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ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

1 CFR Part 305

Recommendations and Statements of the Administrative Conference Regarding Administrative Practice and Procedure

AGENCY: Administrative Conference of the United States.

ACTION: Recommendations and amendments; correction.

SUMMARY: The Administrative Conference of the United States is correcting an error in the title of a Conference recommendation that was published in the **Federal Register** on December 29, 1992 (57 FR 61759).

EFFECTIVE DATE: December 29, 1992.

FOR FURTHER INFORMATION CONTACT: Renee Barnow, Information Officer (202–254–7020).

SUPPLEMENTARY INFORMATION: Recommendations adopted by the Administrative Conference of the United States at its Forty-Seventh Plenary Session were published in the **Federal Register** on December 29, 1992 (57 FR 61759). At the same time, the Conference removed the texts (but not the titles) of certain recommendations and statements from the Code of Federal Regulations because they are deemed to be no longer of general interest. The title of one recommendation whose text was removed contained an error which this document corrects below.

Dated: January 6, 1993.

Michael W. Bowers,

Deputy Research Director.

The following correction is made to "Recommendations and amendments" published in the **Federal Register** on December 29, 1992 (57 FR 61759).

On page 61768, third column, the section number for Recommendation No. 79–7, Appropriate Restrictions on Participation by a Former Agency Official in Matters Involving the Agency, is changed from "§ 305.79–4" to "§ 305.79–7".

[FR Doc. 93–870 Filed 1–13–93; 8:45 am]
BILLING CODE 6110–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 52

[FV–88–202]

United States Standards for Grades of Canned Green Beans and Canned Waxed Beans

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: In compliance with the requirements for periodic review of existing regulations and in response to petitions from the National Food Processors Association (NFPA) the Agricultural Marketing Service (AMS) is revising the United States Standards for Grades of Canned Green Beans and Canned Waxed Beans. The final rule changes the U.S. grade standards for canned green beans and canned waxed beans.

EFFECTIVE DATE: February 16, 1993.

FOR FURTHER INFORMATION CONTACT: Leon R. Cary, Processed Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, room 0709, South Building, Washington, DC 20090–6456, Telephone: (202) 720–6247.

SUPPLEMENTARY INFORMATION: This action has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been designated as a "nonmajor" rule. It will not result in an annual effect on the economy of $100 million or more. There will be no major increase in cost or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions. It will not result in significant effects on competition, employment, investments, productivity, innovations, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

The Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act, (5 U.S.C. 601 et seq.). The changes to the standards reflect current marketing practices. In addition, use of these standards is voluntary. A small entity may avoid incurring additional economic impact by not employing the standards.

In 1984, the Standards Subcommittee of the Fruit and Vegetable Products Technical Committee, National Food Processors Association (NFPA), requested that the United States Department of Agriculture (USDA) prepare a draft revision of the U.S. grade standards for canned green beans and canned wax beans. The draft was to incorporate a grading system where individual tolerances would be assigned to each individual defect. This system of grading, referred to as "individual attributes," would provide statistically derived acceptable quality levels (AQL's) based on the tolerances in the current grade standards.

In addition to their original request, in March 1988, NFPA asked USDA to modify the draft revised standards to reduce the recommended minimum drained weight for whole beans in No. 303 (303 x 406) containers by one-half (0.5) ounce. After studying the petition, USDA determined that to maintain consistency in the standards the minimum drained weight for whole beans in No. 300 (300 x 409) containers should also be reduced by one-half (0.5) ounce. At this time NFPA also asked for a reduction in the minimum drained weight for french style (sliced lengthwise) beans in 8 ounce Tall (211 x 304) containers by two-tenths (0.2) ounce, and in No. 303 (303 x 406) containers by forty-five hundredths (0.45) ounce. NFPA stated that virtually

none of its members packing whole or french style green or wax beans in these containers, even under optimum operating conditions, was able to meet the current recommended minimum drained weight. They explained that attempts to do so resulted in unacceptable damage to the beans and, more seriously, in false seams, knocked down flanges, and other seam defects that compromised the commercial sterility of the product.

USDA then prepared another draft incorporating the requested changes in drained weights and several other minor editorial changes. USDA staff discussed this draft with the NFPA Subcommittee on Standards in January 1989. At this meeting the Subcommittee asked USDA to revise the draft standards again to include the sample sizes, acceptable quality levels (AQL's), tolerances and acceptance numbers for lot inspection.

The proposed standards, as published in the Federal Register, incorporated these suggestions. The proposal to revise the U.S. Standards for Grades of Canned Green and Canned Wax Beans was published in the Federal Register on July 15, 1991 (56 FR 32121). In addition, the standards would incorporate USDA's policy of replacing dual grade nomenclature with single letter grade designations. Under the proposal, "U.S. Grade A" (or "U.S. Fancy"), "U.S. Grade B" (or "U.S. Extra Standard") and "U.S. Grade C" (or "U.S. Standard") would simply become "U.S. Grade A," "U.S. Grade B," and "U.S. Grade C."

The proposed revision of the voluntary grade standards would also bring the quality factors of stems, and extraneous vegetable material (EVM) in line with the Food and Drug Administration minimum quality standards and eliminate the quality factor "clearness of liquor" since this factor does not always reflect the quality of canned green and canned wax beans.

In addition to these substantive changes, the proposed standards would be modified to present them in a simple easy-to-use format. Consistent with recent revisions of other U.S. grade standards, definitions of terms and easy-to-read tables replace the textual descriptions. These changes would facilitate a better understanding and more uniform application of the grade standards.

A copy of the proposed rule was also provided to the Agricultural Research Service for help in identifying studies, monographs, data collection or other information relevant to the possible effect of pesticide use of the "cosmetic appearance elements" of the proposed rule. None was reported.

Four comments were received in response to the Notice of Proposed Rulemaking: two from industry members and two from food processing associations. One industry member commented that the proposed rule did not improve the definitions for the various defects and that the allowances for mechanical damage in cut and whole style are too restrictive for current mechanical processing methods. All comments noted that the proposed allowances for short pieces in cut style had been substantially tightened from those in the current standards and could be met only with great difficulty and considerable cost. All those commenting requested that a series of illustrations depicting various green bean defects be developed by USDA.

Also it was noted in every comment that the recommended minimum drained weights for No. 300 metal containers should be ninety percent (90%) of the recommended minimum drained weights for No. 303 metal containers.

In their comments, NFPA also petitioned for a reduction in the recommended minimum drained weights for various other styles and container sizes.

Final Rule

With respect to the comment that proposed allowances for mechanical damage in cut and whole style are too restrictive for current mechanical processing methods, USDA notes that no data was submitted to support the claim. Therefore, the allowances for mechanical damage will remain the same as published in the proposed rule.

Regarding the comments that proposed tolerances for short pieces in cut style were substantially tighter than those in the current standards and would be costly to meet, USDA reviewed data provided regarding short pieces and is in agreement with these comments. The tolerances for short pieces in cut style beans are adjusted in this final rule to be more in line with the current tolerances.

USDA agrees with the comments suggesting the development of a series of illustrations depicting various green bean defects. USDA will provide for such illustrations. These illustrations will be included in a grading manual.

USDA agrees with the comments that the recommended minimum drained weights for No. 300 metal containers should be approximately 90% of the recommended minimum drained weights for No. 303 metal containers. The recommended minimum drained weights for No. 300 metal containers will be adjusted accordingly in this final rule.

With regard to NFPA's request for reductions in the recommended minimum drained weights for various other styles and container sizes, USDA is denying this request since these changes are outside the scope of the proposed rule. USDA will, however, consider these proposed changes for future revisions based on supportive data under a separate petition.

Further, additional miscellaneous changes are made to the standards in this final rule for clarity.

Upon review of all background information and public comments collected during the rulemaking process, USDA determined that this final rule for the United States Standards for Grades of Canned Green and Canned Wax Beans appearing after this preamble should be published in the Federal Register and become effective 30 days after publication.

List of Subjects in 7 CFR Part 52

Food grades and standards, Food labeling, Frozen foods, Fruit juices, Fruits, Reporting and recordkeeping requirements, Vegetables.

For the reasons set forth in the preamble, this final rule amends 7 CFR part 52 as follows:

PART 52—[AMENDED]

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

Authority: 7 U.S.C. 1622, 1624.

2. The Subpart—United States Standards for Grades of Canned Green Beans and Canned Wax Beans, 7 CFR 52.441–52.453 (formerly 52.441–52.456), is revised to read as follows:

Subpart—United States Standards for Grades of Canned Green Beans and Canned Wax Beans

Sec.

§ 52.441 Product description.

Canned green beans and canned wax beans are the products defined in the Food and Drug Standard of Identity for canned green beans and canned wax beans (21 CFR 155.120). For the

purposes of these standards and unless the text indicates otherwise, the terms "canned beans" or "beans" referred to in this text mean canned green beans or canned wax beans.

§ 52.442 Styles.

(a) *Whole* means canned beans that consist of whole pods, including pods which after removal of either or both ends are not less than 44 mm (1.75 in) in length or transversely cut pods not less than 70 mm (2.75 in) in length and, except for "vertical pack" or "asparagus" style, are not arranged in any definite position in the container.

(b) *Whole vertical pack* means canned beans that are "whole" and are packed parallel to the sides of the container.

(c) *Whole asparagus style* means canned beans that are "whole" and consist of pods that are cut at both ends, are of substantially equal lengths, and are packed parallel to the sides of the container.

(d) *Sliced lengthwise, Shoestring, Julienne, or French style* means canned beans consisting of pods that are sliced lengthwise.

(e) *Cut or cuts* means canned beans consisting of pods that are cut transversely into pieces less than 70 mm (2.75 in), but not less than 19 mm (0.75 in), in length, and may contain shorter end pieces which result from cutting.

(f) *Short cut or short cuts* means canned beans consisting of pieces of pods of which not less than 75 percent are less than 19 mm (0.75 in) in length and not more than 1 percent are more than 32 mm (1.25 in) in length.

(g) *Mixed or mixture means* a mixture of two or more of the following styles of canned beans: "whole;" "sliced lengthwise;" "cuts;" or "short cuts".

§ 52.443 Definitions of terms.

(a) *Acceptable Quality Level (AQL)* means the maximum percent of defective units or the maximum number of defects per hundred units of product that, for the purpose of acceptance sampling, can be considered satisfactory as a process average.

(b) *Blemish.* (1) *Minor blemished* means any unit which is affected by scars, pathological injury, insect injury or other means in which the aggregate area affected exceeds the area of a circle 3 mm (0.125 in) in diameter or the appearance or eating quality of the unit is slightly affected.

(2) *Major blemished* means any unit which is affected or damaged by discoloration or any other means to the extent that the appearance or eating quality of the unit is more than slightly affected.

(c) *Character.* (1) Round type—Green Beans.

(i) *Good character ("A")* means the pods are full fleshed; the pods are tender.

(ii) *Reasonably good character ("B")* means the pods are reasonably fleshly; the pods are tender.

(iii) *Fairly good character ("C")* means the pods have not entirely lost their fleshy structure; the pods are fairly tender.

(iv) *Poor character ("Sstd")* means the beans fail the requirements for "fairly good character."

(2) Round type—Wax Beans.

(i) *Good character ("A")* means the pods are full fleshed and may show slight breakdown of the flesh between seed cavities; the pods are tender.

(ii) *Reasonably good character ("B")* means the pods are reasonably fleshy and may show substantial breakdown of the flesh between the seed cavities; the pods are reasonably tender.

(iii) *Fairly good character ("C")* means the pods may show total breakdown of the flesh between the seed cavities with no definite seed pocket, but still retain flesh on the inside pod wall; the pods are fairly tender.

(iv) *Poor character ("Sstd")* means the beans fail the requirements for "fairly good character."

(3) Romano or Italian type.

(i) *Good character ("A")* means the pods have a full inner membrane, typical of the variety and are tender.

(ii) *Reasonably good character ("B")* means the pods have a reasonably well developed inner membrane and are reasonably tender.

(iii) *Fairly good character ("C")* means the pods may lack an inner membrane; the pods are fairly tender.

(iv) *Poor character ("Sstd")* means the beans fail the requirements for "fairly good character."

(d) *Color defective* means any unit that varies markedly from the color that is normally expected for the variety and grade.

(e) *Defect* means any nonconformance of a unit(s) of product from a specified requirement of a single quality characteristic.

(f) *Extraneous vegetable material (EVM)* means any harmless vegetable material (other than the bean pods) including, but not limited to, stalk, vine material, stem material attached to vine, leaves of the bean plant, and leaves or portions of other harmless plants.

(g) Flavor and odor. *Good flavor and odor* means the product has a good characteristic flavor and odor and is free from objectionable flavors and odors.

(h) Fiber.

(1) *Edible fiber* means fiber developed in the wall of the bean pod that is noticeable upon chewing, but may be consumed with the rest of the bean material without objection.

(2) *Inedible fiber* means fiber developed in the wall of the bean pod that is objectionable upon chewing and tends to separate from the rest of the bean material.

(i) *Mechanical damage* means any unit that is broken or split into two parts, (equal 1 defect) or has ragged edges that are greater than 5/16 inch, or is crushed or is damaged by mechanical means to such an extent that the appearance is seriously affected.

(j) *Single sample unit* means the amount of product specified (1200 grams for french style and 400 units for all other styles) to be used for unofficial inspection. It may be:

(1) The entire contents of a container;

(2) A portion of the contents of a container; or

(3) A combination of the contents of two or more containers.

(k) *Short piece* means any unit in cut style, mixed style or short cut style that is less than 13 mm (0.50 in) in length, and any unit in whole style that is less than 32 mm (1.25 in) in length, measured along the longest dimension parallel to the bean suture line.

(l) *Sloughing* means the separation of the outer surface layer of tissue from the pod.

(m) *Small pieces and odd cuts,* in french style, mean pieces of pod less than 13 mm (0.50 in) in length or pieces of pod not conforming to the normal appearance of a sliced lengthwise bean unit.

(n) *Stem* means any part or portion (loose or attached) of the hard or tough fibrous material that attaches the bean pod to the vine and is objectionable upon eating.

(o) *Tolerance* means the percentage of defective units allowed for each quality factor.

(p) *Tough strings* mean strings or pieces of strings, removed from the cooked bean pod, that will support a 227 g (½ lb) weight for not less than five (5) seconds.

(q) *Unit* means a bean pod or any individual portion thereof.

§ 52.444 Recommended fill of container.

The recommended fill of container is not incorporated in the grades of the finished product since fill of container, as such, is not a factor of quality for the purposes of these grades. It is recommended that each container of canned beans be filled with beans as full as practicable without impairment of quality and that the product and packing medium occupy not less than 90 percent of the total capacity of the container.

§ 52.445 Recommended minimum drained weights.

(a) The drained weight recommendations in Tables No. I and Ia of this section are not incorporated in the grades of the finished product since drained weight, as such, is not a factor of quality for the purposes of these grades.

(b) The drained weight of beans is determined by emptying the contents of the container upon a United States Standard No. 8 circular sieve of proper diameter containing 8 meshes to the inch (0.0937-inch ±3%, square openings) so as to distribute the product evenly, inclining the sieve slightly to facilitate drainage, and allowing to drain for 2 minutes. A sieve 8 inches in diameter is used for No. 2½ size cans (401×411) and smaller sizes, and a sieve 12 inches in diameter is used for containers larger than the No. 2½ size can.

(c) Compliance with the recommended minimum drained weights for canned beans in Table I and Table Ia of this section is determined by averaging the drained weights from all of the containers in the sample which is representative of a specific lot and such lot is considered as meeting the recommendations if the following criteria are met:

(1) The average of the drained weights from all of the containers in the sample meets the recommended minimum drained weight for the applicable style.

(2) The drained weights from the containers which do not meet the recommended minimum drained weight are not more than:

(i) 19.9 g (0.7 oz) lower than the recommended minimum average for No. 3 cylinder can size and smaller.

(ii) 56.7 g (2.0 oz) lower than the recommended minimum average for No. 10 cans.

(3) The number of containers in the sample which do not meet the requirements of paragraph (c)(2) of this section does not exceed the acceptance numbers prescribed for the sample size as outlined in 7 CFR 52.1 through 52.83.

