, or treatment of any patient which are maintained in connection with the performance of any drug abuse prevention function conducted, regulated, or directly or indirectly assisted by any department or agency of the United States shall, except as provided in subsection (e) of this section, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized under subsection (b) of this section.

(b) Purposes and circumstances of disclosure affecting consenting patient and patient regardless of consent

(1) The content of any record referred to in subsection (a) of this section may be disclosed in accordance with the prior written consent of the patient with respect to whom such record is maintained, but only to such extent, under such circumstances, and for such purposes as may be allowed under regulations prescribed pursuant to subsection (g) of this section.

(2) Whether or not the patient, with respect to whom any given record referred to in subsection (a) of this section is maintained, gives his written consent, the content of such record may be disclosed as follows:

(A) To medical personnel to the extent necessary to meet a bonafide medical emergency.

(B) To qualified personnel for the purpose of conducting scientific research, management audits, financial audits, or program evaluation, but such personnel may not identify, directly or indirectly, any individual patient in any report of such research, audit, or evaluation, or otherwise disclose patient identities in any manner.

(C) If authorized by an appropriate order of a court of competent jurisdiction granted after application showing good cause therefor. In assessing good cause the court shall weigh the public interest and the need for disclosure against the injury to the patient, to the physician-patient relationship, and to the treatment services. Upon the granting of such order, the court, in determining the extent to which any disclosure of all or part of any record is necessary, shall impose appropriate safeguards against unauthorized disclosure.

(c) Prohibition against use of record in making criminal charges or investigation of patient

Except as authorized by a court order granted under subsection (b)(2)(C) of this section, no record referred to in subsection (a) of this section may be used to initiate or substantiate any criminal charges against a patient or to conduct any investigation of a patient.

(d) Continuing prohibition against disclosure irrespective of status as patient

The prohibitions of this section continue to apply to records concerning any individual who has been a patient, irrespective of whether or when he ceases to be a patient.

(e) Armed Forces and Veterans' Administration; interchange of records

The prohibitions of this section do not apply to any interchange of records—

(1) within the Armed Forces or within those components of the Veterans' Administration furnishing health care to veterans, or

(2) between such components and the Armed Forces.

(f) Penalty for first and subsequent offenses

Any person who violates any provision of this section or any regulation issued pursuant to this section shall be fined not more than $500 in the case of a first offense, and not more than $5,000 in the case of each subsequent offense.

(g) Regulations; interagency consultations; definitions, safeguards, and procedures, including procedures and criteria for issuance and scope of orders

Except as provided in subsection (h) of this section, the Secretary of Health, Education, and Welfare, after consultation with the Administrator of Veterans' Affairs and the heads of other Federal departments and agencies substantially affected thereby, shall prescribe regulations to carry out the purposes of this section. These regulations may contain such definitions, and may provide for such safeguards and procedures, including procedures and criteria for the issuance and scope of orders under subsection (b)(2)(C) of this section, as in the judgment of the Secretary are necessary or proper to effectuate the purposes of this section, to prevent circumvention or evasion thereof, or to facilitate compliance therewith.

(Subsection (h) was superseded by section 111(c)(3) of Pub. L. 94–581. The responsibility of the Administrator of Veterans' Affairs to write regulations to provide for confidentiality of drug abuse patient records under Title 38 was moved from 21 U.S.C. 1175 to 38 U.S.C. 4134.)

§ 2.2 Statutory authority for confidentiality of alcohol abuse patient records.

The restrictions of these regulations upon the disclosure and use of alcohol abuse patient records were authorized by 333 of the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970 (42 U.S.C. 4582). That section was recently transferred by Pub. L. 98–24 to section 523 of the Public Health Service Act. As a result of the transfer, in the future the provision will be codified at 42 U.S.C. 290dd–3. For the present it remains at 42 U.S.C. 4582 which is set forth below:

§ 4582. Confidentiality of patient records

(a) Disclosure authorization

Records of the identity, diagnosis, prognosis, or treatment of any patient which are maintained in connection with the performance of any program or activity relating to alcoholism or alcohol abuse education, training, treatment, rehabilitation, or research, which is conducted, regulated, or directly or indirectly assisted by any department or agency of the United States shall, except as provided in subsection (e) of this section, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized under subsection (b) of this section.

(b) Purposes and circumstances of disclosure affecting consenting patient and patient regardless of consent

(1) The content of any record referred to in subsection (a) of this section may be disclosed in accordance with the prior written consent of the patient with respect to whom such record is maintained, but only to such extent, under such circumstances, and for such purposes as may be allowed under regulations prescribed pursuant to subsection (g) of this section.

(2) Whether or not the patient, with respect to whom any given record referred to in subsection (a) of this section is maintained, gives his written consent, the content of such record may be disclosed as follows:

(A) To medical personnel to the extent necessary to meet a bona fide medical emergency.

(B) To qualified personnel for the purpose of conducting scientific research, management audits, financial audits, or program evaluation, but such personnel may not identify, directly or indirectly, any individual patient in any report of such research, audit, or evaluation, or otherwise disclose patient identities in any manner.

(C) If authorized by an appropriate order of a court of competent jurisdiction granted after application showing good cause therefor. In assessing good cause the court shall weigh the public interest and the need for disclosure against the injury to the patient, to the physician-patient relationship, and to the treatment services. Upon the granting of such order, the court, in determining the extent to which any disclosure of all or any part of any record is necessary, shall impose appropriate safeguards against unauthorized disclosure.

(c) Prohibition against use of record in making criminal charges or investigation of patient

Except as authorized by a court order granted under subsection (b)(2)(C) of this section, no record referred to in subsection (a) of this section may be used to initiate or substantiate any criminal charges against a patient or to conduct any investigation of a patient.

(d) Continuing prohibition against disclosure irrespective of status as patient

The prohibitions of this section continue to apply to records concerning any individual who has been a patient, irrespective of whether or when he ceases to be a patient.

(e) Armed Forces and Veterans' Administration; interchange of records

The prohibitions of this section do not apply to any interchange of records—

(1) within the Armed Forces or within those components of the Veterans' Administration furnishing health care to veterans, or

(2) between such components and the Armed Forces.

(f) Penalty for first and subsequent offenses

Any person who violates any provision of this section or any regulation issued pursuant to this section shall be fined not more than $500 in the case of a first offense, and not more than $5,000 in the case of each subsequent offense.

(g) Regulations of Secretary; definitions, safeguards, and procedures, including procedures and criteria for issuance and scope of orders

Except as provided in subsection (h) of this section, the Secretary shall prescribe regulations to carry out the purposes of this section. These regulations may contain such definitions, and may provide for such safeguards and procedures, including procedures and criteria for the issuance and scope of orders under subsection (b)(2)(C) of this section, as in the judgment of the Secretary are necessary or proper to effectuate the purposes of this section, to prevent circumvention or evasion thereof, or to facilitate compliance therewith.

(Subsection (h) was superseded by section 111(c)(4) of Pub. L. 94–581. The responsibility of the Administrator of Veterans' Affairs to write regulations to provide for confidentiality of alcohol abuse patient records under Title 38 was moved from 42 U.S.C. 4582 to 38 U.S.C. 4134.)

§ 2.3 Purpose and effect.

(a) *Purpose.* Under the statutory provisions quoted in §§ 2.1 and 2.2, these regulations impose restrictions upon the disclosure and use of alcohol and drug abuse patient records which are maintained in connection with the performance of any federally assisted alcohol or drug abuse program. The regulations specify:

(1) Definitions, applicability, and general restrictions in Subpart B;

(2) Disclosures which may be made with written patient consent and the form of the written consent in Subpart C;

(3) Disclosures which may be made without written patient consent or an authorizing court order in Subpart D; and

(4) Disclosures and uses of patient records which may be made with an authorizing court order and the procedures and criteria for the entry and scope of those orders in Subpart E.

(b) *Effect.* (1) These regulations prohibit the disclosure and use of patient records unless certain circumstance exist. If any circumstances exists under which disclosure is permitted, that circumstance acts to remove the prohibition on disclosure but it does not compel disclosure. Thus, the regulations do not require disclosure under any circumstance.

(2) These regulations are not intended to direct the manner in which substantive functions such as research, treatment, and evaluation are carried out. They are intended to insure that an alcohol or drug abuse patient in a federally assisted alcohol or drug abuse program is not made more vulnerable by reason of the availability of his or her patient record than an individual who has an alcohol or drug problem and who does not seek treatment.

(3) Because there is a criminal penalty a fine—see (42 U.S.C. 290ee–3(f), 42 U.S.C. 290dd–3(f) and 42 CFR § 2.4) for violating the regulations, they are to be construed strictly in favor of the potential violator in the same manner as a criminal statute (see *M. Kraus & Brothers* v. *United States*, 327 U.S. 614, 621–22, 66 S. Ct. 705, 707–08 (1946)).

§ 2.4 Criminal penalty for violation.

Under 42 U.S.C. 290ee–3(f) and 42 U.S.C. 290dd–3(f), any person who violates any provision of those statutes or these regulations shall be fined not more than $500 in the case of a first offense, and not more than $5,000 in the case of each subsequent offense.

§ 2.5 Reports of violations.

(a) The report of any violation of these regulations may be directed to the United States Attorney for the judicial district in which the violation occurs.

(b) The report of any violation of these regulations involving a drug abuse patient record may be directed to:

Director, National Institute on Drug Abuse, 5600 Fishers Lane, Rockville, Maryland 20857

(c) The report of any violation of these regulations involving an alcohol abuse patient record may be directed to:

Director, National Institute on Alcohol Abuse and Alcoholism, 5600 Fishers Lane, Rockville, Maryland 20857

(d) The report of any violation of these regulations by a methadone program may be directed to the Regional Offices of the Food and Drug Administration.

(e) The report of any violation of these regulations by a Federal agency or a Federal grantee or contractor may be directed to the Federal agency responsible for the program or for monitoring the grant or contract.

Subpart B—General Provisions

§ 2.11 Definitions.

For purposes of these regulations:

Alcohol abuse means the use of an alcoholic beverage which impairs the physical, mental, emotional, or social well-being of the user.

Drug abuse means the use of a psychoactive substance for other than medicinal purposes which impairs the

physical, mental, emotional, or social well-being of the user.

Central registry means an organization which obtains from two or more member programs patient identifying information about individuals applying for maintenance treatment or detoxification treatment for the purpose of avoiding an individual's concurrent enrollment in more than one program.

Detoxification treatment means the dispensing of a narcotic drug in decreasing doses to an individual in order to reduce or eliminate adverse physiological or psychological effects incident to withdrawal from the sustained use of a narcotic drug.

Diagnosis means any reference to an individual's alcohol or drug abuse or to a condition which is identified as having been caused by that abuse which is made for the purpose of treatment or referral for treatment.

Disclose or *disclosure* means a communication of patient indentifying information, the affirmative verification of another person's communication of patient identifying information, or the communication of any information from the record of a patient who has been identified.

Informant means an individual:

(a) Who is a patient or employee of a program or who becomes a patient or employee of a program at the request of a law enforcement agency or official; and

(b) Who at the request of a law enforcement agency or official observes one or more patients or employees of the program for the purpose of reporting the information obtained to the law enforcement agency or official.

Maintenance treatment means the dispinsing of a narcotic drug in the treatment of an individual for dependence upon heroin or other morphine-like drugs.

Member program means a detoxification treatment or maintenance treatment program which reports patient identifying information to a central registry and which is in the same State as that central registry or is not more than 125 miles from any border of the State in which the central registry is located.

Patient means any individual who has applied for or been given diagnosis or treatment for alcohol or drug abuse at a federally assisted program and includes any individual who, after arrest on a criminal charge, is identified as an alcohol or drug abuser in order to determine that individual's eligibility to participate in a program.

Patient identifying information means the name, address, social security number, fingerprints, photograph, or similar information by which the identity of a patient can be determined with reasonable accuracy and speed either directly or by reference to other publicly available information. The term does not include a number assigned to a patient by a program, if that number does not consist of, or contain numbers (such as a social security, or driver's license number) which could be used to identify a patient with reasonable accuracy and speed.

Person means an individual, partnership, corporation, Federal, State or local governmental agency, or any other legal entity.

Program means a person which in whole or in part holds itself out as providing, and provides, alcohol or drug abuse diagnosis, treatment, or referral for treatment. For a general medical care facility or any part thereof to be a program, it must have:

(a) An identified unit which provides alcohol or drug abuse diagnosis, treatment, or referral for treatment or

(b) Medical personnel or other staff whose primary function is the provision of alcohol or drug abuse diagnosis, treatment, or referral for treatment and who are identified as such providers.

Program director means:

(a) In the case of a program which is an individual, that individual;

(b) In the case of a program which is an organization, the individual designated as director, managing director, or otherwise vested with authority to act as chief executive of the organization.

Qualified service organization means a person which:

(a) Provides services to a program, such as data processing, bill collecting, dosage preparation, laboratory analyses, or legal, medical, accounting, or other professional services, or services to prevent or treat child abuse or neglect, including training on nutrition and child care and individual and group therapy; and

(b) Has entered into a written agreement with a program under which that person:

(1) Acknowledges that in receiving, storing, processing or otherwise dealing with any patient records from the programs, it is fully bound by these regulations; and

(2) If necessary, will resist in judicial proceedings any efforts to obtain access to patient records except as permitted by these regulations.