TABLE I.—RECOMMENDED MINIMUM DRAINED WEIGHTS FOR CANNED GREEN BEANS AND WAX BEANS

[Ounces—English (Avoirdupois System)]

Container size or designation	Whole	Whole vertical pack and whole asparagus style	Short cuts and cuts less than 1½ inches	Cuts—1½ inches and longer	Mixed-cuts and short cuts	Sliced lengthwise or French style
8 oz. tall	4.0	4.6	4.5	4.1	4.5	3.9
8 oz. glass	3.9	4.5	4.4	4.0	4.4	4.0
No. 1 (picnic)	5.6	6.1	6.0	5.7	6.0	5.7
No. 300	7.2	8.6	8.3	7.8	8.3	7.4
No. 300 glass	6.2	9.2	6.5	6.2	6.5	6.2
No. 1 tall	8.5	9.5	9.2	8.7	9.2	8.7
No. 303	8.0	9.5	9.2	8.7	9.2	8.25
No. 303 glass	9.0	10.0	9.7	9.2	9.7	9.2
No. 2	10.5	11.9	11.2	11.0	11.2	11.0
No. 2½	16.0	17.0	16.4	16.2	16.4	16.2
No. 2½ glass	15.6	16.6	16.2	16.0	16.2	16.0
No. 3 cylinder	26.6	N/A	27.3	27.0	27.3	27.0
No. 10	57.5	N/A	63.0	60.0	63.0	59.0

TABLE IA.—RECOMMENDED MINIMUM DRAINED WEIGHTS FOR CANNED GREEN BEANS AND WAX BEANS

[Grams—Metric (Systeme International)]

Container size or designation	Whole	Whole vertical pack and whole asparagus style	Short cuts and cuts less than 1½ inches	Cuts—1½ inches and longer	Mixed-cuts and short cuts	Sliced lengthwise or French style
8 oz. tall	113.4	130.4	127.6	116.2	127.6	110.6
8 oz. glass	110.6	127.6	124.7	113.4	124.7	113.4
No. 1 (picnic)	158.6	172.9	170.1	161.6	170.1	161.6
No. 300	204.1	243.6	235.3	221.1	235.3	209.8
No. 300 glass	232.5	260.8	241.0	232.5	241.0	232.5
No. 1 tall	241.0	269.3	260.8	246.6	260.6	246.6
No. 303	226.8	269.3	260.8	246.6	260.6	233.9
No. 303 glass	255.2	283.5	275.0	260.0	275.0	260.6
No. 2	297.7	337.4	317.5	311.9	317.5	311.9
No. 2½	453.6	482.0	464.9	459.3	464.9	459.3
No. 2½ glass	447.9	476.3	459.3	453.6	459.3	453.6
No. 3 cylinder	745.1	N/A	774.0	765.5	774.0	765.5
No. 10	1630.1	N/A	1786.1	1701.0	1786.1	1672.7

§ 52.446 Types.

The type of canned beans is not incorporated in the grades of finished product, since it is not a factor of quality. The types of canned beans are described as "round type" and "Romano or Italian type."

(a) *Round type* means canned beans having a width not greater than 1½ times the thickness of the beans.

(b) *Romano or Italian type* means canned beans having a width greater than 1½ times the thickness of the beans.

§ 52.447 Sizes.

The size of canned beans is not a factor of quality for the purposes of these grades. The size of a whole, cut, or short cut bean is determined by measuring the thickness at the shorter diameter of the bean transversely to the long axis at the thickest portion of the pod. The designations of the various sizes of round type and flat type (Romano or Italian) beans are shown in Tables II and IIa below.

TABLE II.—SIZES OF ROUND TYPE BEANS

Number designations	Word designation		Thickness in 1/64 inch	Thickness in millimeters
	Whole	Cut or short		
Size 1	Tiny	Small	Less than 14½	Less than 5.8.
Size 2	Small	Small	14½ but less than 18½	5.8 but less than 7.3.
Size 3	Medium	Small	18½ but less than 21	7.3 but less than 8.3.
Size 4	Medium large	Medium	21 but less than 24	8.3 but less than 9.5.
Size 5	Large	Large	24 but less than 27	9.5 but less than 10.7
Size 6	Extra large	Extra large	27 or more	10.7 or more.

TABLE IIA.—SIZES OF ROMANO OR ITALIAN TYPE BEANS

Number designations	Word designation		Thickness in 1/64 inch	Thickness in millimeters
	Whole	Cut or short		
Size 2	Small	Small	Less than 14½	Less than 5.8.
Size 3	Medium	Medium	14½ but less than 18½	5.8 but less than 7.3.
Size 4	Medium large	Medium large	18½ but less than 21	7.3 but less than 8.3.
Size 5	Large	Large	21 but less than 24	8.3 but less than 9.5.
Size 6	Extra large	Extra large	24 or more	9.5 or more.

§ 52.448 Kinds of pack.

The kind of pack of canned beans is not incorporated in the grades of finished product, since it is not a factor of quality. The kinds of pack of canned beans are described as "regular pack" and "special pack."

(a) *Regular pack* means canned beans that are packed containing single varietal characteristics.

(b) *Special pack* means canned beans that are intentionally packed containing two or more varietal characteristics (such as a mixture of green and wax beans).

§ 52.449 Grades.

(a) *U.S. Grade A* is the quality of canned green and canned wax beans that:

(1) Meets the following prerequisites in which the beans:

(i) Have similar varietal characteristics (except "special packs");

(ii) Have a good flavor and odor;

(iii) Have a good appearance;

(iv) Are not materially affected by sloughing;

(v) Are practically free from small pieces [units less than 13 mm (0.50 in) in length] and odd cut units (units not representative of the intended shape of cut) for the style of "sliced lengthwise."

(2) Is within the limits for defects as specified in Tables IIIa, IVa, Va, VIa, or VIIa in § 52.451 as applicable for the style.

(b) *U.S. Grade B* is the quality of canned green beans and canned wax beans that:

(1) Meets the following prerequisites in which the beans:

(i) Have similar varietal characteristics (except "special packs");

(ii) Have a good flavor and odor;

(iii) Have a reasonably good appearance;

(iv) Are not materially affected by sloughing;

(v) Are reasonably free from small pieces [units less than 13 mm (0.50 in) in length] and odd cut units (units not representative of the intended shape of cut) for the style of "sliced lengthwise."

(2) Is within the limits for defects as specified in Tables IIIa, IVa, Va, VIa, or VIIa in § 52.451 as applicable for the style.

(c) *U.S. Grade C* is the quality of canned green beans and canned wax beans that:

(1) Meets the following prerequisites in which the beans:

(i) Have similar varietal characteristics (except "special packs");

(ii) Have a good flavor and odor;

(iii) Have a reasonably good appearance;

(iv) Are not seriously affected by sloughing.

(2) Is within the limits for defects as specified in Tables IIIa, IVa, Va, VIa, or VIIa in § 52.451 as applicable for the style.

(d) Substandard is the quality of canned green beans and canned wax beans that fail the requirements of U.S. Grade C.

§ 52.450 Factors of quality.

The grade of canned green and canned wax beans is based on requirements for the following quality factors:

(a) Varietal characteristics (except "special packs");

(b) Flavor and odor;

(c) Sloughing;

(d) Small pieces and odd cuts (sliced lengthwise style only);

(e) Appearance;

(f) Extraneous vegetable material (EVM);

(g) Stems;

(h) Major blemished;

(i) Total blemished (includes major blemished and minor blemished);

(j) Mechanical damage;

(k) Short pieces (except sliced lengthwise style);

(l) Color;

(m) Character;

(n) Tough strings;

(o) Inedible fiber;

(p) Edible fiber.

§ 52.451 Allowances for defects.

TABLE III.—ACCEPTABLE QUALITY LEVELS (AQL'S) AND TOLERANCES FOR WHOLE STYLE CANNED GREEN BEANS AND WAX BEANS

Quality factor	Grade A		Grade B		Grade C	
	AQL	Tolerance	AQL	Tolerance	AQL	Tolerance
EVM	0.40	1.00	0.65	1.25	2.50	3.75
Stems	1.50	2.50	2.50	3.75	4.00	5.50
Blemished-major	0.65	1.25	1.50	2.50	2.50	3.75

TABLE III.—ACCEPTABLE QUALITY LEVELS (AQL'S) AND TOLERANCES FOR WHOLE STYLE CANNED GREEN BEANS AND WAX BEANS—Continued

Quality factor	Grade A		Grade B		Grade C	
	AQL	Tolerance	AQL	Tolerance	AQL	Tolerance
Blemished-total	1.50	2.50	2.50	3.75	6.50	8.50
Mechanical damage	4.00	5.50	6.50	8.50	8.50	10.75
Short pieces	20.00	23.25	N/A	N/A	N/A	N/A
Tough strings	1.00	1.75	2.50	3.75	8.50	10.75
Color defectives	4.00	5.50	8.50	10.75	15.00	17.75
Character—"B"	8.50	10.75	N/A	N/A	N/A	N/A
Character—"C"	1.00	1.75	8.50	10.75	N/A	N/A
Character—sstd	0.40	1.00	1.00	1.75	8.50	10.75
Edible fiber	1.00	1.75	4.00	5.50	8.50	10.75
Inedible fiber	0.04	0.10	1.00	1.75	4.00	5.50

TABLE IIIA.—ACCEPTANCE NUMBERS FOR WHOLE STYLE CANNED GREEN BEANS AND WAX BEANS

Units of product	Grade A					Grade B					Grade C				
	1200	2400	5200	8400	11600	1200	2400	5200	8400	11600	1200	2400	5200	8400	11600
Extraneous vegetable material	8	15	28	43	57	12	22	43	67	89	39	73	149	234	318
Stems	25	46	92	144	195	39	73	149	234	318	59	112	232	366	499
Major blemishes	12	22	43	67	89	25	46	92	144	195	39	73	149	234	318
Total blemishes (major+minor)	25	46	92	144	195	39	73	149	234	318	92	176	368	584	799
Mechanical damage	59	112	232	366	499	92	176	368	584	799	118	227	476	758	1037
Short pieces	262	512	1087	1740	2391	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)
Tough strings	18	32	64	99	134	39	73	149	234	318	118	227	476	758	1037
Edible fiber	18	32	64	99	134	39	73	149	234	318	118	227	476	758	1037
Inedible fiber	1	2	4	6	8	18	32	64	99	134	59	112	232	366	499
Color defectives	59	112	232	366	499	118	227	476	758	1037	200	388	822	1314	1803
"B" character	118	227	476	758	1037	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)
"C" character	18	32	64	99	134	118	227	476	758	1037	(1)	(1)	(1)	(1)	(1)
"Sstd" character	8	15	28	43	57	18	32	64	99	134	118	227	476	758	1037

[1] No limit.

TABLE IV.—ACCEPTABLE QUALITY LEVELS (AQL'S) AND TOLERANCES FOR CUT STYLE CANNED GREEN BEANS AND WAX BEANS

Quality factor	Grade A		Grade B		Grade C	
	AQL	Tolerance	AQL	Tolerance	AQL	Tolerance
EVM	0.40	1.00	0.65	1.25	1.50	2.50
Stems	1.50	2.50	2.50	3.75	4.00	5.50
Blemished—major	0.65	1.25	1.50	2.50	2.50	3.75
Blemished—total	1.50	2.50	2.50	3.75	6.50	8.50
Mechanical damage	2.50	3.75	4.00	5.50	8.50	10.75
Short pieces	6.50	8.50	10.00	12.50	15.00	18.25
Tough strings	1.00	1.75	2.50	3.75	6.50	8.50
Color defectives	4.00	5.50	8.50	10.75	15.00	17.75
Character—"B"	8.50	10.75	N/A	N/A	N/A	N/A
Character—"C"	1.00	1.75	8.50	10.75	N/A	N/A
Character-sstd	0.40	1.00	1.00	1.75	8.50	10.75
Edible fiber	1.00	1.75	2.50	3.75	6.50	8.50
Inedible fiber	0.04	0.125	0.65	1.25	2.50	3.75

TABLE IVA.—ACCEPTANCE NUMBERS FOR CUT STYLE CANNED GREEN BEANS AND WAX BEANS

Units of product	Grade A					Grade B					Grade C				
	1200	2400	5200	8400	11600	1200	2400	5200	8400	11600	1200	2400	5200	8400	11600
Extraneous vegetable material	8	15	28	43	57	12	22	43	67	89	25	46	92	144	195
Stems	25	46	92	144	195	39	73	149	234	318	59	112	232	366	499
Major blemishes	12	22	43	67	89	25	46	92	144	195	39	73	149	234	318
Total blemishes (major+minor)	25	46	92	144	195	39	73	149	234	318	92	176	368	584	799
Mechanical damage	39	73	149	234	318	59	112	232	366	499	118	227	476	758	1037
Short pieces	92	176	368	584	799	136	265	557	887	1216	200	388	822	1314	1803
Tough strings	18	32	64	99	134	39	73	149	234	318	92	176	368	584	799
Edible fiber	18	32	64	99	134	39	73	149	234	318	92	176	368	584	799
Inedible fiber	1	2	4	6	8	12	22	43	67	89	39	73	149	234	318
Color defectives	59	112	232	366	499	118	227	476	758	1037	200	388	822	1314	1803
"B" character	118	227	476	758	1037	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)
"C" character	18	32	64	99	134	118	227	476	758	1037	(1)	(1)	(1)	(1)	(1)
"Sstd" character	8	15	28	43	57	18	32	64	99	134	118	227	476	758	1037

[1] No limit.

TABLE V.—ACCEPTABLE QUALITY LEVELS (AQL'S) AND TOLERANCES FOR SHORT CUT STYLE CANNED GREEN BEANS AND WAX BEANS

Quality factor	Grade A		Grade B		Grade C	
	AQL	Tolerance	AQL	Tolerance	AQL	Tolerance
EVM	0.15	0.50	0.40	1.00	0.65	1.25
Stems	0.65	1.25	1.00	1.75	1.50	2.50
Blemished-major	0.65	1.25	1.50	2.50	2.50	3.75
Blemished-total	1.50	2.50	2.50	3.75	6.50	8.50
Mechanical damage	12.50	15.25	15.00	17.75	20.00	23.25
Short pieces	12.50	15.25	15.00	17.75	20.00	23.25
Tough strings	1.00	1.75	2.50	3.75	2.50	3.75
Color defectives	4.00	5.50	8.50	10.75	15.00	17.75
Character-"B"	8.50	10.75	N/A	N/A	N/A	N/A
Character-"C"	1.00	1.75	8.50	10.75	N/A	N/A
Character-sstd	0.40	1.00	1.00	1.75	8.50	10.75
Edible fiber	1.00	1.75	2.50	3.75	6.50	8.50
Inedible fiber	0.04	0.10	0.65	1.25	2.50	3.75

TABLE VA.—ACCEPTANCE NUMBERS FOR SHORT CUT STYLE CANNED GREEN BEANS AND WAX BEANS

Units of product	Grade A					Grade B					Grade C				
	1200	2400	5200	8400	11600	1200	2400	5200	8400	11600	1200	2400	5200	8400	11600
Extraneous vegetable material	4	7	12	18	24	8	15	28	43	57	12	22	43	67	89
Stems	12	22	43	67	89	18	32	64	99	134	25	46	92	144	195
Major blemishes	12	22	43	67	89	25	46	92	144	195	39	73	149	234	318
Total blemishes (major+minor)	25	46	92	144	195	39	73	149	234	318	92	176	368	584	799
Mechanical damage	169	326	689	1100	1508	200	388	822	1314	1803	262	512	1087	1740	2391
Short pieces	169	326	689	1100	1508	200	388	822	1314	1803	262	512	1087	1740	2391
Tough strings	18	32	64	99	134	39	73	149	234	318	39	73	149	234	318
Edible fiber	18	32	64	99	134	39	73	149	234	318	92	176	368	584	799
Inedible fiber	1	2	4	6	8	12	22	43	67	89	39	73	149	234	318
Color defectives	59	112	232	366	499	118	227	476	758	1037	200	388	822	1314	1803
"B" character	118	227	476	758	1037	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)
"C" character	18	32	64	99	134	118	227	476	758	1037	(1)	(1)	(1)	(1)	(1)
"Sstd" character	8	15	28	43	57	18	32	64	99	134	118	227	476	758	1037

[1] No limit.

TABLE VI.—ACCEPTABLE QUALITY LEVELS (AQL'S) AND TOLERANCES FOR MIXED CUT STYLE CANNED GREEN BEANS AND WAX BEANS

Quality factor	Grade A		Grade B		Grade C	
	AQL	Tolerance	AQL	Tolerance	AQL	Tolerance
EVM	0.40	1.00	0.65	1.25	1.00	1.75
Stems	0.65	1.25	1.00	1.75	2.50	3.75
Blemished—major	0.65	1.25	1.50	2.50	2.50	3.75
Blemished—total	1.50	2.50	2.50	3.75	6.50	8.50
Mechanical damage	12.50	15.00	15.00	17.75	20.00	23.25
Short pieces	12.50	15.00	15.00	17.75	20.00	23.25
Tough strings	1.00	1.75	2.50	3.75	5.00	6.75
Color defectives	4.00	5.50	8.50	10.75	15.00	17.75
Character—"B"	8.50	10.75	N/A	N/A	N/A	N/A
Character—"C"	1.00	1.75	8.50	10.75	N/A	N/A
Character—sstd	0.40	1.00	1.00	1.75	8.50	10.75
Edible fiber	1.00	1.75	2.50	3.75	6.50	8.50
Inedible fiber	0.04	0.10	0.65	1.25	2.50	3.75

TABLE VIA.—ACCEPTANCE NUMBERS FOR MIXED CUT STYLE CANNED GREEN BEANS AND WAX BEANS

Units of product	Grade A					Grade B					Grade C				
	1200	2400	5200	8400	11600	1200	2400	5200	8400	11600	1200	2400	5200	8400	11600
Extraneous vegetable material	8	15	28	43	57	12	22	43	67	89	18	32	64	99	134
Stems	25	46	92	144	195	39	73	149	234	318	39	73	149	234	318
Major blemishes	12	22	43	67	89	25	46	92	144	195	39	73	149	234	318
Total blemishes (major+minor)	25	46	92	144	195	39	73	149	234	318	92	176	368	584	799
Mechanical damage	169	326	689	1100	1508	200	388	822	1314	1803	262	512	1087	1740	2391
Short pieces	169	326	689	1100	1508	200	388	822	1314	1803	262	512	1087	1740	2391
Tough strings	18	32	64	99	134	39	73	149	234	318	73	138	286	453	619
Edible fiber	18	32	64	99	134	39	73	149	234	318	92	176	368	584	799
Inedible fiber	1	2	4	6	8	12	22	43	67	89	39	73	149	234	318
Color defectives	59	112	232	366	499	118	227	476	758	1037	200	388	822	1314	1803
"B" character	118	227	476	758	1037	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)

TABLE VIA.—ACCEPTANCE NUMBERS FOR MIXED CUT STYLE CANNED GREEN BEANS AND WAX BEANS—Continued

Units of product	Grade A					Grade B					Grade C				
	1200	2400	5200	8400	11600	1200	2400	5200	8400	11600	1200	2400	5200	8400	11600
"C" character	18	32	64	99	134	118	227	476	758	1037	(1)	(1)	(1)	(1)	(1)
"Sstd" character	8	15	28	43	57	18	32	64	99	134	118	227	476	758	1037

[1] No limit.

TABLE VII.—ACCEPTABLE QUALITY LEVELS (AQL'S) AND TOLERANCES FOR FRENCH STYLE CANNED GREEN BEANS AND WAX BEANS

Quality factor	Grade A		Grade B		Grade C	
	AQL	Tolerance	AQL	Tolerance	AQL	Tolerance
EVM	0.40	1.00	0.65	1.25	2.50	3.75
Stems	1.50	2.50	2.50	3.75	4.00	5.50
Blemished-major	0.65	1.25	1.50	2.50	2.50	3.75
Blemished-total	1.50	2.50	2.50	3.75	8.50	10.75
Tough strings	1.50	2.50	4.00	5.50	8.50	10.75
Color defectives	4.00	5.50	8.50	10.75	15.00	17.75
Character—"B"	40.00	44.40	N/A	N/A	N/A	N/A
Character—"C"	5.00	6.75	20.00	23.75	N/A	N/A
Character—sstd	1.00	1.75	4.00	5.50	10.00	12.50
Edible fiber	1.00	1.75	4.00	5.50	8.50	10.75
Inedible fiber	0.04	0.10	1.00	1.75	4.00	5.50

TABLE VIIa.—ACCEPTANCE NUMBERS FOR FRENCH STYLE CANNED GREEN BEANS AND WAX BEANS

Grams of product	Grade A					Grade B					Grade C				
	3600	7200	15600	25200	34800	3600	7200	15600	25200	34800	3600	7200	15600	25200	34800
Extraneous vegetable material (number of pieces)	8	15	28	43	57	12	22	43	67	89	39	73	149	234	318
Stems (number of stems)	25	46	92	144	195	39	73	149	234	318	59	112	232	366	499
Major blemishes (grams)	36	66	129	201	267	75	138	276	432	585	117	219	447	702	954
Total blemishes=maj+min (grams)	75	138	276	432	585	177	219	447	702	954	354	681	1428	2274	3111
Tough Strings (number of strings)	25	46	92	144	195	59	112	232	366	499	118	227	476	758	1037
Edible Fiber (number of pieces)	18	32	64	99	134	59	112	232	366	499	118	227	476	758	1037
Inedible Fiber (number of pieces)	1	2	4	6	8	18	32	64	99	134	59	112	232	366	499
Color Defectives (grams)	177	336	696	1098	1497	354	681	1428	2274	3111	600	1164	2466	3942	5409
"B" Character (grams)	1521	2997	6414	10299	14178	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)
"C" Character (grams)	219	414	858	1359	1857	786	1537	3261	5220	7173	(1)	(1)	(1)	(1)	(1)
"Sstd" Character (grams)	54	96	192	297	402	177	336	696	1098	1497	414	795	1671	2661	3648

[1] No limit.

§ 52.452 Sample size.

The sample size used to determine whether the requirements of these standards are met shall be as specified in the sampling plans and procedures in the "Regulations Governing Inspection and Certification of Processed Fruits and Vegetables, Processed Products Thereof, and Certain Other Processed Food Products" (7 CFR 52.1 through 52.83).

§ 52.453 Quality requirements criteria.

(a) *Lot Inspection.* A lot of canned beans is considered as meeting the requirements for quality if:

(1) The prerequisite requirements specified in § 52.449 are met; and

(2) None of the allowances for the individual quality factors specified in Table IIIa, IVa, Va, VIa, or VIIa in § 52.451 as applicable for the style, are exceeded.

(b) *Single sample unit.* Each unofficial sample unit submitted for quality evaluation will be treated individually and is considered as meeting the requirements for quality if:

(1) The prerequisites requirements specified in § 52.449 are met; and

(2) The Acceptable Quality Levels in Table III, IV, V, VI, or VII in § 52.551 as applicable for the style are not exceeded.

§§ 52.454–52.456 [Removed].

(3) Sections 52.454, 52.455, and 52.456 are removed and reserved.

Dated: January 8, 1993.

Daniel Haley,

Administrator.

[FR Doc. 93–930 Filed 1–13–93; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 928

[Docket No. FV–92–928–1]

Papayas Grown in Hawaii; Order Directing That a Referendum be Conducted; Determination of Representative Period for Voter Eligibility; and Designation of Referendum Agents to Conduct the Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Referendum order.

SUMMARY: This document directs that a referendum be conducted among eligible growers of Hawaiian papayas to determine whether they favor continuance of the marketing order regulating the handling of papayas grown in the production area.

DATES: The representative production period is from July 1, 1991, through June 31, 1992. The referendum will be conducted from March 1 through March 31, 1993.

ADDRESSES: Copies of the text of the aforesaid marketing order may be obtained from the office of the referendum agent at 2202 Monterey Street, suite 102B, Fresno, California, 93721, or the Office of the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC, 20090–6456.

FOR FURTHER INFORMATION CONTACT: Charles L. Rush, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, room 2522–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2431; or Kurt J. Kimmel, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, 2202 Monterey Street, suite 102B, Fresno, California, 93721; telephone: (209) 487–5901.

SUPPLEMENTARY INFORMATION: Pursuant to Marketing Order No. 928 (17 CFR part 928), hereinafter referred to as the "order," and the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (17 U.S.C. 601–674), hereinafter referred to as the "Act," it is hereby directed that a referendum be conducted within the period March 1 through March 31, 1993, among growers in the production area who, during the period July 1, 1991, through June 30, 1992, (which period is hereby determined to be a representative period for purposes of such referendum), were engaged in the production of papayas covered by the said marketing order to ascertain whether continuance of the order is favored by the growers.

The Secretary of Agriculture has determined that continuance referenda are an effective means for ascertaining whether growers favor continuation of marketing order programs. The Secretary would consider termination of the order if less than two-thirds of the growers voting in the referendum and growers of less than two-thirds of the volume of papayas represented in the referendum favor continuance. However, in evaluating the merits of continuance versus termination, the Secretary will not only consider the results of the continuance referendum, but also all other relevant information concerning the operation of the order and the relative benefits and disadvantages to growers, handlers, and consumers in order to determine whether continued operation of the order would tend to effectuate the declared policy of the Act.

In any event, section 8c(16)(B) of the Act requires the Secretary to terminate an order whenever the Secretary finds that a majority of all growers favor termination, and such majority produced for market more than 50 percent of the commodity covered under such order.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the ballot materials that will be used in the referendum herein ordered have been submitted to and approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581–0102. It has been estimated that it will take an average of 20 minutes for each of the approximately 120 growers of papayas to participate in the voluntary referendum balloting.

Mr. Kurt J. Kimmel, California Marketing Field Office, Fruit and Vegetable Division, Agricultural Marketing Service, USDA, is hereby designated as the referendum agent of the Secretary of Agriculture to conduct such referendum. The procedure applicable to the referendum shall be the "Procedure for the Conduct of Referenda in Connection With Marketing Orders for Fruits, Vegetables, and Nuts Pursuant to the Agricultural Marketing Agreement Act of 1937, as Amended" (7 CFR part 900.400 *et seq.*).

Ballots will be mailed to all growers and may also be obtained from the referendum agent and from his appointees at the above address.

List of Subjects in 7 CFR Part 928

Marketing agreements, Papayas, Reporting and recordkeeping requirements.

Authority: Agricultural Marketing Agreement Act of 1937, as amended, secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Dated: January 8, 1993.

John E. Frydenlund,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–920 Filed 1–13–93; 8:45 am]

BILLING CODE 3410–02–M

Commodity Credit Corporation

7 CFR Parts 1413 and 1421

RIN 0560–AC54 and 0560–AC68

1993 Feed Grain Acreage Reduction and Paid Land Diversion Programs and the 1993 Feed Grain and Oilseed Price Support Rates

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: On August 3, 1992, the Commodity Credit Corporation (CCC) issued a proposed rule with respect to the 1993 Production Adjustment Program for feed grains, which is conducted by the CCC in accordance with the Agricultural Act of 1949 (1949 Act), as amended. The 1993 feed grain Acreage Reduction Program (ARP) percentages have been determined to be 10 percent for corn, 5 percent for grain sorghum, and 0 percent for barley and oats. This final rule amends the regulations to set forth the acreage reduction percentage for the 1993 crop of feed grains. No paid land diversion (PLD) program will be implemented for the 1993 crop of feed grains. Also, this final rule amends the regulations to set forth the 1993 price support rates for feed grains and oilseeds. These actions are required by section 105B, in the case of feed grains, and section 205, in the case of oilseeds, of the 1949 Act.

EFFECTIVE DATE: January 14, 1993.

FOR FURTHER INFORMATION CONTACT: Philip W. Sronce, Director, Grains Analysis Division, Agricultural Stabilization and Conservation Service, United States Department of Agriculture (USDA), P.O. Box 2415, Washington, DC 20013–2415 or call 202–720–4418.

SUPPLEMENTARY INFORMATION: The Final Regulatory Impact Analysis describing the options considered in developing this rule and the impact of the implementation of each option is available on request from the above-named individual.

This final rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation 1512–1 and has been designated as "major." It has been determined that these program provisions will result in an annual effect on the economy of $100 million or more.

The titles and numbers of the Federal Assistance Programs, as found in the Catalog of Federal Domestic Assistance, to which this rule applies, are as follows:

Titles	Numbers
Feed Grain Production Stabilization	10.055
Commodity Loans and Purchases	10.051

It has been determined that the Regulatory Flexibility Act is applicable to this final rule because the CCC is required by section 105B(o) of the 1949 Act to publish a notice of proposed rulemaking with respect to certain provisions of this rule. A Final Regulatory Flexibility Analysis for the 1993 Feed Grain ARP was prepared as part of the Final Regulatory Impact Analysis. Copies of this analysis are available from the above-named individual.

This final rule has been reviewed in accordance with Executive Order 12778. The provisions of this final rule do not preempt State laws; are not retroactive; and do not require the exhaustion of any administrative appeal remedies.

It has been determined by an environmental evaluation that this action will not have a significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

This program/activity is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

The amendments to 7 CFR parts 1413 and 1421 set forth in this final rule do not contain information collections that require clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35).

This final rule amends 7 CFR parts 1413 and 1421 to set forth the determination of the 1993 Production Adjustment Program for feed grains and the 1993 price support rates for feed grains and oilseeds. General descriptions of the statutory basis for the 1993 Feed Grain ARP percentage determinations in this final rule were set forth at 57 FR 34087 (August 3, 1992).

The public was asked to comment on the five 1993 feed grain ARP options shown in Table 1.

TABLE 1.—1993 FEED GRAIN ARP OPTIONS

Crop	Option				
	1	2	3	4	5
	Percent				
Corn	7.5	0	5	7.5	12.5
Grain sorghum	7.5	0	5	0	7.5
Barley	7.5	0	5	0	7.5
Oats	0	0	0	0	0

Comments received during the specified comment period are summarized as follows:

A total of 1,944 respondents commented, including 171 from an open letter from the Iowa American Corn Growers Association and 1,556 from a producer survey collected by the Nebraska Corn Development, Utilization and Marketing Board at Harvest Husker Days. One thousand nine hundred and seventeen of the respondents commented on the corn ARP, 128 of the respondents commented on the grain sorghum ARP, and 145 of the respondents commented on the barley ARP. Table 2 shows a breakdown of the comments received by type of respondent.

TABLE 2.—SUMMARY OF COMMENTS ON ARP LEVELS, BY COMMODITY AND RESPONDENT TYPE

Item	ARP percentage					
	0%	5%	7.5%	10%	12.5%	>12.5%
Corn:						
Farm Organizations	0	1	0	6	5	0
Agri-businesses	5	2	0	1	9	2
Others	3	1	1	3	2	0
Producers	98	160	158	966	386	108
Total	106	164	159	976	402	110
Grain Sorghum:						
Farm Organizations	1	1	0	3	4	0
Agri-businesses	4	2	0	1	6	1
Others	3	1	0	3	2	0
Producers	3	4	2	17	71	15
Total	11	8	2	24	83	16
Barley:						
Farm Organizations	10	1	0	2	4	0
Agri-businesses	4	2	0	0	6	1
Others	4	1	0	2	2	0
Producers	4	4	2	17	65	14
Total	22	8	2	21	77	15

Respondents favoring the lower ARP's noted that the U.S. needs to produce more to take advantage of export opportunities. Many confirmed USDA's analysis that lower ARP's result in higher producer incomes. Advocates for a 0-percent barley ARP indicated the need for adequate supplies to aggressively implement the Export Enhancement Program for barley.

Respondents favoring the higher ARP's noted that feed grain prices would be higher and Government costs would be lower with higher ARP levels. Many producers wanted higher ARP's, which would increase prices and improve the profitability of their farms.

After considering these comments, the Secretary of Agriculture (Secretary) made an initial announcement on September 29, 1992, of an ARP of 10 percent for corn, 5 percent for grain sorghum, and 0 percent for barley and oats. The Secretary is authorized to make adjustments in the 1993 program no later than November 15.

On November 16, 1992, the Secretary announced that the initially announced ARP levels would not be changed. A change was not warranted because feed grain supplies had increased only 5 percent since September.

The Secretary determined that the ARP percentages announced on September 29 would maintain U.S. competitiveness in world markets while balancing the risks of excessive supplies and possible shortages.

The announced corn ARP level of 10 percent is 2.5 percentage points below

the statutory maximum of 12.5 percent. The 1949 Act provides that an ARP of 0 to 12.5 percent may be implemented if the corn ending stocks-to-use (S/U) ratio for the previous marketing year is equal to or less than 25 percent. When the 1993 ARP levels were initially announced, the S/U for the 1992/93 marketing year was estimated to be 22.7 percent. In the case of grain sorghum and barley, the 1949 Act provides for ARP percentages from 0 to 20 percent. Section 1104 of the Agricultural Reconciliation Act of 1990 provides for a minimum 7.5 percent ARP for the 1992 through 1995 crops under certain conditions. However, section 1302(b) of that Act also authorizes the Secretary to waive any ARP requirement if an agreement relating to the General Agreement on Tariffs and Trade negotiations was not entered into by June 30, 1992. Since such negotiations had not produced such an agreement, these minimum requirements could be waived.

A 10-percent ARP for corn reflects the prospects for a large 1992 crop. At the same time, a 5-percent ARP for grain sorghum and a zero-percent barley ARP signal to competitors that the U.S. will maintain its commitment to remain competitive in world markets and also signal to domestic and foreign customers that the U.S. will be a reliable supplier.

Tables 3 through 5 show the estimated impacts of three different 1993 ARP options based on September 1992 estimates, the month in which the initial 1993 ARP decisions were made.

Two barley ARP options of 0 percent are included to show the cross-commodity impacts of different ARP levels for corn and grain sorghum.