Records means any information, whether recorded or not, relating to a patient, received or acquired by a federally assisted alcohol or drug program.

Third party payer means a person who pays, or agrees to pay, for diagnosis or treatment furnished to a patient on the basis of a contractual relationship with the patient or a member of his family or on the basis of the patient's eligibility for Federal, State, or local governmental benefits.

Treatment means the management and care of a patient suffering from alcohol or drug abuse, a condition which is identified as having been caused by that abuse, or both, in order to reduce or eliminate the adverse effects upon the patient.

Undercover agent means an officer of any Federal, State, or local law enforcement agency who enrolls in or becomes an employee of a program for the purpose of investigating a suspected violation of law or who pursues that purpose after enrolling or becoming employed for other purposes.

§ 2.12 Applicability

(a) *General*—(1) *Restrictions on disclosure.* The restrictions on disclosure in these regulations apply to any information, whether or not recorded, which:

(i) Would identify a patient as an alcohol or drug abuser either directly, by reference to other publicly available information, or through verification of such an identification by another person; and

(ii) Is drug abuse information obtained by a federally assisted drug abuse program after March 20, 1972, or is alcohol abuse information obtained by a federally assisted alcohol abuse program after May 13, 1974 (or if obtained before the pertinent date, is maintained by a federally assisted alcohol or drug abuse program after that date as part of an ongoing treatment episode which extends past that date) for the purpose of treating alcohol or drug abuse, making a diagnosis for that treatment, or making a referral for that treatment.

(2) *Restriction on use.* The restriction on use of information to initiate or substantiate any criminal charges

against a patient or to conduct any criminal investigation of a patient (42 U.S.C. 290ee-3(c), 42 U.S.C. 290dd-3(c)) applies to any information, whether or not recorded which is drug abuse information obtained by a federally assisted drug abuse program after March 20, 1972, or is alcohol abuse information obtained by a federally assisted alcohol abuse program after May 13, 1974 (or if obtained before the pertinent date, is maintained by a federally assisted alcohol or drug abuse program after that date as part of an ongoing treatment episode which extends past that date), for the purpose of treating alcohol or drug abuse, making a diagnosis for that treatment, or making a referral for that treatment.

(b) *Federal assistance.* An alcohol abuse or drug abuse program is considered to be federally assisted if:

(1) It is conducted in whole or in part, whether directly or by contract or otherwise, by any department or agency of the United States (but see paragraphs (c)(1) and (c)(2) of this section relating to the Veterans' Administration and the Armed Forces);

(2) It is being carried out under a license, certification, registration, or other authorization granted by any department or agency of the United States including:

(i) Certification of provider status under the Medicare program;

(ii) Authorization to conduct methadone maintenance treatment (see 21 CFR 291.505); or

(iii) Registration to dispense a substance under the Controlled Substances Act to the extent the controlled substance is used in the treatment of alcohol or drug abuse;

(3) It is supported by funds provided by any department or agency of the United States by being:

(i) A recipient of Federal financial assistance in any form, including financial assistance which does not directly pay for the alcohol or drug abuse diagnosis, treatment, or referral activities; or

(ii) Conducted by a State or local government unit which, through general or special revenue sharing or other forms of assistance, receives Federal funds which could be (but are not necessarily) spent for the alcohol or drug abuse program; or

(4) It is assisted by the Internal Revenue Service of the Department of the Treasury through the allowance of income tax deductions for contributions to the program or through the granting of tax exempt status to the program.

(c) *Exceptions*—(1) *Veterans' Administration.* These regulations do not apply to information on alcohol and drug abuse patients maintained in connection with the Veterans' Administraton provision of hospital care, nursing home care, domiciliary care, and medical services under Title 38, United States Code. Those records are governed by 38 U.S.C. 4132 and regulations issued under that authority by the Administrator of Veterans' Affairs.

(2) *Armed Forces.* These regulations apply to any information described in paragraph (a) of this section which was obtained by any component of the Armed Forces during a period when the patient was subject to the Uniform Code of Military Justice except:

(i) Any interchange of that information within the Armed Forces; and

(ii) Any interchange of that information between the Armed Forces and those components of the Veterans Administration furnishing health care to veterans.

(3) *Communications within a program.* The restrictions on disclosure in these regulations do not apply to communications of information within a program between or among personnel having a need for the information in connection with a patient's diagnosis, treatment, or referral for treatment of alcohol or drug abuse.

(4) *Qualified Service Organizations.* The restrictions on disclosure in these regulations do not apply to communications between a program and a qualified service organization of information needed by the organization to provide services to the program.

(5) *Crimes on program premises or against program personnel.* The restrictions on disclosure and use in these regulations do not apply to communications from program personnel to law enforcement officers which–

(i) Are directly related to a patient's commission of a crime on the premises of the program or against program personnel or to a threat to commit such a crime; and

(ii) Are limited to the circumstances of the incident, including the patient status of the individual committing or threatening to commit the crime, that individual's name and address, and that individual's last know whereabout.

(d) *Applicability to recipients of information*—(1) *Restriction on use of information.* The restriction on the use of any information subject to these regulations to initiate or substantiate any criminal charges against a patient or to conduct any criminal investigation of a patient applies to any person who obtains that information from a federally assisted alcohol or drug abuse program, regardless of the status of the person obtaining the information or of whether the information was obtained in accordance with these regulations. This restriction on use bars, among other things, the introduction of that information as evidence in a criminal proceeding and any other use of the information to investigate or prosecute a patient with respect to a suspected crime. Information obtained by undercover agents or informants (see § 2.17) or through patient access (see § 2.23) is subject to the restriction on use.

(2) *Restrictions on disclosures—Third party payers and others.* The restrictions on disclosure in these regulations apply to third party payers who maintain patient records disclosed to them by federally assisted alcohol or durg abuse programs and to those persons—

(i) Who receive patient records directly from a federally assisted alcohol or drug abuse program; and

(ii) who are notified of the restrictions on redisclosure of the records in accordance with § 2.32 of these regulations.

(e) *Explanation of applicability*—(1) *Coverage.* These regulations cover information maintained about alcohol and drug abuse patients (including information on referral and intake) by any federally assisted alcohol or drug abuse program. Coverage includes, but is not limited to, those treatment or rehabilitation programs, employee assistance programs, programs within general hospitals, and private practitioners who hold themselves out as providing, and provide alcohol or drug abuse diagnosis, treatment, or referral for treatment.

(2) *How type of assistance affects scope of coverage.* (i) Any hospital which has Federal tax exempt status and operates an alcohol or drug abuse program must protect the confidentiality of information on any individual who applies for or receives referral, diagnosis, or treatment for alcohol or drug abuse in that program.

(ii) Any provider of care under Medicare or Medicaid must protect the confidentiality of information on any patient for whom Medicare or Medicaid reimbursement for alcohol and drug abuse services has been sought.

(iii) Any program which has a Federal license or registration to prescribe or administer a drug or controlled substance is required to protect the confidentiality of the records of any patient who is treated with that drug or substance.

(3) *How type of diagnosis affects coverage.* (a) These regulations cover any record of a diagnosis identifying a patient as an alcohol or drug abuser which is prepared in connection with the treatment or referral for treatment of alcohol or drug abuse. A diagnosis prepared for the purpose of treatment or referral for treatment but which is not so used is covered by these regulations. The following are not covered by these regulations:

(i) A diagnosis which is made solely for the purpose of providing evidence for use by law enforcement authorities;

(ii) A reference to a patient's alcoohol or drug abuse history in the course of treating a condition which is not related to alcohol or drug abuse; or

(iii) A diagnosis of drug overdose or alcohol intoxication which clearly shows that the individual involved is not an alchol or drug abuser (e.g., involuntary ingestion of alcohol or drugs or reaction to a prescribed dosage or one or more drugs).

§ 2.13 Coinfidentiality restrictions.

(a) *General.* The patient records to which these regulations apply may be disclosed or used only as permitted by these regulations and may not otherwise be disclosed or used in any civil, criminal, administrative, or legislative proceedings conducted by any Federal, State, or local authority. Any disclosure made under these regulations must be limited to that information which is necessary to carry out the purpose of the disclosure.

(b) *Unconditional compliance required.* The restrictions on disclosure and use in these regulations apply whether the holder of the information believes that the person seeking the information already has it, has other means of obtaining it, is a law enforcement or other official, has obtained a subpoena, or asserts any other justification for a disclosure or use which is not permitted by these regulations.

(c) *Acknowledging the persence of patients; Responding to requests.* (1) The presence of an identified patient in a facility or component of a facility which is publicly identified as a place where only alcohol or drug abuse diagnosis, treatment, or referral is provided may be acknowledged only if the patient's written consent is obtained in accordance with subpart C of these regulations or if an authorizing court order is entered in accordance with Subpart E of these regulations. The regulations permit acknowledgement of the presence of an identified patient in a facility or part of a facility if the facility is not publicy identified as only alcohol or drug abuse diagnosis, treatment or referral facility, and if the acknowledgement does not reveal that the patient is an alcohol or drug abuser.

(2) Any answer to a request for a disclosure of patient records which is not permissible under these regulations must be made in a way that will not affirmatively reveal that an identified individual has been, or is being, diagnosed or treated for alcohol or drug abuse. An inquiring party may be given a copy of these regulations and advised that they restrict the disclosure of alcohol or drug abuse patient records, but may not be told affirmatively that the regulations restrict the disclosure of the records of an identified patient. The regulations do not restrict a disclosure that an identified individual is not and never has been a patient.

§ 2.14 Minor patients.

(a) *Definition of minor.* As used in these regulations the term "minor" means a person who has not attained the age of majority specified in the applicable State law, or if no age of majority is specified in the applicable State law, the age of eighteen years.

(b) *State law requiring parental consent to treatment*—(1) *Notifying parent or guardian of minor's application for treatment.* Notwithstanding any State law, any information regarding a minor's application for alcohol or drug abuse services may be communicated to the parent, guardian, or other person authorized under State law to act on behalf of the minor only if:

(i) The minor patient has given written consent to the disclosure in accordance with Subpart C of these regulations (if the minor patient does not give that consent and State law requires parental consent prior to any treatment, these regulations do not prohibit a refusal to provide treatment); or

(ii) In the judgment of the program director the minor applicant for services, because of a mental or physical condition, lacks the capacity to make a rational decision on whether to consent to the notification of his or her parent or guardian *and* the situation poses a substantial threat to the physical well being of any person which may be reduced by communicating relevant facts to the minor's parent or guardian.

(2) *Other disclosures with consent where State law requires parental consent to treatment.* In all other cases in which written patient consent is required under these regulations, that consent must be given by both the minor and his or her parent, guardian, or other person authorized under State law to act in the minor's behalf.

(c) *State law not requiring parental consent to treatment.* If a minor patient acting alone has the legal capacity under the applicable State law to apply for and obtain alcohol and drug abuse treatment, any written consent for a disclosure authorized under Subpart C of these regulations may be given only by the minor patient. This restriction includes, but is not limited to, a disclosure of patient identifying information to the parent or guardian of a minor patient for the purpose of obtaining financial reimbursement. These regulations do not prohibit a program from refusing to provide treatment until the minor patient consents to the disclosure necessary to obtain reimbursement, but refusal to provide treatment may be prohibited under a State or local law requiring the program to furnish the services irrespective of ability to pay.

§ 2.15 Incompetent and deceased patients.

(a) *Incompetent patients other than minors*—(1) *Adjudication of incompetence.* In the case of a patient who has been adjudicated as lacking the capacity, for any reason other than insufficient age, to manage his or her own affairs, any consent which is required under these regulations may be given by the guardian or other person authorized under State law to act in the patient's behalf.

(2) *No adjudication of incompetency.* For any period for which the program director determines that a patient, other than a minor or one who has been adjudicated incompetent, suffers from a medical condition that prevents knowing or effective action on his or her own behalf, the program director may exercise the right of the patient to consent to a disclosure under Subpart C of these regulations for the sole purpose of obtaining payment for services from a third party payer.

(b) *Deceased patients*—(1) *Vital statistics.* These regulations do not restrict the disclosure of patient identifying information relating to the cause of death of a patient under laws requiring the collection of death or other vital statistics or permitting inquiry into the cause of death.

(2) *Consent by personal representative.* Any other disclosure of information identifying a deceased patient as an alcohol or drug abuser is subject to these regulations. If a written consent to the disclosure is required, that consent may be given by an executor, administrator, or other personal representative appointed under applicable State law. If there is no such

appointment the consent may be given by the patient's spouse or, if none, by any responsible member of the patient's family.

§ 2.16 Security for written records.

(a) Written records which are subject to these regulations must be maintained:

(1) In a secure room, locked file cabinet, safe or other similar container when not in use; and

(2) In a manner that will permit the review of financial and administrative matters with no disclosure of clinical information and no disclosure of patient identifying information except where necessary for audit verification.

(b) Each program shall adopt in writing procedures which regulate and control access to and use of written records which are subject to these regulations.

§ 2.17 Undercover agents and informants.

(a) *Restrictions on placement.* Except as specifically authorized by a court order granted under § 2.66 of these regulations, no program may knowingly employ, or enroll as a patient, any undercover agent or informant.