TABLE 3.—CORN SUPPLY AND DEMAND ESTIMATES

Item	1993 program options		
	1	2	3
	Percent		
ARP	10	7.5	12.5
Participation	80	80	78
	Million acres		
Planted acreage	74.0	75.1	73.0
	Million bushels		
Production	8,095	8,215	7,980
Domestic use	6,645	6,675	6,615
Exports	1,540	1,550	1,530
Ending stocks 8/31	1,746	1,826	1,671
	Dollars per bushel		
Average market price	2.10	2.05	2.15

TABLE 3.—CORN SUPPLY AND DEMAND ESTIMATES—Continued

Item	1993 program options		
	1	2	3
	Million dollars		
Deficiency payments	3,595	3,930	3,195
Net income to corn producers	9,799	9,855	9,675

TABLE 4.—GRAIN SORGHUM SUPPLY AND DEMAND ESTIMATES

Item	1993 program options		
	1	2	3
	Percent		
ARP	5	0	7.5
Participation	77	85	75
	Million acres		
Planted acreage	12.1	12.4	11.9
	Million bushels		
Production	715	735	705
Domestic use	455	460	450
Exports	275	280	275
Ending stocks 8/31	125	135	120
	Dollars per bushel		
Average market price	1.96	1.92	2.01
	Million dollars		
Deficiency payments	329	402	288
Net income to Sorghum producers	894	962	880

TABLE 5.—BARELY SUPPLY AND DEMAND ESTIMATES

Item	1993 program options		
	1	2	3
	Percent		
ARP	0	0	7.5
Participation	77	77	75
	Million acres		
Planted acreage	8.6	8.6	8.2
	Million bushels		
Production	445	445	425
Domestic use	350	350	350
Exports	110	110	105
Ending stocks 5/31	134	134	119
	Dollars per bushel		
Average market price	2.10	2.07	2.18
	Million dollars		
Deficiency payments	136	144	104
Net income to Barley producers	631	625	612

Acreage Reduction

In accordance with section 105B(e)(1) of the 1949 Act, the ARP has been established with respect to the 1993 crop of corn at 10 percent, grain sorghum at 5 percent, and barley and oats at 0 percent. Accordingly, producers will be required to reduce their 1993 acreage of corn and grain sorghum for harvest from the crop acreage base established for feed grains for a farm by at least this established percentage in order to be eligible for price support loans, purchase, and payments for the respective feed grains.

Paid Land Diversion

In accordance with section 105B(e)(5) of the 1949 Act, a paid land diversion program will not be implemented for the 1993 crop of feed grains.

Price Support Rates

In accordance with sections 105B(a) and 205 of the 1949 Act, the price support rates have been established with respect to the 1993 crop of corn at $1.72 per bushel, grain sorghum at $1.63 per bushel, barley at $1.40 per bushel, oats at $0.88 per bushel, and the price support rates have been established with respect to the 1993 crop of rye at $1.46 per bushel. In accordance with section 205 of the 1949 Act, the price support rates have been established with respect to the 1993 crops of soybeans at $5.02 per bushel, and canola, flaxseed, mustard seed, rapeseed, safflower, and sunflower seed at $0.089 per pound.

List of Subjects

7 CFR Part 1413

Acreage allotments, Cotton, Disaster assistance, Feed grains, Price support programs, Reporting and recordkeeping requirements, Rice, Soil conservation, Wheat.

7 CFR Part 1421

Grains, Loan programs/agriculture, Oilseeds, Peanuts, Price support programs, Reporting and recordkeeping requirements, Soybeans, Surety bonds, Warehouses.

Accordingly, 7 CFR parts 1413 and 1421 are amended as follows:

PART 1413—FEED GRAIN, RICE, UPLAND AND EXTRA LONG STAPLE COTTON, WHEAT AND RELATED PROGRAMS

1. The authority citation for 7 CFR part 1413 continues to read as follows:

Authority: 7 U.S.C. 1308, 1308a, 1309, 1441–2, 1444–2, 1444f, 1445b–3a, 1461–1469; 15 U.S.C. 714b and 714c.

2. In § 1413.54, paragraphs (a)(2) and (d) are revised to read as follows:

§ 1413.54 Acreage reduction program provisions.

(a) * * *

(2)(i) For the 1991 crop:
(A) Corn, grain sorghum, and barley, 7.5 percent, and
(B) Oats, 0 percent;
(ii) For the 1992 crop:
(A) Corn, grain sorghum, and barley, 5.0 percent, and
(B) Oats, 0 percent; and
(iii) For the 1993 crop:
(A) Corn, 10 percent,
(B) Grain sorghum, 5 percent, and
(C) Barley and oats, 0 percent.

* * * * *

(d) Paid land diversion program payments:
(1) For the 1991 crop:
(i) Shall not be made available to producers of wheat,
(ii) Shall not be made available to producers of feed grains,
(iii) Shall not be made available to producers of upland cotton,
(iv) Shall not be made available to producers of ELS cotton, and
(v) Shall not be made available to producers of rice; and
(2) For the 1992 crop:
(i) Shall not be made available to producers of wheat,
(ii) Shall not be made available to producers of feed grains,
(iii) Shall not be made available to producers of upland cotton,
(iv) Shall not be made available to producers of ELS cotton, and
(v) Shall not be made available to producers of rice; and
(3) For the 1993 crop:
(i) Shall not be made available to producers of wheat, and
(ii) Shall not be made available to producers of feed grains.

* * * * *

PART 1421—GRAINS AND SIMILARLY HANDLED COMMODITIES

3. The authority citation for 7 CFR part 1421 continues to read as follows:

Authority: 7 U.S.C. 1421, 1423, 1425, 1441z, 1444f–1, 1445b–3a, 1445b–3a, 1444c–3, 1445e, and 1446f; 15 U.S.C. 714b and 714c.

4. In § 1421.7, paragraphs (c)(2) through (6) and (c)(9) and (10) are revised to read as follows:

§ 1421.7 Adjustment of basic support rates.

* * * * *

(c) * * *
(2)(i) 1991 Corn—$1.62 per bushel;
(ii) 1992 Corn—$1.72 per bushel;
(iii) 1993 Corn—$1.72 per bushel;
(3)(i) 1991 Barley—$1.32 per bushel;
(ii) 1992 Barley—$1.40 per bushel;
(iii) 1993 Barley—$1.40 per bushel;
(4)(i) 1991 Oats—$0.83 per bushel;
(ii) 1992 Oats—$0.88 per bushel;
(iii) 1993 Oats—$0.88 per bushel;
(5)(i) 1991 Grain sorghum—$1.54 per bushel;
(ii) 1992 Grain sorghum—$1.63 per bushel;
(iii) 1993 Grain sorghum—$1.63 per bushel;
(6)(i) 1991 Rye—$1.38 per bushel;
(ii) 1992 Rye—$1.46 per bushel;
(iii) 1993 Rye—$1.46 per bushel;

* * * * *

(9)(i) 1991 Soybeans—$5.02 per bushel;
(ii) 1992 Soybeans—$5.02 per bushel;
(iii) 1993 Soybeans—$5.02 per bushel;
(10)(i) 1991 Canola, flaxseed, mustard seed, rapeseed, safflower, and sunflower seed—$0.089 per pound;
(ii) 1992 Canola, flaxseed, mustard seed, rapeseed, safflower, and sunflower seed—$0.089 per pound;
(iii) 1993 Canola, flaxseed, mustard seed, rapeseed, safflower, and sunflower seed—$0.089 per pound.

* * * * *

Signed on January 8, 1993 at Washington, DC.

John A. Stevenson,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 93–922 Filed 1–13–93; 8:45 am]

BILLING CODE 3410–05–M

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 92–141–2]

Importation of Animal Products and Byproducts From Countries Where BSE Exists; Removal of Denmark

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending our regulations by removing Denmark from the list of countries where bovine spongiform encephalopathy (BSE) exists. Denmark was added to the list in September 1992 after the disease was diagnosed in a cow in that country. We are taking this action because epidemiological investigations reveal that the disease occurred in only one animal imported into Denmark from Great Britain, and that animal and the herd into which it was imported have been destroyed. The effect of this action is to relieve certain prohibitions or restrictions on the importation of certain fresh, chilled, and frozen meat, and certain other animal products and animal byproducts from ruminants which have been in Denmark, without presenting a significant risk of introducing BSE into the United States.

DATES: This interim rule is effective January 14, 1993. Consideration will be given only to comments received on or before March 15, 1993.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 92–141–2. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. John Gray, Senior Staff Veterinarian, Import-Export Products Staff, VS, APHIS, USDA, room 756, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7885.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR parts 94 and 95 (referred to below as the regulations) govern the importation of meat, animal products, animal byproducts, hay, and straw into the United States in order to prevent the introduction of various animal diseases, including bovine spongiform encephalopathy (BSE). Sections 94.18 and 95.4 of the regulations prohibit and restrict the importation of certain meat, animal products, and animal byproducts from ruminants which have been in countries in which BSE exists. These countries are listed in § 94.18 of the regulations.

Bovine spongiform encephalopathy is a neurological disease of bovine animals and other ruminants. The disease is not known to be contagious. The major means of spread of BSE appears to be through the use of ruminant feed containing protein and other products from ruminants infected with BSE. Therefore, BSE could become established in the United States if materials carrying the BSE agent, such as certain meat, animal products, and animal byproducts from ruminants in countries in which BSE exists, are imported into the United States and are fed to ruminants in the United States. At the present time, BSE is not known to exist in the United States. However, it is known to exist in France, Great Britain, Northern Ireland, the Republic of Ireland, Oman, and Switzerland.

In an interim rule published in the **Federal Register** and effective on September 22, 1992 (57 FR 43606–43607, Docket No. 92–141–1), we amended the regulations by adding Denmark to the list of countries where

BSE exists, after the disease was diagnosed in a cow in that country. Comments were required to be received on or before November 23, 1992. We received two comments prior to this closing date, both submitted by representatives of foreign governments. These comments opposed the interim rule and explained how this situation occurred. There are no reports of any additional animals in Denmark being affected with BSE. Base on results of our continuing study of the situation described in the interim rule of September 22, and on the comments received, we are removing Denmark from the list of countries where BSE is known to exist. The list of countries appears in § 94.18 of the regulations.

An earlier report, by the Chief Veterinary Officer of the Danish Ministry of Agriculture, stated that BSE had been detected in one cow and suspected in another cow imported into Denmark from Great Britain. This led to our adding Denmark to the list of countries where BSE is known to exist. This action was taken in order to reduce the risk of introducing BSE into the United States. Epidemiological investigations have since revealed that there was only one infected cow, a Highland cow born in Scotland in June 1987 and imported into Denmark in June 1988. Two concentrates which were fed to the herd of origin during the winter of 1987/88 have been identified, and these two concentrates have been associated with other cases of BSE in the northeastern part of Scotland. The Danish Veterinary Service required the affected cow and the entire herd into which it was imported to be killed and the premises thoroughly cleaned and disinfected.

Further investigations by the Danish Government established that meat and bone meal have not been imported into Denmark from Great Britain for many years, and the Danish Government has imposed an official ban on the importation of such materials. Additionally, Danish farmers and veterinarians have been thoroughly informed of the symptoms of BSE, especially in relation to imported animals, and notification of a detection of symptoms of BSE is required. Finally, all Danish rendering plants are supervised and inspected daily for hygiene and processing. Diagnostic capabilities for BSE are available at the National Veterinary Laboratory in Copenhagen. Therefore, we are removing Denmark from the list of countries where BSE is known to exist.

Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this rule without prior opportunity for public comment.

Prompt implementation is needed to relieve unnecessary restrictions on the importation of certain fresh, chilled, and frozen meat, and certain other animal products and animal byproducts from ruminants which have been in Denmark. With these restrictions lifted, U.S. importers will be able to resume their importation of the animal products and animal byproducts described above. Danish producers and exporters, denied these U.S. markets by our September interim rule, will be able to resume their business with the United States.

Since prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest under these conditions, there is good cause under 5 U.S.C. 553 for making it effective upon publication in the **Federal Register**. We will consider comments that are received within 60 days of publication of this interim rule in the **Federal Register** After the comment period closes, we will publish another document in the **Federal Register**. It will include discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12291 and Regulatory Flexibility Act

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

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

The provisions of this rule will not have a significant economic impact. Placing Denmark on the list of countries in which BSE exists restricted or prohibited the importation of certain meat, animal products, and animal byproducts from ruminants that have been in Denmark. These restrictions and prohibitions had a minor negative economic impact on U.S. importers. Denmark is not a major export source of ruminant meat. It exported 123,000 metric tons in 1991, less than 3 percent of the world total. The United States imported only 180 tons, or $345,000 worth, of ruminant meat from Denmark in 1991, representing less than three-hundredths of one percent of the total amount of ruminant meat imported into the United States. There does not appear to be a significant amount of ruminant products or byproducts, other than meat, imported from Denmark.

At present, there are 14 U.S. importers who import ruminant meat from Denmark. Thirteen of these would be considered small entities. Relieving these restrictions would restore their ability to import ruminant meat from Denmark. The proportion of ruminant meat imported from Denmark is so small that there would be very little or no impact on U.S. producers and consumers. Additionally, price and competition in the United States would not be affected.

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

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws, regulations, and policies that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

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

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, the regulations in 9 CFR part 94 are amended as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), VELOGENIC VISCEROTROPIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 continues to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, and 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, and 134f; 31 U.S.C. 9701; 42 U.S.C. 4331, 4332; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 94.18, paragraph (a) is revised to read as follows:

§ 94.18 Ruminant meat and edible products from ruminants that have been in countries where bovine spongiform encephalopathy exists.

(a) Bovine spongiform encephalopathy exists in the following countries: France, Great Britain, Northern Ireland, the Republic of Ireland, Oman, and Switzerland.

* * * * *

Done in Washington, DC, this 8th day of January 1993.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 93–923 Filed 1–13–93; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 506, 509, 516, 528, 541, 543, 545, 552, 556, 558, 559, 561, 563, 563b, 563e, 567, 571, 579 and 580

[No. 92–503]

RIN 1550–AA60

Regulatory Review

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The President announced on January 28, 1992, a review of all Federal regulations and policies for the purpose of eliminating over-burdensome regulations that discourage economic growth. The Office of Thrift Supervision (OTS) reviewed its regulations and policies, considered public comments and testimony and issued a notice of proposed rulemaking on September 3, 1992, listing recommended changes and deletions. Today, the OTS is issuing its final regulation implementing the modifications to its regulations consistent with the President's program.

DATES: February 16, 1993.

FOR FURTHER INFORMATION CONTACT: Deborah Kennedy, Project Manager, (202) 906–7324, Policy; Jennifer Lowe, Program Analyst, (202) 906–5633, Specialized Programs; Mary H. Gottlieb, Paralegal Supervisor, (202) 906–7135, Deborah Dakin, Assistant Chief Counsel, (202) 906–6445, or Karen Solomon, Deputy Chief Council, (202) 906–7240, Regulations and Legislation Division, Chief Counsel's Office, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

A. Background

On January 28, 1992, the President announced a Regulatory Review Program for all Federal government agencies. The agencies were asked to "weed out unnecessary and burdensome government regulations, which impede economic growth." We solicited public comments and received 58 comment letters and heard testimony from 19 savings associations, law firms and trade associations. The staff considered these comments in its review and identified a number of rules to delete or modify that fall within the guidelines of the President's program. Proposed modifications were published on September 3, 1992. 57 FR 40350 (Sept. 3, 1992).

The changes implemented today balance the benefits of promoting growth and reducing regulatory burden against the need to ensure a safe and sound thrift industry. While the changes implemented in this rulemaking touch almost every facet of our regulations, they are consistent with maintaining safe and sound operations at OTS-regulated savings associations. None of the changes alone will have a major impact on the industry, but taken together they will significantly reduce regulatory burden and clarify OTS regulatory requirements.

B. Comment Summary

We received ten comment letters in response to the notice of proposed rulemaking on Regulatory Review, all generally supporting our review initiative. The commenters were eight savings associations and two trade associations. Most commenters raised additional areas for review with specific suggestions for changes.

1. Regulations Restating Statutes or Listing Powers

Three commenters considered the general question of whether we should delete regulations that merely repeat statutory requirements or replace individual regulations setting forth savings association powers with a more general authorizing regulation. Two concluded that a large number of regulations is, in this case, warranted to ensure enforceability and to simplify tracking OTS requirements for savings associations. Eliminating specific regulations could increase uncertainty as to what savings associations may be authorized to do, or create further burdensome applications or notices. One commenter noted that OTS regulations afford federal thrifts the ability to argue preemption of state regulation and a general rule might weaken the preemption case. In view of the concerns raised by these commenters, we have decided not to modify our regulations that track statutory powers and set forth specific savings association powers at this time.