(b) *Restriction on use of information.* No information obtained by an undercover agent or informant, whether or not that undercover agent or informant is placed in a program pursuant to an authorizing court order, may be used to criminally investigate or prosecute any patient.

§ 2.18 Restrictions on the use of identification cards.

No person may require any patient to carry on his or her person while away from the program premises any card or other object which would identify the patient as an alcohol or drug abuser. This section does not prohibit a person from requiring patients to use or carry cards or other identification objects on the premises of a program.

§ 2.19 Disposition of records by discontinued programs.

(a) *General.* If a program discontinues operations or is taken over or acquired by another program, it must purge patient identifying information from its records or destroy the records unless—

(1) The patient who is the subject of the records gives written consent (meeting the requirements of § 2.31) to a transfer of the records to the acquiring program or, if none, to any program designated in the consent (the manner of obtaining this consent must minimize the likelihood of a disclosure of patient identifying information to a third party); or

(2) There is a legal requirement that the records be kept for a period specified by law which does not expire until after the discontinuation or acquisition of the program.

(b) *Procedure where retention period required by law.* If paragraph (a)(2) of this section applies, the records must be:

(1) Sealed in envelopes or other containers labeled as follows: "Records of [insert name of program] required to be maintained under [insert citation to statute, regulation, or court order requiring that records be kept] until a date not later than [insert appropriate date];" and

(2) Held under the restrictions of these regulations by a responsible person who must, as soon as practicable after the end of the retention period specified on the label, destroy the records.

§ 2.20 Relationship to State laws.

The statutes authorizing these regulations (42 U.S.C. 290ee-3 and 42 U.S.C. 290dd-3) do not preempt the field of law which they cover to the exclusion of all State laws in that field. If a disclosure permitted under these regulations is prohibited under State law, neither these regulations nor the authorizing statutes may be construed to authorize any violation of that State law. However, no State law may either authorize or compel any disclosure prohibited by these regulations.

§ 2.21 Relationship to Federal statutes protecting research subjects against compulsory disclosure of their identity.

(a) *Research privilege discription.* There may be concurrent coverage of patient identifying information by these regulations and by administrative action taken under: Section 303(a) of the Public Health Service Act (42 U.S.C. 242a(a)) and the implementing regulations at 42 CFR Part 2a); or section 502(c) of the Controlled Substances Act (21 U.S.C. 872(c) and the implementing regulations at 21 CFR 1316.21). These "research privilege" statutes confer on the Secretary of Health and Human Services and on the Attorney General, respectively, the power to authorize researchers conducting certain types of research to withhold from all persons not connected with the research the names and other identifying information concerning individuals who are the subjects of the research.

(b) *Effect of concurrent coverage.* These regulations restrict the disclosure and use of information about patients, while administrative action taken under the research privilege statutes and implementing regulations protects a person engaged in applicable research from being compelled to disclose any identifying characteristics of the individuals who are the subjects of that research. The issuance under Subpart E of these regulations of a court order authorizing a disclosure of information about a patient does not affect an exercise of authority under these research privilege statutes. However, the research privilege granted under 21 CFR 291.505(g) to treatment programs using methadone for maintenance treatment does not protect from compulsory disclosure any information which is permitted to be disclosed under these regulations. Thus, if a court order entered in accordance with Subpart E of these regulations authorizes a methadone maintenance treatment program to disclose certain information about its patients, that program may not invoke the research privilege under 21 CFR 291.505(g) as a defense to a subpoena for that information.

§ 2.22 Notice to patients of Federal confidentiality requirements.

(a) *Notice required.* At the time of admission or as soon thereafter as the patient is capable of rational communication, each program shall:

(1) Communicate to the patient that Federal law and regulations protect the confidentiality of alcohol and drug abuse patient records; and

(2) Give to the patient a summary in writing of the Federal law and regulations.

(b) *Required elements of written summary.* The written summary of the Federal law and regulations must include:

(1) A citation to the Federal law and regulations.

(2) A description of the limited circumstances under which a program may disclose outside the program information identifying a patient as an alcohol or drug abuser.

(3) A description of the limited circumstances under which a program may acknowledge that an individual is present at a facility.

(4) A description of the circumstances under which alcohol or drug abuse patient records may be used to initiate or substantiate criminal charges against a patient.

(5) A statement that information related to a patient's commission of a crime on the premises of the program or against personnel of the program is not protected.

(6) A statement that the Federal law and regulations do not prohibit a program from giving a patient access to his or her own records.

(7) A statement of the criminal penalty for violation of the Federal law and regulations.

(8) An address where suspected violations of the Federal law and regulations may be reported.

(c) *Program options.* The program may devise its own notice or may use the sample notice in paragraph (d) to comply with the requirement to provide the patient with a summary in writing of the Federal law and regulations. In addition, the program may include in the written summary information concerning State law and any program policy not inconsistent with State and Federal law on the subject of confidentiality of alcohol and drug abuse patient records.

(d) *Sample notice.*

Confidentiality of Alcohol and Drug Abuse Patient Records

The confidentiality of alcohol and drug abuse patient records maintained by this program is protected by Federal law and regulations (42 U.S.C. 290dd–3, 42 U.S.C. 290ee–3 and 42 CFR Part 2). No information identifying a patient as an alcohol or drug abuser may be disclosed outside the program or those assisting the program in the provision of services:

(1) Unless the patient consents in writing;

(2) Unless the disclosure is allowed by a court order based upon a finding of good cause, or

(3) Unless the disclosure is to medical personnel for a medical emergency or to qualified personnel to conduct scientific research, management audits, financial audits, or program evaluation, but those qualified personnel may not redisclose any information which would identify any patient.

The program may not say that an individual is present at a facility if to do so would reveal that the patient is an alcohol or drug abuser unless the patient consents in writing to have his or her presence acknowledged or unless an authorizing court order is entered permitting that acknowledgment.

Unless allowed by a court order which meets the requirements of the regulations, no alcohol or drug abuse patient record may be used to initiate or substantiate any criminal charges against a patient, but the Federal law and regulations do not protect information related to a patient's commission of a crime on the premises of the program or against personnel of the program or a patient's threat to commit such a crime.

Under the regulations a program may (but is not required to) allow a patient to inspect and copy his or her record.

There is a criminal penalty for violation of Federal law or regulations requiring confidentiality of alcohol and drug abuse patient records: a fine of not more than $500 in the case of a first offense, and not more than $5,000 in the case of each subsequent offense.

Suspected violations may be reported either to the Director, National Institute on Drug Abuse or to the Director, National Institute on Alcohol Abuse and Alcoholism, both at 5600 Fishers Lane, Rockville, Maryland 20857. Suspected violations may also be reported to the United States Attorney for the judicial district in which the violation occurs.

§ 2.23. Patient access and restriction on use.

(a) *Patient access not prohibited.* These regulations do not prohibit a program from giving a patient access to his or her own records, including the opportunity to inspect and copy any records that the program maintains about the patient. The program is not required to obtain a patient's written consent or other authorization under these regulations in order to provide such access to the patient.

(b) *Restriction on use of information.* Information obtained by patient access to his or her patient record is subject to the restriction on use of this information to initiate or substantiate any criminal charges against the patient or to conduct any criminal investigation of the patient as provided for under §2.12(d)(1).

Subpart C—Disclosures With Patient's Consent

§ 2.31 Form of written consent.

(a) *Required elements.* A written consent to a disclosure under these regulations must include:

(1) The name of the program which is to make the disclosure.

(2) The name or title of the individual or the name of the organization to which disclosure is to be made.

(3) The name of the patient.

(4) The purpose of the disclosure.

(5) How much and what kind of information is to be disclosed.

(6) The signature of the patient and, when required for a patient who is a minor, the signature of a person authorized to give consent under § 2.14; or, when required for a patient who is incompetent or deceased, the signature of a person authorized to sign under § 2.15 in lieu of the patient.

(7) The date on which the consent is signed.

(8) A statement that the consent is subject to revocation at any time except to the extent that the program which is to make the disclosure has already acted in reliance on it. Acting in reliance includes the provision of treatment services in reliance on a valid consent to disclose information to a third party payer.

(9) The date, event, or condition upon which the consent will expire if not revoked before. This date, event, or condition must insure that the consent will last no longer than reasonably necessary to serve the purpose for which it is given.

(b) *Sample consent form.* The following form complies with paragraph (a) of this section, but other elements may be added.

1. I (name of patient) ☐ Request ☐ Authorize:
2. (name of program which is to make the disclosure) ———
3. To disclose: (kind and amount of information to be disclosed) ———
4. To: (name or title of the person or organization to which disclosure is to be made) ———
5. For: (purpose of the disclosure) ———
6. Date (on which this consent is signed) ———
7. Signature of patient ———
8. Signature of parent or guardian (where required) ———
9. Signature of person authorized to sign in lieu of the patient (where required) ———
10. This consent is subject to revocation at any time except to the extent that the program which is to make the disclosure has already taken action in reliance on it. If not previously revoked, this consent will terminate upon: (specific date, event, or condition)

(c) *Expired, deficient, or false consent.* A disclosure may not be made on the basis of a consent which:

(1) Has expired;

(2) Does not comply with paragraph (a) of this section;

(3) Is known to have been revoked; or

(4) Is known, or through a reasonable effort could be known, by the person holding the records to be materially false.

§ 2.32 Prohibition on redisclosure.

(a) *Notice to accompany disclosure.* Each disclosure made with the patient's written consent must be accompanied by the following written statement:

This information has been disclosed to you from records protected by Federal confidentiality rules (42 CFR Part 2). The Federal rules prohibit you from making any further disclosure of this information without the specific written consent of the person to whom it pertains or as otherwise permitted by 42 CFR Part 2. A general authorization for the release of medical or other information is NOT sufficient for this purpose. The Federal rules restrict any use of the information to criminally investigate or prosecute any alcohol or drug abuse patient.

§ 2.33 Disclosures permitted with written consent.

If a patient consents to a disclosure of his or her records under § 2.31, a program may disclose those records in accordance with that consent to any individual or organization named in the consent, except that disclosures to central registries and in connection with criminal justice referrals must meet the requirements of § 2.34 and § 2.35, respectively.

§ 2.34 Disclosures to prevent multiple enrollments in detoxification and maintenance treatment programs.

(a) *Restrictions on disclosure.* A program may disclose patient records to a central registry or to any detoxification or maintenance treatment program not more than 200 miles away for the purpose of preventing the multiple enrollment of a patient only if:

(1) The disclosure is made when;

(i) The patient is accepted for treatment;

(ii) The type or dosage of the drug is changed; or

(iii) The treatment is interrupted, resumed or terminated.

(2) The disclosure is limited to;

(i) Patient identifying information;

(ii) Type and dosage of the drug; and

(iii) Relevant dates.

(3) The disclosure is made with the patient's written consent meeting the requirements of § 2.31, except that:

(i) The consent must list the name and address of each central registry and each known detoxification or maintenance treatment program to which a disclosure will be made; and

(ii) The consent may authorize a disclosure to any detoxification or maintenance treatment program established within 200 miles of the program after the consent is given without naming any such program.

(b) *Use of information limited to prevention of multiple enrollments.* A central registry and any detoxification or maintenance treatment program to which information is disclosed to prevent multiple enrollments may not redisclose or use patient identifying information for any purpose other than the prevention of multiple enrollments unless authorized by a court order under Subpart E of these regulations.

(c) *Permitted disclosure by a central registry to prevent a multiple enrollment.* When a member program asks a central registry if an identified patient is enrolled in another member program and the registry determines that the patient is so enrolled, the registry may disclose—

(1) The name, address, and telephone number of the member program(s) in which the patient is already enrolled to the inquiring member program; and

(2) The name, address, and telephone number of the inquiring member program to the member program(s) in which the patient is already enrolled. The member programs may communicate as necessary to verify that no error has been made and to prevent or eliminate any multiple enrollment.

(d) *Permitted disclosure by a detoxification or maintenance treatment program to prevent a multiple enrollment.* A detoxification or maintenance treatment program which has received a disclosure under this section and has determined that the patient is already enrolled may communicate as necessary with the program making the disclosure to verify that no error has been made and to prevent or eliminate any multiple enrollment.

§ 2.35 Disclosures to elements of the criminal justice system which have referred patients.

(a) A program may disclose information about a patient to those persons within the criminal justice system which have made participation in the program a condition of the disposition of any criminal proceedings against the patient or of the patient's parole or other release from custody if:

(1) The disclosure is made only to those individuals within the criminal justice system who have a need for the information in connection with their duty to monitor the patient's progress (e.g., a prosecuting attorney who is withholding charges against the patient, a court granting pretrial or posttrial release, probation or parole officers responsible for supervision of the patient); and

(2) The patient has signed a written consent meeting the requirements of § 2.31 (except paragraph (a)(8) which is inconsistent with the revocation provisions of paragraph (c) of this section) and the requirements of paragraphs (b) and (c) of this section.

(b) *Duration of consent.* The written consent must state the period during which it remains in effect. This period must be reasonable, taking into account:

(1) The anticipated length of the treatment;

(2) The type of criminal proceeding involved, the need for the information in connection with the final disposition of that proceeding, and when that final disposition will occur; and

(3) Such other factors as the program, the patient, and the person(s) who will receive the disclosure consider pertinent.