2. Affiliates Transactions

Two commenters approved of the use of "insider" rather than "affiliated person" as a further step to harmonize our transactions with affiliates rules with those of the other banking agencies. Another considered the term "insider" to have negative implications and urged another choice. We believe that no other term readily maintains the similarity of our rule "Loans to Executive Officers, Directors and Principal Shareholders of Savings Associations", 57 FR 45977 (October 6, 1992), with those of the other banking agencies. In order to ensure adequate opportunity to consider the implications of any changes to our "affiliated person" rules, however, we are undertaking a review of all of our "affiliated person" regulations in a separate rulemaking and will make appropriate proposals for revisions to terminology therein.

In response to our request for comments on all portions of the regulations, a commenter suggested deleting § 563.33(b), dealing with activities undertaken for affiliates. The section limits the circumstances under which an employee of a savings association may work for an affiliated person. Upon review, we have concluded that this provision is unnecessary because it is subsumed within the restrictions applicable to savings associations pursuant to section 23B of the Federal Reserve Act, 12 U.S.C. 371c–1. It will be deleted in this rule.

One commenter asked that we incorporate section 23A of the Federal Reserve Act, 12 U.S.C. 371c, by reference, instead of incorporating much of the text of that statute into our regulations. Because savings

associations continue to be subject to several unique statutory provisions governing their transactions with affiliates, consolidating all the applicable standards in the regulation helps to clarify how the various provisions apply to savings associations. Thus, we have determined not to change § 563.41 at this time.

3 Compliance

a. Home Mortgage Disclosure

Three commenters wrote favoring elimination of the nondiscrimination disclosure requirements at § 528.6 as duplicative of the requirements set forth in 12 CFR part 203, which are made applicable to savings associations pursuant to the Home Mortgage Disclosure Act (HMDA), 12 U.S.C. 2801 *et seq.* One commenter asserted that the current requirement of § 528.6 requiring savings associations to continue reporting the "reason for denial" on their HMDA Loan Application Registers is unnecessary as long as other published OTS guidance contains the requirement.

We agree that § 528.6 is largely duplicative of part 203 and we are therefore deleting all redundant provisions. We disagree, however, that the "reason for denial" is unnecessary. The "reason for denial" provides us with useful information that assists the examination process. We believe that retaining the regulatory requirement assures that this important data field is completed by all OTS-regulated filers, including any majority-owned savings association service corporations or affiliates. Therefore, we are amending § 528.6 to clarify that savings associations and other OTS-regulated filers that are required to keep HMDA Loan Application Registers pursuant to part 203 must enter the reason for denial for all loan denials. Because of the changes in § 528.6, we are deleting the definitions in §§ 528.1(d), (e), (f), and (g) as unnecessary

b. Truth in Savings

One commenter suggested the elimination of § 563.7, "Fixed-term accounts (certificate accounts)," and § 563.27, "Advertising," because they duplicate requirements found in Regulation DD of the Federal Reserve Board, 12 CFR part 230. The Truth in Savings Act (12 U.S.C. 4301 *et seq.*, contained in the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA), Pub. L. No. 102–242, 105 Stat. 2236) directed the Federal Reserve Board to issue final implementing regulations by September 1992. Regulation DD was published by the Board on September 21, 1992 and is applicable to all savings associations.

In light of the publication of Regulation DD, which covers the field of savings disclosures and advertising, we agree that certain portions of § 563.7 and 563.27 are no longer necessary and should be removed. In particular, we are amending § 563.7 to delete paragraph (d), which contains contract provisions required in certificate accounts. This paragraph is not necessary given the extensive disclosure requirements contained in Regulation DD specifying that clear, written disclosures must be provided to consumers in a form they may keep. See 12 CFR 230.3–230.6. In addition, because Regulation DD contains newly adopted advertising requirements in 12 CFR 230.8, § 563.27(a) has been superseded and, therefore, is removed. Section 563.27(b)(2) is also removed because restrictions on name and corporate title advertising are no longer necessary for consumer protection. We do, however, retain in § 563.27 the prohibition against misrepresentation of an association's services, contracts, investments, and financial condition. Regulation DD prohibits misleading advertising of an institution's deposit contracts, but the OTS's prohibition section is broader We intend to continue monitoring compliance with this section.

In addition to those sections mentioned by the commenter, we have reviewed OTS regulations and determined that paragraphs (b), (c), (d), (e), and (g) of § 561.16 should be removed in light of the new provisions in Regulation DD covering bonuses paid on accounts, 12 CFR 230.4(b)(7), 230.8(d), and the removal of identical provisions from the Federal Reserve System's Regulation Q, as amended in conjunction with its adoption of Regulation DD. Section 545.12 is amended to remove reference to the paragraphs of § 561.16 that are being deleted.

c. Community Development

Section 5(c)(3)(B) of the Home Owners' Loan Act (HOLA) authorizes federal savings associations to invest up to two percent of their assets in real property and loans located in "a geographic area or neighborhood receiving concentrated development assistance by a local government under title I of the Housing and Community Development Act of 1974." 42 U.S.C. 5301 *et seq.* OTS's implementing regulation, 12 CFR 545.41, originally promulgated in 1974, was drafted to be consistent with how the Department of Housing and Urban Development (HUD) was then administering its Title I programs. Since then, HUD has made numerous changes in its Title I programs. As a result, OTS's regulation is outdated and contains obsolete standards and criteria.

In the proposed rule, we solicited comments on how to update 12 CFR 545.41. In particular, the agency requested comments on meaningful ways to identify areas or neighborhoods receiving concentrated Title I assistance. We received no comments.

We are amending our community development regulation to eliminate the outdated criteria contained in 12 CFR 545.41(a) and to substitute a simple restatement of the authorization set forth in section 5(c)(3)(B) of the HOLA. This amendment will avoid the need to update the regulation each time modifications are made to Title I programs. Savings associations that have questions about whether particular investments will qualify under section 5(c)(3)(B) of the HOLA may contact the OTS.

We will also pursue an amendment to HOLA section 5(c)(3)(B) to eliminate its outdated references to HUD criteria that no longer exist.

4. Lending Requirements

One commenter urged us to further explore ways to authorize "untroubled associations" to use salvage powers to exceed Loans to One Borrower (LTOB) limits in "selected circumstances." We believe the concept has merit, and is feasible under 12 U.S.C. 1464(u) and 12 CFR 563.93 in certain circumstances. We plan to issue guidance soon that would allow, with prior OTS approval, greater use of salvage powers. Expanded salvage powers generally will be available for well-capitalized, well-managed institutions, but will be closely controlled for other institutions.

Another commenter recommended that we remove the regulations governing loans in §§ 545.32 through 545.45 because they are likely to change as a result of OTS adoption of interagency uniform real estate lending standards. Changes to these regulations will be made as a part of the rulemaking process for real estate lending standards.

Another commenter urged us to drop the requirement to maintain reports of the status of tax payments in loan files (§ 563.170(c)(1)(xi)). We are considering changing this provision as part of our implementation of section 132 of FDICIA, which requires the OTS and the other banking agencies to establish loan documentation requirements.

One commenter suggested that we modify our Appraisal regulation (part 564) to allow for the use of the Departure Provision of the Uniform

Standards of Professional Appraisal Practice. This provision allows limited exceptions to industry appraisal standards. We believe this proposal has merit and will, on an interagency basis, pursue this recommendation.

The same commenter requested that we not delete two sections—571.1, "Appraisal of real estate securing assets of savings associations" and 563.90, "Appraisals on loans outside lending area." We believe that both sections can be deleted without compromising safety and soundness. Section 571.1 is a statement of policy that does not establish any specific regulatory requirements. The section generally lists the authority of the OTS to require appraisals and, even with its deletion, the OTS retains such authority. Section 563.90 requires institutions to obtain appraisals on loans outside their lending areas. Even with the deletion of this section, institutions continue to be required to obtain appraisals in accordance with part 564.

The commenter also requested that we mandate appraisals for all real estate-related loans, even those that fall at or below the $100,000 threshold established by our appraisal rule. As discussed more fully in the preamble to the final regulation that established the $100,000 threshold level, we believe it is unnecessary for the regulation to require an appraisal for loans at or below that level due to the low risk of loss generally associated with such loans.

The same commenter also opposed use of the term "evaluation" (rather than "appraisal") for loans that do not require the services of a licensed or certified appraiser under the appraisal regulation (part 564). Another commenter asked for clarification of the differences between evaluations and appraisals for real estate. We believe that the differences between the terms "evaluations" and "appraisals" are important to maintain. Thrift Bulletin 55 (TB–55) Real Estate Appraisal and Evaluation Guidelines, issued on October 13, 1992, explains each type of valuation and its use.

5. Other Comments

A commenter suggested that we repeal Thrift Bulletin 13 (TB–13) when an interest rate risk element is incorporated into the capital requirements. In the supplemental notice of proposed rulemaking for incorporating the interest rate component into the risk-based capital rule, we proposed replacing TB–13 with a new § 571.3 that sets forth the responsibilities of directors and management in managing interest rate risk exposure. See 57 FR 40524 (Sept. 3, 1992).

Another commenter recommended that we delete the liquidity requirements at § 566.2. These are statutorily mandated by 12 U.S.C. 1465, thus, we can not eliminate them as part of this rulemaking. They are being considered, however, as part of the interagency study of regulatory burden that will contain recommendations for legislative changes.

A commenter asked us to consider raising the reporting thresholds for criminal referrals in § 563.180(d). The commenter explained that law enforcement officials do not take action on many claims that fall within our reporting requirements because they are too small. We are currently working to revise this regulation and will issue changes to it in a separate rulemaking.

One commenter noted that § 563.96, limiting investments in accounts of commercial banks and thrift institutions and debt securities hedged with forward commitments, is difficult to understand. We agree that the provision needs to be revised and that these requirements could be covered in other areas of our regulations. We plan to revise the rule in the near future, possibly in conjunction with the interagency project on Interbank Liabilities.

Commenters mentioned several proposed changes that they highly approved. Among these were deletion of the "giveaway" rules (§ 545.21), obsolete gold regulations (§§ 545.79, 571.10 and 571.17), certain redundant lending disclosures (§ 563.99(d)), restrictions on prepayment penalties on ARM loans (§ 545.34), and certain restrictions on corporate names and titles. They also approved deleting Form AR filings (§ 563.45) and the outdated liability growth rule (§ 563.131). Commenters also favored the proposed changes to rules on the numbers of directors for savings associations (§ 552.6–1) and the removal of certain restrictions on advisory boards (§ 545.123). Except as discussed above, we received no other comments on the proposed rules.

C. Changes in the Proposed Rules

Besides those changes discussed above, the modifications to our rules and regulations listed in this final rule are materially unchanged from those listed in the proposal. Some minor changes have been made, however, to our Local Rules of Practice and Procedure in Adjudicatory Proceedings ("Local Rules")[1].

Changes to § 509.104 of the Local Rules from those listed in the proposal including the following:

Minor revisions to paragraphs (b), (f), (g), and (h) have been made to clarify the additional filing procedures. The term "Secretary," which refers to the Secretary to the Office, who receives adjudicatory filings, will replace the term "Corporate Secretary," which refers to the person who receives applications and other corporate filings. The proposed amendment to paragraph (d) has been withdrawn as redundant; there is no change to existing paragraph (d).

Paperwork Reduction Act

The collection of information requirement contained in this final regulation has been submitted to and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507). The collection of information is contained in 12 CFR 516.1(c).

Section 516.1 contains OTS application processing guidelines and procedures. Applications are labelled to ensure that all appropriate OTS offices receive copies. To expedite processing, OTS is now requiring the filing of two additional copies of all applications/notices that raise significant issues for concurrent review by Washington and Regional offices.

The information collection under OMB Control Number 1550–0056 entitled "Requirements for Filings" was amended to include this new collection.

The following summarizes the estimated additional burden of the information collection in § 516.1(c):

Number of hours per response	.05
Number of annual responses	630
Total number of hours yearly	31.5
Average cost per hour	$20.00
Total yearly cost	$630.00

The following summarizes the estimated total burden for the amended package under control number 1550–0056:

Number of hours per response	.055
Number of annual responses	6,300
Total number of hours yearly	346.5
Average cost per hour	$20.00
Total yearly cost	$6,930.00

Comments concerning the accuracy of these estimates and suggestions for reducing this burden should be directed to Office of Management and Budget, Paperwork Reduction Project (1550), Washington, DC 20503.

[1] The Local Rules apply to OTS administrative enforcement proceedings commenced on or subsequent to August 12, 1991 See 56 FR 38,302, 38,305, 38,317 (Aug. 12, 1991) (codified at 12 CFR 509.100–509.104).

Executive Order 12291

The OTS has determined that this regulation does not constitute a "major rule" and, therefore, does not require the preparation of a final regulatory impact analysis.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, it is certified that this regulation will not have a significant economic impact on a substantial number of smaller entities. Accordingly, a Regulatory Flexibility Act Analysis is not required.

List of Subjects

12 CFR Part 506

Reporting and recordkeeping requirements.

12 CFR Part 509

Administrative practice and procedures, Penalties.

12 CFR Part 516

Applications, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 528

Advertising, Civil rights, Credit, Fair housing, Mortgages, Reporting and recordkeeping requirements, Savings associations, Signs and symbols.

12 CFR Parts 541, 543, 556, 558, 559, 561, 579 and 580

Savings associations.

12 CFR Part 545

Accounting, Consumer protection, Credit, Electronic funds transfers, Investments, Manufactured homes, Mortgages, Reporting and recordkeeping requirements, Savings associations.

12 CFR Parts 552 and 563b

Reporting and recordkeeping requirements, Savings associations, Securities.

12 CFR Part 563

Accounting, Advertising, Crime, Currency, Flood insurance, Investments, Reporting and recordkeeping requirements, Savings associations, Securities, Surety bonds.

12 CFR Part 563e

Community development, Credit, Investments, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 567

Capital, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 571

Accounting, Conflicts of interest, Gold, Investments, Reporting and recordkeeping requirements, Savings associations.

Accordingly, the Office of Thrift Supervision amends chapter V, title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER A—ORGANIZATION AND PROCEDURES

PART 506—INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT

1. The authority citation for part 506 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

1a. Section 506.1 is amended by adding four new entries to the table in paragraph (b) in numerical order to read as follows:

§ 506.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) *Display*

12 CFR part or section where identified and described	Current OMB control No.
• • • • •	•
516.1(b)	1550–0056
• • • • •	•
563.99–563.101 (Subpart D), Appendix A	1550–0078
563.100	1550–0078
563.101	1550–0078
• • • • •	•

PART 509 RULES OF PRACTICE AND PROCEDURE IN ADJUDICATORY PROCEEDINGS

1b. The authority citation for part 509 continues to read as follows:

Authority: 5 U.S.C. 556; 12 U.S.C. 1464, 1467, 1467a, 1813; 15 U.S.C. 781.

2. Section 509.104 is amended by revising paragraphs (b) and (f), by redesignating paragraph (g) as paragraph (i), and by adding new paragraphs (g) and (h) to read as follows:

§ 509.104 Additional procedures.

* * * * *

(b) *Motions.* All motions shall be filed with the administrative law judge and an additional copy shall be filed with the Secretary to the Office, who receives adjudicatory filings, ("Secretary"); provided, however, that once the administrative law judge has certified the record to the Director pursuant to § 509.38 of this part, all motions must be filed with the Director, to the attention of the Secretary, within the 10 day period following the filing of exceptions allowed for the filing of replies to exceptions. Responses to such motions filed in a timely manner with the Director, other than motions for oral argument before the Director, shall be allowed pursuant to the procedures at § 509.23(d) of this part. No response is required for the Director to make a determination on a motion for oral argument.

* * * * *

(f) *Service upon the Office.* Service of any document upon the Office shall be made by filing with the Secretary, in addition to the individuals and/or offices designated by the Office in its Notice issued pursuant to § 509.18 of this part, or such other means reasonably suited to provide notice of the person and/or office designated to receive filings.

(g) *Filings with the Director.* An additional copy of all materials required or permitted to be filed with or referred to the administrative law judge pursuant to subpart A and B of this part shall be filed with the Secretary. This rule shall not apply to the transcript of testimony and exhibits adduced at the hearing or to proposed exhibits submitted in advance of the hearing pursuant to an order of the administrative law judge under § 509.32 of this part. Materials required or permitted to be filed with or referred to the Director pursuant to suparts A and B of this part shall be filed with the Director, to the attention of the Secretary.

(h) *Filing and certification of record.* At the same time the administrative law judge files with and certifies to the Director for final determination the record of the proceeding, the administrative law judge shall furnish to the Director a certified index of the entire record of the proceeding. The certified index shall include, at a minimum, an entry for each paper, document or motion filed with the administrative law judge in the proceeding, the date of the filing and the identity of the filer. The certified index shall also include an exhibit index containing, at a minimum, an entry consisting of exhibit number and title or description for: Each exhibit introduced and admitted into evidence at the hearing; each exhibit introduced but not admitted into evidence at the hearing; each exhibit introduced and admitted into evidence after the completion of the hearing; and each exhibit introduced but not admitted into evidence after the completion of the hearing.

* * * * *

PART 516—APPLICATION PROCESSING GUIDELINES AND PROCEDURES

3. The authority citation for part 516 is revised to read as follows:

Authority: 5 U.S.C. 552, 559; 12 U.S.C. 1462a, 1463, 1464.

4 Section 516.1 is amended by adding a sentence to precede the last sentence of paragraph (c) introductory text to read as follows:

§ 516.1 Offices of the Office of Thrift Supervision; information and submittals.

* * * * *

(c) *Filings.* * * * Two additional conformed copies shall be filed with the Applications Filing Room, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC, 20552 of any application, notice or other filing that raises a significant issue of law or policy, as defined by OTS order or other OTS guidance. * * *

* * * * *

SUBCHAPTER B—CONSUMER-RELATED REGULATIONS

PART 528—NONDISCRIMINATION REQUIREMENTS

5. The authority citation for part 528 is revised to read as follows:

Authority: 12 U.S.C. 1464, 2810 *et seq.*, 2901 *et seq.*, 15 U.S.C. 1691, 42 U.S.C. 1981, 1982, 3601–3619.

§ 528.1 [Amended]

6. Section 528.1 is amended by removing paragraphs (d) through (g).

7 Section 528.6 is revised to read as follows:

§ 528.6 Loan application register.

Savings associations and other lenders required to file Home Mortgage Disclosure Act Loan Application Registers with the Office of Thrift Supervision in accordance with 12 CFR part 203 must enter the reason for denial, using the codes provided in 12 CFR part 203, with respect to all loan denials.

SUBCHAPTER C—REGULATIONS FOR FEDERAL SAVINGS ASSOCIATIONS

PART 541—DEFINITIONS

8. The authority citation for part 541 is revised to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464.

§ 541.9 [Removed]

9 Section 541 9 is removed.

§ 541.12 [Removed]

10 Section 541.12 is removed.

§ 541.24 [Removed]

11 Section 541.24 is removed.

PART 543—INCORPORATION, ORGANIZATION, AND CONVERSION OF FEDERAL MUTUAL ASSOCIATIONS

12. The authority citation for part 543 is revised to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 2901 *et seq.*

§ 543.1 [Amended]

13. Section 543.1 is amended by removing the first sentence of paragraph (a).

PART 545—OPERATIONS

14. The authority citation for part 545 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1828.

15. Section 545.12 is amended by revising paragraph (b) to read as follows:

§ 545.12 Demand deposit accounts.

* * * * *

(b) A Federal savings association shall not pay interest on a demand deposit; however, finders' fees offered in accordance with § 561.16(b) of this chapter are not payments of interest.

* * * * *

§ 545.21 [Removed]

16. Section 545.21 is removed.

17. Section 545.34 is amended by revising the second sentence of paragraph (b) and the second sentence of paragraph (c) to read as follows, and by removing the last sentence of paragraph (c):

§ 545.34 Limitations for home loans secured by borrower-occupied property.

* * * * *

(b) * * * With respect to any loan made after July 31, 1976, on the security of a home occupied or to be occupied by the borrower, no late charge, regardless of form, shall be assessed or collected by a Federal savings association, unless any monthly billing, coupon, or notice the Federal savings association may provide regarding installment payments due on the loan discloses the date after which the charge may be assessed. * * *

(c) * * * A Federal savings association may impose a penalty on the prepayment of a loan as provided in the loan contract.

§ 545.36 [Amended]

18. Section 545.36 is amended by removing the second and third sentences in paragraph (d).

19. Section 545.41 is amended by revising paragraph (a) to read as follows

§ 545.41 Community development loans and investments.

(a) *General.* Federal savings associations have the authority to make investments pursuant to section 5(c)(3)(B) of the Act.

* * * * *

§ 545.75 [Amended]

20. Section 545.75 is amended by removing and reserving paragraph (b)(5).

§ 545.79 [Removed]

21. Section 545.79 is removed.

§ 545.93 [Removed]

22. Section 545.93 is removed.

§ 545.123 [Removed]

23. Section 545.123 is removed.

PART 552—INCORPORATION, ORGANIZATION, AND CONVERSION OF FEDERAL STOCK ASSOCIATIONS

24. The authority citation for part 552 is revised to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a.

25. Section 552.6–1 is amended by revising the first sentence of paragraph (b) to read as follows:

§ 552.6–1 Board of directors.

* * * * *

(b) *Number and term.* The board of directors shall consist of not fewer than five nor more than fifteen as prescribed in the bylaws. * * *

* * * * *

§ 552.7 [Removed]

26. Section 552.7 is removed.

§ 552.8 [Amended]

27. Section 552.8 is amended by removing and reserving paragraph (b).

PART 556—STATEMENTS OF POLICY

28. The authority citation for part 556 is revised to read as follows:

Authority: 5 U.S.C. 552, 559; 12 U.S.C. 1464, 1701j–3; 15 U.S.C. 1693–1693r

§ 556.7 [Removed]

29. Section 556.7 is removed.

30. Part 558 is revised to read as follows:

PART 558—POSSESSION BY CONSERVATORS AND RECEIVERS FOR FEDERAL AND STATE SAVINGS ASSOCIATIONS

Sec.
558.1 Procedure upon taking possession.
558.2 Notice of appointment.

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a.

§ 558.1 Procedure upon taking possession.

(a) The conservator or receiver for a Federal or state savings association shall take possession of the savings association by taking possession of the principal office of the Federal or state savings association and in accordance with the terms of the Director's appointment.

(b) Upon taking possession, the conservator or receiver shall immediately:

(1) Give notice of the appointment to any officer or employee in the principal office who appears to be in charge of that office.

(2) Serve a copy of the order of appointment upon the savings association or upon its conservator or receiver by:

(i) Leaving a certified copy of the order of appointment at the principal office of the savings association; or

(ii) Handing a certified copy of the order of appointment to the previous conservator, receiver or other legal custodian of the savings association, or to the officer or employee of the savings association or of the previous conservator, receiver or other legal custodian in the principal office of the savings association who appears to be in charge.

(3) Take possession of the savings association's books, records and assets.

(4) Notify in writing, served personally or by registered mail or telegraph, all persons and entities that the conservator or receiver knows to be holding or in possession of assets of the savings association, that the conservator or receiver has succeeded to all rights, titles, powers and privileges of the savings associations.

(5) File with the Corporate Secretary a statement that possession was taken, including the time of the taking, which statement shall be conclusive evidence thereof.

(6) Post a notice on the door of the principal and other offices of the savings association in substantially the following form:

(i) For the appointment of a conservator:

The (name of Federal/state savings association) is in the hands of (name) as Conservator under appointment by the Director of the Office of Thrift Supervision.
Conservator _____.
Date _____.

(ii) For the appointment of a Receiver:

(A) During the period beginning on December 31, 1988 and ending on October 1, 1993:

The (name of savings association) is in the hands of the Resolution Trust Corporation as Receiver under appointment by the Director of the Office of Thrift Supervision.
Receiver _____.
Date _____.

(B) After October 1, 1993:

The (name of savings association) is in the hands of the Federal Deposit Insurance Corporation as Receiver under appointment by the Director of the Office of Thrift Supervision.
Receivor _____.
Date _____.

(7) By operation of law and without any conveyance or other instrument, act or deed, succeed to the rights, titles, powers and privileges of the savings association, and to the rights, powers, and privileges of its stockholders, members, accountholders, depositors, officers, and directors. No stockholder, member, accountholder, depositor, officer or director shall thereafter have or exercise any right, power, or privilege, or act in connection with any of the savings association's assets or property.

§ 558.2 Notice of appointment.

If the Director of the OTS appoints a conservator or receiver under this part, the Corporate Secretary shall mail a certified copy of the OTS's appointment to the savings association's address as it appears in the OTS's records, and notice of the appointment shall be filed immediately for publication in the Federal Register.

PART 559—[REMOVED]

31. Part 559 is removed.

SUBCHAPTER D—REGULATIONS APPLICABLE TO ALL SAVINGS ASSOCIATIONS

PART 561—DEFINITIONS

32. The authority citation for part 561 is revised to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a.

§ 561.5 [Removed]

33. Section 561.5 is removed.

§ 561.16 [Amended]

34. Section 561.16 is amended by removing paragraphs (b) through (e), and (g), and by redesignating paragraph (f) as paragraph (b).

§ 561.17 [Removed]

35. Section 561.17 is removed.

§ 561.22 [Removed]

36. Section 561.22 is removed.

§ 561.46 [Removed]

37. Section 561.46 is removed.

PART 563—OPERATIONS

38. The authority citation for part 563 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1468, 1817, 1828, 3806; 42 U.S.C. 4106; Pub. L. 102–242, sec. 306, 105 Stat. 2236, 2355 (1991).

§ 563.7 [Amended]

39. Section 563.7 is amended by removing paragraph (d) and redesignating paragraph (e) as paragraph (d).

§ 563.24 [Removed]

40. Section 563.24 is removed.

§ 563.27 [Amended]

41. Section 563.27 is amended by removing paragraphs (a) and (b)(2), and by removing the heading of paragraph (b) and the paragraph designations (b) and (b)(1).

§ 563.29 [Removed]

42. Section 563.29 is removed.

§ 563.32 [Removed]

43. Section 563.32 is removed.

§ 563.33 [Amended]

44. Section 563.33 is amended by removing and reserving paragraph (b).

§ 563.34 [Removed]

45. Section 563.34 is removed.

§ 563.45 [Removed]

46. Section 563.45, including Form AR, is removed.

§ 563.48 [Amended]

47. Section 563.48 is amended by removing from the first sentence of paragraph (e) the phrase "(including purchasing)" and by adding in lieu thereof the phrase "(but not including purchasing)".

§ 563.90 [Removed]

48. Section 563.90 is removed.

§ 563.93 [Amended]

49. Section 563.93 is amended by removing the phrase "as defined in paragraph (b)(13) of this section" from paragraphs (b)(6)(i) and (d)(3)(ii), and by adding in lieu thereof the phrase "as defined in paragraph (b)(11) of this section."

§ 563.99 [Amended]

50. Section 563.99 is amended by removing and reserving paragraph (d).

§ 563.131 [Removed]

51. Section 563.131 is removed.

52. Section 563.132 is amended by revising paragraph (a)(1)(ii) to read as follows:

§ 563.132 Securities issued through subsidiaries.

(a) * * *

(1) * * *

(ii) An operating subsidiary (as defined in § 545.81(b) of this chapter), a service corporation (as defined in § 561.45 of this subchapter), or any other subsidiary of a state-chartered savings association not organized in compliance with § 545.82 of this chapter, if any proceeds of such securities are remitted to a parent savings association (unless such a subsidiary demonstrates to the OTS that the purpose for such an issuance was totally for the subsidiary's reasonable corporate needs based on reasonable written projections of its financing requirements).

* * * * *

§ 563.192 [Removed]

53. Section 563.192 is removed.

PART 563b—CONVERSIONS FROM MUTUAL TO STOCK FORM

54. The authority citation for part 563b continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a; 15 U.S.C. 78c, 781, 78m, 78n, 78w

55. Section 563b.3 is amended by adding a new paragraph (i)(4)(vi) to read as follows:

§ 563b.3 General principles for conversions.

* * * * *

(i) *Acquisition of the securities of converting and converted savings associations)*—* * *

(4) *Exceptions.* * * *

(vi) No application under paragraph (i)(3)(i) of this section generally shall be required for any proposed acquisition that requires prior approval of, or clearance by, the OTS under 12 CFR part 574 *provided* that the application required to be filed pursuant to part 574 of this chapter addresses in specific detail how the proposed transaction will comply with the criteria for approval under paragraph (i)(5) of this section, and the proposed acquisition is not opposed by the recently converted association subject to paragraph (i)(3)(i) of this section Where, pursuant to this paragraph (i)(4)(vi), no separate application under paragraph (i)(3)(i) of this section is required, the prohibition on offers to acquire equity securities contained in paragraph (i)(3)(i) of this section shall not apply.

* * * * *

PART 563e—COMMUNITY REINVESTMENT

56. The authority citation for part 563e is revised to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1467a, 2901 *et seq.*

§ 563e.6 [Amended]

57. Section 563e.6 is amended by removing the phrase "District Director" from the third, fifth, and sixth paragraphs in the sample notice, and adding in lieu thereof the phrase "Regional Director".

PART 567—CAPITAL

58. The authority citation for part 567 is revised to read as follows

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a.

§ 567.20 [Removed]

59 Section 567.20 is removed.

PART 571—STATEMENTS OF POLICY

60. The authority citation for part 571 is revised to read as follows:

Authority: 5 U.S.C. 552, 559; 12 U.S.C. 1462a, 1463, 1464.

§ 571.1 [Removed]

61 Section 571.1 is removed.

§ 571.3 [Removed]

62. Section 571.3 is removed.

§ 571.10 [Removed]

63. Section 571 10 is removed.

§ 571.16 [Removed]

64. Section 571.16 is removed.

§ 571.17 [Removed]

65. Section 571.17 is removed.

§ 571.25 [Removed]

66. Section 571.25 is removed.

§ 571.26 [Removed]

67. Section 571.26 is removed.

SUBCHAPTER E—[RESERVED]

PARTS 579 AND 580—[REMOVED]

68. Parts 579 and 580 are removed and subchapter E is removed and reserved.

Dated: December 2, 1992.

By the Office of Thrift Supervision.

Timothy Ryan,

Director

[FR Doc. 93–720 Filed 1–13–93; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 91–AEA–25]

Change of Operating Hours of Control Zone; Chincoteague (Wallops Island), VA

AGENCY: Federal Aviation Administration (FAA), DOT

ACTION: Final rule; correction.

SUMMARY: This document contains a correction to the final rule published in the **Federal Register** on August 25, 1992. The final rule amended the name and operating hours of the Chincoteague (Wallops Island), VA, Control Zone. This correction adds to the description the ceiling height that was inadvertently omitted.

EFFECTIVE DATE: January 14, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis L. Brewington, Designated Airspace Specialist, System Management Branch, AEA–530, F.A.A. Eastern Region, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553–0857.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 92–20347, Airspace Docket No. 91–AEA–25, published on August 25, 1992 (57 FR 38435), revised the name and changed the operating hours of the Chincoteague (Wallops Island), VA, Control Zone. The height of the Wallops Island, VA, Control Zone was inadvertently omitted from the description. This action corrects that error.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the publication on August 25, 1992 (Federal Register Document 92–20347) and the description in FAA Order 7400.7A which is incorporated by reference in 14 CFR 71.1, are corrected as follows:

§ 71.1 [Corrected]

1. On page 38435, columns 2 and 3, the description for Wallops Island, VA, Control Zone is corrected to read as follows:

Section 71.171 Designation

* * * * *

AEA VA CZ Chincoteague, VA [Removed]

* * * * *

AEA VA CZ Wallops Island, VA [Added]

NASA Wallops Flight Facility, Wallops Island, VA (lat. 37°56'30"N., long. 75°27'44"W.)

Snow Hill VORTAC (lat. 38°03'24"N., long. 75°27'50"W.)

That airspace extending upward from the surface to 2,500 feet MSL within a 4.4-mile radius of NASA Wallops Flight Facility and within 1.8 miles each side of the Snow Hill, MD, VORTAC 181° radial, extending from the 4.4-mile radius to 2.2 miles south of the VOR. This control zone shall be effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Jamaica, New York, on December 22, 1992.

Gary W. Tucker,

Manager, Air Traffic Division.

[FR Doc. 93–810 Filed 1–13–93; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 92–AWP–16]

Enlargement of the Riverside, CA 700 Foot Mean Sea Level (MSL) and Above Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action enlarges the Riverside, CA 700 foot MSL and above transition area. This enlargement will provide controlled airspace for aircraft executing a missed approach for the Very High Frequency Omnidirectional Range-B (VOR–B) Standard Instrument Approach Procedure (SIAP) to the Riverside Municipal Airport, CA.

EFFECTIVE DATE: 0901 UTC, April 1, 1993.

FOR FURTHER INFORMATION CONTACT: Gene Enstad, Airspace Specialist, System Management Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 297–0010.