(c) *Revocation of consent.* The written consent must state whether it is revocable, and if so, the period during which it is revocable. The consent may be:

(1) Irrevocable until there has been a final disposition of the conditional release or other action in connection with which the consent was given; or

(2) Revocable upon the passage of a specified amount of time or the occurrence of a specified, ascertainable event.

(d) *Retrictions on redisclosure and use.* A person who receives patient information under this section may redisclose and us it only to carry out that person's official duties with regard to the patient's conditional release or other action in connection with which the consent was given.

Subpart D—Disclosures Without Patient Consent

§ 2.51 Medical emergencies.

(a) *General Rule.* Under the procedures required by paragraph (c) of this section, patient identifying information may be disclosed to medical personnel who have a need for information about a patient for the purpose of treating a condition which poses an immediate threat to the health of any individual and which requires immediate medical intevention.

(b) *Special Rule.* Patient identifying information may be disclosed to medical personnel of the Food and Drug Administration (FDA) who assert a reason to believe that the health of any individual may be threatened by an error in the manufacture, labeling, or sale of a product under FDA justisdiction, and that the information will be used for the exclusive purpose of notifying patients or their physicians of potential dangers.

(c) *Procedures.* (1) Prior to disclosure, the program shall make a reasonable effort to verify the medical personnel status of any proposed recipient of the disclosure.

(2) Immediately following disclosure, the program shall document the disclosure in the patient's records setting forth in writing:

(i) The name of the medical personnel to whom disclosure was made and their affiliation with any health care facility;

(ii) The name of the individual making the disclosure;

(iii) The date and time of the disclosure;

(iv) The nature of the emergency (or error, if the report was to FDA); and

(v) The details of the attempt to verify the medical personnel status of the recipient.

§ 2.52 Research activities.

(a) Patient identifying information may be disclosed for the purpose of conducting scientific research if the program director makes a determination that the recipient of the patient identifying information:

(1) Is qualified to conduct the research; and

(2) Has a research protocol under which the patient identifying information:

(i) Will be maintained in accordance with the security requirements of § 2.16 of these regulations (or more stringent requirements); and

(ii) Will not be redisclosed except as permitted under paragraph (b) of this section.

(b) A person conducting research may disclose patient identifying information obtained under paragraph (a) of this section only back to the program from which that information was obtained and may not identify any individual patient in any report of that research or otherwise disclose patient identities.

§ 2.53 Audit and evaluation activities.

(a) *Records not copied or removed.* If patient records are not copied or removed, patient identifying information may be disclosed in the course of a review of records on program premises to any person who agrees in writing to comply with the limitations on redisclosure and use in paragraph (c) of this section and who:

(1) Is paid to perform the audit or evaluation activity by a Federal, State, or local governmental agency which provides financial assistance to the program or is authorized by law to regulate its activities; or

(2) Is determined by the program director to be qualified to conduct the audit or evaluation activities.

(b) *Copying or removal of records.* Records containing patient identifying information may be copied or removed from program premises by any person who:

(1) Agrees in writing to:

(i) Maintain the patient identifying information in accordance with the security requirements provided in § 2.16 of these regulations (or more stringent requirements);

(ii) Destroy all the patient identifying information upon completion of the audit or evaluation; and

(iii) Comply with the limitations on disclosure and use in paragraph (c) of this section; and

(2) Is paid to perform the audit or evaluation activity by a Federal, State or local governmental agency which provides financial assistance to the program or is authorized by law to regulate its activities.

(c) *Limitations on disclosure and use.* Patient identifying information disclosed under this section may be disclosed only back to the program from which it was obtained and used only to carry out an audit or evaluation purpose or to investigate or prosecute the program for criminal activities, as authorized by a court order entered under § 2.65 of these regulations.

Subpart E—Court Orders Authorizing Disclosure And Use

§ 2.61 Legal effect of order.

(a) *Effect.* An order of a court of competent jurisdiction entered under this subpart is a unique kind of court order. Its only purpose is to authorize a disclosure or use of patient information which would otherwise be prohibited by 42 U.S.C. 290ee–3, 42 U.S.C. 290dd–3 and these regulations. Such an order does not compel disclosure. A subpoena or a similar legal mandate must be issued in order to compel disclosure. This mandate may be entered at the same time as, and accompany, an authorizing court order entered under these regulations.

(b) *Examples.* (1) A person holding records subject to these regulations receives a subpoena for those records; a response to the subpoena is not permitted under the regulations unless an authorizing court order is entered. The person may not disclose the records in response to the subpoena unless a court of competent jurisdiction enters an authorizing order under these regulations.

(2) An authorizing court order is entered under these regulations, but the person authorized does not want to make the disclosure. If there is no subpoena or other compulsory process, or a subpoena for the records has expired or been quashed, that person may refuse to make the disclosure. Upon the entry of a valid subpoena or other compulsory process the person authorized to disclose must disclose, unless there is a valid legal defense to the process other than the confidentiality restrictions of these regulations.

§ 2.62 Order not applicable to records disclosed without consent to researchers, auditors and evaluators.

A court under these regulations may not authorize qualified personnel, who have received patient identifying information without consent for the purpose of conducting research, audit or evaluation, to disclose that information or use it to conduct any criminal investigation or prosecution of a patient. However, a court order under § 2.65 may authorize disclosue and use of records to investigate or prosecute qualified personnel holding the records.

§ 2.63 Procedures and criteria for orders authorizing disclosures for noncriminal purposes.

(a) *Application.* An order authorizing the disclosure of patient records for purposes other than criminal investigation or prosecution may be applied for by any person having a legally recognized interest in the disclosure which is sought. The application may be filed separately or as part of a pending civil action in which it appears that the patient records are needed to provide evidence. An application must use a fictitious name, such as John Doe, to refer to any patient and may not contain or otherwise disclose any patient identifying information unless the patient is the applicant or has given a written consent (meeting the requirements of these regulations) to disclosure or the court has ordered the record of the proceeding sealed from public scrutiny.

(b) *Notice.* The patient and the person holding the records from whom disclosure is sought must be given:

(1) Adequate notice in a manner which will not disclose patient identifying information to other persons; and

(2) An opportunity to file a written response to the application, or to appear in person.

(c) *Review of evidence; Conduct of hearing.* Any oral argument, review of evidence, or hearing on the application must be held in the judge's chambers or in some manner which ensures that patient identifying information is not disclosed to anyone other than a party to the proceeding, the patient, or the person holding the record. The proceeding may include an examination by the judge of the patient records referred to in the application.