SUPPLEMENTARY INFORMATION:

History

On September 29, 1992, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to enlarge the Riverside, CA 700 foot MSL and above transition area (57 FR 44712). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments were received. The coordinates in the proposal were North American Datum 27; however, these coordinates have been updated to North American Datum 83. Transition areas are published in section 71.181 of FAA Order 7400.7A, dated November 2, 1992, and effective November 27, 1992, which is incorporated by reference in 14 CFR 71.1. The transition areas listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations enlarges the Riverside, CA transition area. This transition area will provide controlled airspace for aircraft executing a missed approach for the VOR–B SIAP to the Riverside Municipal Airport, CA. The additional 700 foot MSL and above transition area encompasses about five square miles. In addition, a minor latitude and longitude typographical error in defining the Riverside, CA 700 foot and above transition area was made in the Notice of Proposed Rulemaking and is corrected in this final rule.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Incorporation by reference, Transition areas.

Adoption of the Amendment

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

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS, JET ROUTES, AND AREA HIGH ROUTES

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7A, Compilation of Regulations, dated November 2, 1992, and effective November 27, 1992, is amended as follows:

Section 71.181 Designation of Transition Areas

* * * * *

AWP CA TA Riverside CA [Revised]

That airspace extending upward from 700 feet above the surface bounded by a line beginning at lat. 34°10'00"N, long. 117°59'03"W; to lat. 34°10'00"N, long. 117°01'03"W; to lat. 33°50'00"N, long. 117°01'03"W; to lat. 33°42'30"N, long. 116°56'33"W; to lat. 33°38'00"N, long. 117°09'03"W; to lat. 33°43'00"N, long. 117°15'03"W; to lat. 33°43'00"N, long. 117°20'03"W; to lat. 33°42'00"N, long. 117°20'03"W; to lat. 33°42'00"N, long. 117°25'03"W; to lat. 33°39'00"N, long. 117°25'03"W; to lat. 33°39'00"N, long. 117°30'03"W; to lat. 33°46'00"N, long. 117°45'03"W; to lat. 33°56'00"N, long. 117°53'03"W; to lat. 33°56'00"N, long. 117°59'03"W, thence to the point of beginning. That airspace extending upward from 1,200 feet above the surface bounded by a line beginning at lat. 34°30'00"N, long. 117°43'03"W; thence east along lat. 34°30'00"N, to the southeast boundary of V–21, thence along the southeast boundary of V–21 to long. 116°30'03"W, thence direct to lat. 34°40'30"N, long. 116°29'43"W; to lat. 34°30'00"N, long. 116°26'23"W; to lat. 34°16'00"N, long. 116°18'03"W; to lat. 33°30'00"N, long. 116°18'03"W; thence westerly along lat. 33°30'00"N, to long. 117°30'03"W; to lat. 33°39'00"N, long. 117°30'03"W; to lat. 33°46'00"N, long. 117°45'03"W; to lat. 33°56'00"N, long. 117°53'03"W; to lat. 33°56'00"N, long. 117°59'03"W; to lat. 34°10'00"N, long. 117°59'03"W; to lat. 34°10'00"N, long. 117°43'03"W, thence to the point of beginning.

* * * * *

Issued in Los Angeles, California, on December 11, 1992.

Richard R. Lien,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 93–885 Filed 1–13–93; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 558

Animal Drugs, Feeds, and Related Products; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for a new animal drug application (NADA) from Agri Beef Co. to Elanco Animal Health, A Division of Eli Lilly and Co.

EFFECTIVE DATE: January 14, 1993.

FOR FURTHER INFORMATION CONTACT: Benjamin Puyot, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–295–8646.

SUPPLEMENTARY INFORMATION: Agri Beef Co., 2201 North 20th St., P. O. Box 47, Nampa, ID 83653, has informed FDA that it has transferred ownership of, and all rights and interests in, approved NADA 140–939 for Monensin/Tylosin liquid B feed to Elanco Animal Health, A Division of Eli Lilly and Co., Lilly Corporate Center, Indianapolis, IN 46285. Accordingly, the agency is amending the regulations in 21 CFR 558.355(f)(3)(ix) to reflect the change of sponsor. Also, FDA is amending the regulations in 21 CFR 510.600(c)(1) and (c)(2) by removing Agri Beef Co. because the firm is no longer the sponsor of any approved NADA's.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 558 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 376).

§ 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in the table in paragraph (c)(1) by removing the entry "Agri Beef Co." and in the table in paragraph (c)(2) by removing the entry "022941".

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

3. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

§ 558.355 [Amended]

4. Section 558.355 *Monensin* is amended in paragraph (f)(3)(ix) by removing the number "022941" and adding in its place "000986".

Dated: January 7, 1993.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 93–803 Filed 1–13–92; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

Schedules of Controlled Substances: Placement of Cathinone and 2,5-Dimethoxy-4-ethylamphetamine into Schedule I

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Final rule.

SUMMARY: With the issuance of this final rule, the Administrator of the Drug Enforcement Administration (DEA) places cathinone and 2,5-dimethoxy-4-ethylamphetamine (DOET) into Schedule I of the Controlled Substances Act (CSA) (21 U.S.C. 801 et seq.). As a result of this rule, the regulatory controls and criminal sanctions of a Schedule I substance under the CSA will be applicable to the manufacture, distribution, and possession of cathinone and DOET. This action is taken to enable the United States to meet its obligations under the Convention on Psychotropic Substances.

EFFECTIVE DATE: February 16, 1993.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307–7183.

SUPPLEMENTARY INFORMATION: Cathinone and DOET are psychoactive substances which are regulated under Schedule I of the United Nations Convention on Psychotropic Substances, 1971. The United States is a signatory to that Convention. The CSA requires the Secretary of the Department of Health and Human Services (DHHS), should he concur with the scheduling decision of the United Nations Commission on Narcotic Drugs and should he determine that control measures under the CSA are not adequate to meet the requirements of the Convention, to recommend to the Attorney General that he initiate proceedings for scheduling the substance [see 21 U.S.C. 811(d)(3)(B)]. By letter dated July 2, 1987, the Assistant Secretary for Health, acting on behalf of the Secretary, recommended to the Administrator of the DEA that he initiate scheduling actions under the CSA to assure compliance with the international requirements. The Administrator proposed placing cathinone and DOET into Schedule I of the CSA in a notice which was published in the Federal Register (52 FR 41736, October 30, 1987). In response to the proposal, an individual requested a hearing if the placement of cathinone and DOET into Schedule I would affect his religious use of a number of psychoactive substances. Because the comment was not filed in a timely manner and the request for a hearing was not made in accordance with the procedures set forth in 21 CFR 1308.45, the request was denied.

The Administrator, by letter of December 13, 1988, requested a scientific and medical evaluation of the Assistant Secretary for Health [see 21 U.S.C. 811(b)]. The Assistant Secretary responded by letter of November 5, 1992 and recommended that cathinone and DOET be placed into Schedule I. Enclosed with the letter were documents which were entitled "Basis for the Recommendation for Control of Cathinone into Schedule I of the Controlled Substances Act" and "Basis for the Recommendation for Control of 2,5-Dimethoxy-4-ethylamphetamine (DOET) into Schedule I of the Controlled Substances Act". Each document presented an evaluation and scheduling recommendation which were based on a review of the factors which the CSA requires the Attorney General and the Secretary to consider [see 21 U.S.C. 811(c)]. The Assistant Secretary found that because cathinone's abuse potential is similar to those of the stimulants, amphetamine and methamphetamine, both of which have high potentials for abuse and are

controlled in Schedule II of the CSA, and because cathinone has not been accepted for medical use in treatment in the United States, cathinone should be controlled in Schedule I. In relation to DOET, the Assistant Secretary found that because its abuse potential is similar to that of the hallucinogens, mescaline, 2,5-dimethoxy-4-methylamphetamine and 2,5-dimethoxyamphetamine all of which are controlled in Schedule I of the CSA, 2,5-dimethoxy-4-ethylamphetamine (DOET) should be controlled similarly in Schedule I.

Cathinone is the major psychoactive component of the plant *Catha edulis* (khat). The young leaves of khat are chewed for a stimulant effect. Enactment of this rule results in the placement of any material which contains cathinone into Schedule I. When khat contains cathinone, khat is a Schedule I substance. During either the maturation or the decomposition of the plant material, cathinone is converted to cathine, a Schedule IV substance. In a previously published final rule, the Administrator stated that khat will be subject to the same Schedule IV controls as cathine, (see 53 FR 17459, May 17, 1988). When khat does not contain cathinone, but does contain cathine, khat is a Schedule IV substance.

While the clandestine synthesis of cathinone has not been encountered by the DEA, the illicit synthesis of the methyl analog, methcathinone, has been encountered at twelve clandestine laboratories. Methcathinone was placed into Schedule I on May 1, 1992 pursuant to 21 U.S.C. 811(h) (see 57 FR 18825, May 1, 1992). In January 1992, the DEA encountered a clandestine laboratory which had manufactured DOET.

Based on the information gathered and reviewed by the DEA, DHHS and the recommendation of the Assistant Secretary for Health, the Administrator of the DEA, pursuant to the provisions of 21 U.S.C. 811(a), finds that:

(A) Cathinone and DOET each have a high potential for abuse.

(B) Cathinone and DOET have no currently accepted medical use in treatment in the United States.

(C) There is a lack of accepted safety for use of cathinone or DOET under medical supervision.

The above findings are consistent with placement of cathinone and DOET into Schedule I of the CSA.

Regulations that are effective on and after February 16, 1993, and imposed on cathinone and DOET are as follows:

1. *Registration.* Any person who manufactures, distributes, delivers, imports or exports cathinone or DOET or who engages in research or conducts instructional activities with respect to these substances, or who proposes to engage in such activities, must be registered to conduct such activities in accordance with parts 1301 and 1311 of title 21 of the Code of Federal Regulations.

2. *Security.* Cathinone and DOET must be manufactured, distributed and stored in accordance with §§ 1301.71–1301.76 of title 21 of the Code of Federal Regulations.

3 *Labeling and packaging.* All labels and labeling for commercial containers of cathinone and DOET must comply with the requirements of §§ 1302.03–1302.05, 1302.07 and 1302.08 of title 21 of the Code of Federal Regulations.

4. *Quotas.* All persons required to obtain quotas for cathinone or DOET shall submit applications pursuant to §§ 1303.12 and 1303.22 of title 21 of the Code of Federal Regulations.

5. *Inventory.* Every registrant required to keep records and who possesses any quantity of cathinone or DOET shall take an inventory pursuant to §§ 1304.11–1304.19 of title 21 of the Code of Federal Regulations of all stocks of these substances on hand.

6. *Records.* All registrants required to keep records pursuant to §§ 1304.21–1304.27 of title 21 of the Code of Federal Regulations shall maintain such records on cathinone and DOET.

7. *Reports.* All registrants required to submit reports pursuant to §§ 1304.34–1304.37 of title 21 of the Code of Federal Regulations shall do so regarding cathinone and DOET.

8. *Order Forms.* All registrants involved in the distribution of cathinone or DOET must comply with the order form requirements of §§ 1305.01–1305.16.

9. *Importation and Exportation.* All importation and exportation of cathinone or DOET shall be in compliance with part 1312 of title 21 of the Code of Federal Regulations.

10. *Criminal Liability.* Any activity with respect to cathinone or DOET not authorized by, or in violation of, the CSA or the Controlled Substances Import and Export Act shall be unlawful.

Pursuant to 5 U.S.C. 605(b), the Administrator certifies that the placement of cathinone and DOET into Schedule I will have no impact upon small businesses or other entities whose interests must be considered under the Regulatory Flexibility Act (Pub. L. 96–354). This drug control action relates to the control of substances that have no legitimate use or manufacturer in the United States.

This action has been analyzed in accordance with the principles and criteria contained in E.O. 12612, and it has been determined that this matter does not have sufficient federalism implications to require the preparation of a Federalism Assessment.

In accordance with the provisions of 21 U.S.C. 811(d), this scheduling action is a formal rulemaking that is required by United States obligations under an international convention, namely the Convention on Psychotropic Substances, 1971. Such formal proceedings are conducted pursuant to the provisions of 5 U.S.C. 556 and 557 and, as such, have been exempted from the consultation requirements of Executive Order 12291 (46 FR 13193). Accordingly, this action is not subject to those provisions of E.O. 12778 which are contingent upon review by OMB. Nevertheless, the Administrator has determined that this is not a "major rule," as that term is used in E.O. 12291, and that it would otherwise meet the applicable standards of sections 2(a) and 2(b)(2) of E.O. 12778.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

Based upon the notification of the Secretary-General of the United Nations and in accordance with the recommendations of the Assistant Secretary for Health of the Department of Health and Human Services and under the authority vested in the Attorney General by 21 U.S.C. 811(a) and delegated to the Administrator by the regulations of the Department of Justice (28 CFR 0.100), the Administrator hereby amends 21 CFR part 1308 as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

1. The authority citation for 21 CFR part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b) unless otherwise noted.

2. Section 1308.11 is amended by redesignating existing paragraphs (d)(3) through (d)(28) as (d)(4) through (d)(29) and adding new paragraph (d)(3) to read as follows:

* * * * *

§ 1308.11 Schedule I.

(d) * * *

(3) 2,5-dimethoxy-4-ethylamphetamine.....7399

Some trade or other names: DOET

* * * * *

3. Section 1308.11 is amended by redesignating paragraphs (f)(1) through (f)(4) as (f)(2) through (f)(5) and adding paragraph (f)(1) to read as follows:

§ 1308.11 Schedule I.

* * * * *

(f) * * *

(1) cathinone 1235

Some trade or other names: 2-amino-1-phenyl-1-propanone, alpha-aminopropiophenone, 2-aminopropiophenone, and norephedrone.

* * * * *

Dated: January 7, 1993.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 93–877 Filed 1–13–93; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Part 990

[Docket No. N–93–3560; FR 3088–N–04]

Low-Income Public Housing—Project-Based Accounting

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Request for comment on estimated reporting and recordkeeping burden.

SUMMARY: This request for public comment is related to the final rule on project-based accounting for low-income public housing that was published on December 23, 1992. It deals with the subject of the burden of information collections contained in that rule. The Department has not changed the burden estimate, but it is inviting further comment from the public.

DATES: Comments are now being accepted by OMB and HUD.

ADDRESSES: Interested persons are invited to respond to this notice by sending comments on the reporting and recordkeeping burden of the project-based accounting requirement, in accordance with 24 CFR part 990, subpart C, to both of the following persons: HUD Rules Docket Clerk, room 10276, Office of General Counsel, Department of Housing and Development, 451 Seventh Street SW., Washington, DC 20410–0500; and HUD Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street NW., Washington, DC 20503. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for inspection and copying during regular business hours (7:30 a.m.–5:30 p.m. Eastern Time) at the Seventh Street address.

FOR FURTHER INFORMATION CONTACT: Mr. John T. Comerford, Director, Financial Management Division, Office of Management Operations, Public and Indian Housing, room 4212, U.S. Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 708–1872 (voice) or (202) 708–0850 (TDD). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: In the final rule, published on December 23, 1992 (57 FR 61226), adding a subpart C to 24 CFR part 990, the Department mentioned that the estimated reporting and recordkeeping burden had been challenged by commenters. This Notice explains why the Department has not changed the burden estimate, while inviting further comment from the public.

Numerous objections were raised by commenters in response to the estimated reporting and recordkeeping burden of 1¼ hours per PHA for providing year-end information by project. Commenters argued that project-based accounting (PBA) would increase staff hours tremendously, require computer hardware and software redesign, staff training time, additional staff for handling accounting and reporting detail, increase accounting and auditing fees, and require the hiring of consultants.

The respondents who raised objections to the estimate of burden hours, in HUD's view, have misinterpreted the extent of the intended impact of project-based accounting on the PHA accounting system. For example, respondents assumed that the PBA requirement imposed a mandatory framework of accounting or reporting that would require extensive revision of their existing accounting systems; that separate operating budgets and/or HUD reporting forms would have to be prepared and submitted by project; that separate General Ledgers would have to be maintained by project; that PBA meant the assignment of specific staff to individual projects which would either require the hiring of additional staff or result in idle time for existing staff; that operating subsidy and operating reserves would have to be calculated and maintained by project.

On the other hand, the estimate of burden hours was based on the assumption by the Department that many PHAs, particularly larger PHAs, have existing systems in place that provide for the accumulation and allocation of resources by management area; that little, if any, modification of existing systems would be required in order to further identify consolidated income/expense categories by project or cost center; that the only continuing additional time would be in the preparation of the required year-end information reports for the Board. The elimination in the final rule of the requirement to allocate indirect income/expense among projects/cost centers further ensures that the impact on existing accounting systems will be minimal, even for smaller PHAs. Therefore, the Department did not change the number of estimated burden hours because we believe that, on the average, the ongoing additional time required by the PHA will be limited to preparing the annual project/cost center reports for distribution to the Board.