(d) *Criteria for entry of order.* An order under this section may be entered only if the court determines that good cause exists. To make this determination the court must find that:

(1) Other ways of obtaining the information are not available or would not be effective; and

(2) The public interest and need for the disclosure outweigh the potential injury to the patient, the physician-patient relationship and the treatment services.

(e) *Content of order.* An order authorizing a disclosure must:

(1) Limit disclosure to those parts of the patient's record which are essential to fulfill the objective of the order;

(2) Limit disclosure to those persons whose need for information is the basis for the order; and

(3) Include such other measures as are necessary to limit disclosure for the protection of the patient, the physician-patient relationship and the treatment services.

§ 2.64 Procedures and criteria for orders authorizing disclosure and use of records to criminally investigate or prosecute patients.

(a) *Application.* An order authorizing the disclosure or use of patient records to criminally investigate or prosecute a patient may be applied for by the person holding the records or by any person conducting investigative or prosecutorial activities with respect to the enforcement of criminal laws. The application may be filed separately, as part of an application for a subpoena or other compulsory process, or in a pending criminal action. An application must use a fictitious name, such as John Doe, to refer to any patient and may not contain or otherwise disclose patient identifying information unless the court has ordered the record of the proceeding sealed from public scrutiny.

(b) *Notice and hearing.* Unless an order under § 2.65 is sought with an order under this section, the person holding the records must be given:

(1) Adequate notice (in a manner which will not disclose patient identifying information to third parties) of an application by a person performing a law enforcement function;

(2) An opportunity to appear and be heard; and

(3) An opportunity to be represented by counsel independent of counsel for an applicant who is a person performing a law enforcement function.

(c) *Review of evidence; Conduct of hearings.* Any oral argument, review of evidence, or hearing on the application shall be held in the judge's chambers or in some other manner which ensures that patient identifying information is not disclosed to anyone other than a party to the proceedings, the patient, or the person holding the records. The proceeding may include an examination by the judge of the patient records referred to in the application.

(d) *Criteria.* A court may authorize the disclosure and use of patient records for the purpose of conducting a criminal investigation or prosecution of a patient only if the court finds that all of the following criteria are met:

(1) The crime involved causes or directly threatens loss of life or serious bodily injury, such as homicide, rape, kidnapping, armed robbery, assault with a deadly weapon, child abuse and neglect, or the sale of illicit drugs.

(2) There is a reasonable likelihood that the records will disclose information of substantial value in the investigation or prosecution.

(3) There is no other practicable way of obtaining the information.

(4) The potential injury to the patient, to the physician-patient relationship and to the ability of the person holding the records to provide services to other patients is outweighed by the public interest and the need for the disclosure.

(5) If the applicant is a person performing a law enforcement function that:

(i) The person holding the records has been afforded the opportunity to be represented by independent counsel; and

(ii) Any person holding the records which is an entity within Federal, State, or local government has in fact been represented by counsel independent of the applicant.

(e) *Content of order.* Any order authorizing a disclosure or use of patient records under this section must:

(1) Limit disclosure and use to those parts of the patient's record which are essential to fulfill the objective of the order;

(2) Limit disclosure to those law enforcement and prosecutorial officials who are responsible for, or are conducting, the investigation or prosecution, and limit their use of the records to investigation and prosecution of the crime or suspected crime causing or directly threatening loss of life or serious bodily injury which is specified in the application; and

(3) Include such other measures as are necessary to limit disclosure and use to the fulfillment of only that public interest and need found by the court.

§ 2.65 Procedures and criteria for orders authorizing disclosure and use of records to investigate or prosecute a program or the person holding the records.

(a) *Application.* (1) An order authorizing the disclosure or use of patient records to criminally or administratively investigate or prosecute a program or the person holding the records (or employees or agents of that program or person) may be applied for by any administrative, regulatory, supervisory, investigative, law enforcement, or prosecutorial agency having jurisdiction over the program's or person's activities.

(2) The application may be filed separately or as part of a pending civil or criminal action against a program or the person holding the records (or agents or employees of the program or person) in which it appears that the patient records are needed to provide material evidence. The application must use a fictitious name, such as John Doe, to refer to any patient and may not contain or otherwise disclose any patient identifying information unless the court has ordered the record of the proceeding sealed from public scrutiny or the patient has given a written consent (meeting the requirements of § 2.31 of these regulations) to that disclosure.

(b) *Notice.* An application under this section may, in the discretion of the court, be granted without notice. However, upon implementation of any order so granted, the program or person holding the records and the patients whose records are to be disclosed must be afforded an opportunity to seek revocation or amendment of that order.

(c) *Requirements for order.* An order under this section must be entered in accordance with, and comply with the requirements of, paragraphs (d) and (e) of § 2.63 of these regulations.

(d) *Limitations on disclosure and use of patient identifying information.* (1) An order entered under this section must require the deletion of patient identifying information from any documents made available to the public.

(2) No information obtained under this section may be used to conduct any investigation or prosecution of a patient, or be used as the basis for an application for an order under § 2.64 of these regulations.

§ 2.66 Orders authorizing the use of undercover agents and informants to criminally investigate employees or agents of a program.

(a) *Application.* A court order authorizing the placement of an undercover agent or informant in a program as an employee or patient may be applied for by any law enforcement or prosecutorial agency which has reason to believe that employees or agents of the program are engaged in criminal misconduct.

(b) *Notice.* The program director must be given adequate notice of the application and an opportunity to appear and be heard, unless the application asserts a belief that:

(1) The program director is involved in the criminal activities to be investigated by the undercover agent or informant; or

(2) The program director will intentionally or unintentionally disclose the proposed placement of an undercover agent or informant to the employees or agents who are suspected of criminal activities.

(c) *Criteria.* An order under this section may be entered only if the court determines that good cause exists. To make this determination the court must find:

(1) There is reason to believe that an employee or agent of the program is engaged in criminal activity;

(2) Other ways of obtaining evidence of this criminal activity are not available or would not be effective; and

(3) The public interest and need for the placement of an undercover agent or informant in the program outweigh the potential injury to patients of the program, physician-patient relationships and the treatment services.

(d) *Content of order.* An order authorizing the placement of an undercover agent or informant in a program must:

(1) Specifically authorize the placement of an undercover agent or an informant;

(2) Limit the total period of the placement to six months;

(3) Prohibit the undercover agent or informant from disclosing any patient identifying information obtained from the placement except as necessary to criminally investigate or prosecute employees or agents of the program; and

(4) Include any other measures which are appropriate to limit any potential disruption of the program by the placement and any potential for a real or apparent breach of patient confidentiality.

(e) *Limitation on use of information.* No information obtained by an undercover agent or informant placed under this section may be used to criminally investigate or prosecute any patient or as the basis for an application for an order under § 2.64 of these regulations.

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