The Office of Management and Budget is currently reviewing the reporting and recordkeeping burden imposed by the rule and would welcome additional comments concerning the new requirements by housing authorities, and entities that work with them, that have had experience with these new requirements. HUD plans to re-examine the burden estimates after the new PBA requirement is operational, and, therefore, also welcomes comments concerning the burden experienced by housing authorities, especially specific descriptions of the steps taken by the housing authorities, the type of staff or consultant employed for the task, and the time actually taken by each type of staff member to implement the requirements for each project or cost center.

Dated: January 5, 1993.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 93–945 Filed 1–13–93; 8:45 am]

BILLING CODE 4210–33–M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2602

Ethical Conduct of Employees

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation ("PBGC") is repealing provisions of its regulations on the ethical conduct of employees (part 2602, subpart A). Most of the repealed provisions are superseded by Office of Government Ethics ("OGE") rules establishing uniform standards of conduct and financial disclosure requirements for executive branch employees. PBGC, in accordance with OGE guidance, is not repealing provisions of the regulations concerning clearance to engage in certain outside activities.

EFFECTIVE DATE: The removal of § 2602.20 through 2602.32 is effective October 5, 1992. All other amendments are effective February 3, 1993.

FOR FURTHER INFORMATION CONTACT: Holli Beckerman Jaffe, Attorney, Office of the General Counsel (Code 22500), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006; 202–778–8864 (202–778–1958 for TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: In 1977, the Pension Benefit Guaranty Corporation ("PBGC") issued part 2602 of the regulations (29 CFR part 2602, 42 FR 43066), now designated as Subpart A (57 FR 45713, October 5, 1992), primarily pursuant to Executive Order 11222 (30 FR 6469) and regulations issued by the Civil Service Commission (5 CFR 735.104, 33 FR 12487). Executive Order 12674 (April 12, 1989), as modified by Executive Order 12731 (October 17, 1990), revoked Executive Order 11222 (section 501(a)) and directed the Office of Government Ethics ("OGE") to "establish a single, comprehensive, and clear set of executive-branch standards of conduct that shall be objective, reasonable, and enforceable" (section 201).

OGE has now issued 5 CFR part 2635, Standards of Ethical Conduct for Employees of the Executive Branch (57 FR 35006, August 7, 1992). These standards of conduct, when they become effective on February 3, 1993, supersede agency regulations promulgated pursuant to 5 CFR part 735 and authorize agencies to issue (jointly with OGE) "supplemental agency regulations which the agency determines are necessary and appropriate, in view of its programs and operations, to fulfill the purposes" of part 2635 (§ 2635.105(a), 57 FR 35043). Part 2635 does not supersede and its requirements for supplemental agency regulations do not apply to regulations that an agency has authority, independent of part 2635, to issue (§ 2635.105(c)(3), 57 FR 35044).

The PBGC is amending part 2602 by repealing provisions of subpart A that will be superseded when OGE's regulations take effect (February 3, 1993) (removal of §§ 2602.3(c) (2) and (3), 2602.4 through 2602.7, 2602.8 (a) through (c), 2602.9 (a)(2) through (c), 2602.10 through 2602.13, and 2602.17 through 2602.19 of the regulations). The PBGC is considering regulations that will supplement subpart H of part 2635 (Outside Activities) (57 FR 35061–66) by requiring employees to obtain prior approval of certain outside activities. Hence, it is not removing paragraphs (d) and (e) of § 2602.8 (Outside employment and other activity) of the regulations. As permitted by § 2635.803 (Prior approval for outside employment and activities) (57 FR 35062), the above-listed paragraphs of the PBGC's regulation will remain in effect for one year after the effective date of OGE's final rule (February 3, 1993) or until the issuance of PBGC supplemental agency regulations, whichever occurs first. The PBGC is removing paragraph (a)(1) of § 2602.9 (Financial interests) of the regulations. However, the PBGC will be considering whether to issue supplemental agency regulations addressing the holding and acquiring of specific financial interests, as provided in paragraph (a) of § 2635.403 (Prohibited financial interests) of OGE's regulations (57 FR 35053). The PBGC will issue any supplemental regulations with OGE in a separate rulemaking.

In addition, although part 2635 does not supersede all provisions of § 2602.3 (Counseling service) of the regulations, the PBGC is removing the entire section as unnecessary because the information and instructions contained therein regarding the ethnics counseling service will be distributed to its employees pursuant to OGE's final rule establishing new subpart G of 5 CFR part 2638, Executive Agency Ethics Training Programs (57 FR 11886, April 7, 1992). Section 2602.3 will therefore be superfluous.

The PBGC also is removing § 2602.16 of the regulations as unnecessary. This section addresses political activities that are permitted and prohibited under federal law, summarizing applicable requirements that appear in federal statutes and regulations. The PBGC has not prohibited or limited employee participation in any activity that is permitted under 5 CFR 733.111(a), the Office of Personnel Management's ("OPM's") regulation on permissible activities (*e.g.*, displaying a political picture, sticker, badge, or button).

OGE also has issued 5 CFR part 2634, Financial Disclosure, Qualified Trusts, and Certificates of Divestiture For Executive Branch Employees (57 FR 11800, April 7, 1992). Effective October 5, 1992, these regulations superseded the current executive branch confidential reporting regulation at 5 CFR part 735, subpart D and § 735.106 and agencies' implementing regulations. Therefore, the PBGC is further amending part 2602 by removing §§ 2602.20 through 2602.32 (Statement of Employment and Financial Interests) of the regulations and appendix A (Identification of Positions the Incumbents of Which File Financial Statements) thereto.

The PBGC has concluded that with the removal of the provisions discussed above, §§ 2602.1 (Purpose and scope) and 2602.2 (Definitions) of the regulations no longer are necessary. Therefore, it also is removing these sections.

Sections 2602.14 (Gambling, betting, and lotteries) 2602.15 (General conduct prejudicial to the Government) of the regulations are not superseded by part 2635 or any other OGE regulation. However, pursuant to Executive Order 12674, OPM has issued a final rule to complement part 2635 by establishing executive branch-wide standards in these areas that will be enforceable by the employing agency (57 FR 57433, November 30, 1992). Accordingly, the PBGC is removing §§ 2602.14 and 2602.15.

This rule relates to agency management and personnel (5 U.S.C. 553(a)(2)). As such, the notice of proposed rulemaking and delayed effective date requirements of the Administrative Procedure Act do not apply (5 U.S.C. 553 (b) and (d)).

List of Subjects in 29 CFR Part 2602

Conflict of interests, Government employees, Penalties, Political activities (Government employees), Production and disclosure of information, Testimony.

For the reasons set forth above, 29 CFR part 2602 is amended as follows:

PART 2602—[AMENDED]

1. The authority citation for Part 2602 is revised to read as follows:

Authority: 29 U.S.C. 1302(b); E.O. 11222, 30 FR 6469; 5 CFR 735.104.

Subpart A of Part 2602—[Amended]

2. Subpart A of part 2602 is amended by removing the undesignated center heading "General", §§ 2602.1 through 2602.5, the undesignated center heading "Standards of Conduct", §§ 2602.6 and 2602.7, paragraphs (a) through (c) of § 2602.8, and §§ 2602.9 through 2602.19.

3. Subpart A of part 2602 is further amended by removing the undesignated center heading "Statements of Employment and Financial Interests", §§ 2602.20 through 2602.32 and appendix A.

Issued in Washington, DC this 8th day of January, 1993.

James B. Lockhart III,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 93–730 Filed 1–13–93; 8:45 am]

BILLING CODE 7708–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 913

Illinois Abandoned Mine Land Reclamation Plan

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval of a proposed amendment to the Illinois Abandoned Mine Land Reclamation Plan (hereinafter referred to as the Illinois AMLR Plan) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA), Public Law 95–87, 30 U.S.C. 1231 *et seq.*, as amended.

The amendment pertains to changes to SMCRA made by the Abandoned Mine Land (AML) Reclamation Act of 1990, Public Law 101–508, which was enacted November 5, 1990. The amendment is intended to revise the Illinois AMLR Plan to address the changes to SMCRA.

EFFECTIVE DATE: January 14, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Fulton, Director, Office of Surface Mining Reclamation and Enforcement, Springfield Field Office, 511 West Capitol, suite 202, Springfield, Illinois 62704, Telephone (217) 492–4495.

SUPPLEMENTARY INFORMATION:

I. Background on the Illinois Program

Title IV of SMCRA established an Abandoned Mine Land Reclamation (AMLR) program for the purposes of reclaiming and restoring lands and water resources adversely affected by past mining. This program is funded by a reclamation fee imposed upon the production of coal. As enacted in 1977, lands and waters eligible for reclamation were those that were mined or affected by mining and abandoned or left in an inadequate reclamation status prior to August 3, 1977, and for which there was no continuing reclamation responsibility under State or Federal law. The AML Reclamation Act of 1990, (Pub. L. 101–508, title IV, subtitle A, Nov. 5, 1990, enacted Nov. 5, 1990) amended SMCRA, 30 U.S.C. 1231 *et seq.*, to provide changes in the eligibility of project sites for AML expenditures. Title IV of SMCRA now provides for reclamation of certain mine sites where the mining occurred after August 3, 1977. These include interim program sites where bond forfeiture proceeds were insufficient for adequate reclamation and sites affected any time between August 4, 1977, and November 5, 1990, for which there were insufficient funds for adequate reclamation due to the insolvency of the bond surety. Title IV provides that a state with an approved AMLR program has the responsibility and primary authority to implement the program.

The Secretary of the Interior approved the Illinois AMLR Plan on June 1, 1982. Information pertinent to the general background of the Illinois AMLR Plan submission, as well as the Secretary's findings and the disposition of comments can be found in the June 1, 1982, **Federal Register** (47 FR 23886). Subsequent actions concerning plan amendments are identified at 30 CFR 913.25.

The Secretary adopted regulations at 30 CFR part 884 that specify the content requirements of a State reclamation plan and the criteria for plan approval. The regulations provide that a State may submit to the Director proposed amendments or revisions to the approved reclamation plan. If the amendments or revisions change the scope followed by the State in the conduct of its reclamation program, the Director must follow the procedure set forth in 30 CFR 884.14 in approving or disapproving an amendment or revision.

II. Submission of Amendment

By letter dated August 13, 1992 (Administrative Record No. IL–400–AML), the Illinois Abandoned Mined Lands Reclamation Council (Council) submitted to OSM a proposed amendment to the Illinois AMLR Plan on its own initiative, as provided for by 30 CFR 884.15. The proposed amendment consists of revisions to the Illinois Abandoned Mined Lands and Water Reclamation Act (State Act), Ill. Rev. Stat. ch. 96½, par. 8001.01–8003.08. The proposed revisions will be enacted through Illinois House Bill 3773, which passed both chambers of the Illinois General Assembly and was signed into law by the Governor of Illinois on September 1, 1992. Specifically, the State Act is revised by changing section 1.03—Definitions, and adding new section 2.13—Interim Program and Insolvent Surety Sites.

OSM announced receipt of the proposed amendment in the October 28, 1992, **Federal Register** (57 FR 48757) and in the same notice opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period ended on November 27, 1992.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR part 884, are the Director's findings concerning the proposed amendment to the Illinois plan. Any minor revisions not specifically discussed below are found to be no less stringent than SMCRA and no less effective than the Federal regulations.

The legal opinion of the chief legal officer of the Council submitted by letter dated October 19, 1992, states that the proposed amendment provides the State with all necessary legal power and authority to accomplish reclamation of insolvent surety and/or interim program sites in accordance with title IV of SMCRA (Administrative Record No. IL–412–AML). Therefore, the Director finds in accordance with 30 CFR 884.14(a)(3) that Illinois has the necessary legal authority to carry out the provisions of this proposed amendment.

1. Section 1.03—Definitions

Illinois is revising section 1.03 of the State Act to add the following language to the definition of "abandoned lands":

"Abandoned lands also means, in the appropriate context, lands and waters eligible for reclamation under section 2.11 (Non-coal Reclamation) and section 2.13 (Interim Program and Insolvent Surety Sites) of this Act." The general Federal counterpart to Illinois' definition of "abandoned lands" is section 404 of SMCRA. The Director finds the proposed revision at section 1.03(1) to be consistent with the amendments to SMCRA added as a result of the AML Reclamation Act of 1990.

2. Section 2.13—Interim Program and Insolvent Surety Sites

Illinois is adding section 2.13 to the State Act to include those post-1977 abandoned mine lands and waters made eligible for reclamation by title IV of SMCRA as amended by the AML Reclamation Act of 1990. The new section authorizes and empowers the Council to enter and perform reclamation or drainage abatement on the eligible lands and waters within unreclaimed sites that were mined for coal or were affected by such mining, wastebanks, coal processing, or other coal mining processes and left in an inadequate reclamation status after August 3, 1977, if: (1) The surface coal mining operation occurred during the period beginning August 4, 1977, and ending on June 1, 1982, and any funds for reclamation or abatement which are available from any source are not sufficient to provide for adequate reclamation or abatement; or (2) the surface coal mining operation occurred during the period beginning on August 4, 1977, and ending on November 5, 1990, and the surety of the mine operator became insolvent during that period and as of November 5, 1990, funds immediately available from any source are not sufficient to provide for adequate reclamation or abatement.

Section 402(g)(4)(B) of SMCRA provides for the expenditure of funds for the reclamation or drainage abatement of sites if the surface coal mining operation occurred during the period beginning on August 4, 1977, and either: (a) Ending on or before the date of approval of the State program and any funds for reclamation or abatement are not sufficient to provide for adequate reclamation or abatement, or (b) ending on or before November 5, 1990, and during which period the surety of the mine operator became insolvent. The Director finds the proposed amendment at section 2.13(a) no less stringent than the requirements of section 402(g)(4)(B) of SMCRA.

Section 2.13 also requires the Council to follow the priorities specified in section 2.03(a) (1) and (2) when determining which site to reclaim. Priority (1) is the protection of public health, safety, general welfare, and property from extreme danger of adverse effects of coal mining practices. Priority (2) is the protection of public health, safety, and general welfare from adverse effects of coal mining practices. The Council is also required to ensure that the reclamation priority of sites reclaimed is the same or more urgent than the reclamation priority for eligible lands and waters that were abandoned or left in an inadequate reclamation status before August 3, 1977. In section 2.03 of the current State Act, the Council is authorized to establish additional criteria including but not limited to the proximity of abandoned lands to municipalities, residential areas, and public facilities such as water supplies, parks and recreational areas. Section 2501.13(c) of Illinois' AML regulations also establishes criteria for sites identified as containing significant problem conditions, including, but not limited to, the proximity of the site to populated or public use areas.

Section 403(a)(1) of SMCRA defines a Priority I site as one where reclamation is needed to protect the public health, safety, general welfare, and property from extreme danger of adverse effects of coal mining practices. Section 403(a)(2) defines Priority II the same as Priority I except that it refers only to adverse effects of coal mining practices without the element of extreme danger. Section 402(g)(4)(C) of SMCRA requires that priority be given to those sites which are in the immediate vicinity of a residential area or which have an adverse economic impact upon a local community. The Director finds the proposed amendment at section 2.13(b), when read in conjunction with section 2.03 of the current State Act and section 2501.13(c) of the Illinois AML regulations, to be no less stringent than the requirements of sections 403(a) and 402(g) of SMCRA.

3. Section 2501—Eligible Lands and Waters

During a review of Illinois' AML regulations, it was determined that 62 IAC 2501.10 (Eligible Lands and Water) limits eligibility for reclamation activities with Federal funds to coal lands and water disturbed prior to August 3, 1977. While the existing regulations do not preclude the designation of additional eligible sites as defined by title IV of SMCRA, as amended, and the State Act, there is some ambiguity between the statute and existing regulations. Therefore, Illinois will be advised that upon final approval of the Federal Regulations required by the enactment of Public Law 101–508 for sites where the original surface coal mining operations occurred after August 3, 1977, the Illinois' AML regulation at 62 IAC 2501.10 may need to be amended to provide for the reclamation of interim program sites and of permanent program sites where the sureties are insolvent.

IV. Summary and Disposition of Comments

Public Comments

The public comment period and opportunity to request a public hearing announced in the October 28, 1992, **Federal Register** (57 FR 48757) ended on November 27, 1992. No comments were received and the scheduled public hearing was not held as no one requested an opportunity to provide testimony.

Agency Comments

Pursuant to section 503(b) of SMCRA and the implementing regulations at 30 CFR 732.17(h)(11)(i), comments were solicited from various Federal agencies with an actual or potential interest in the Illinois program. No comments were received.

V. Director's Decision

Based on the above findings, the Director is approving the program amendment to the Illinois AMLR Plan submitted by Illinois on August 13, 1992.

The Federal rules at 30 CFR part 913 codifying decisions concerning the Illinois program are being amended to implement this decision. This amendment to the Federal rules is being made effective immediately to expedite the State program amendment process and to encourage states to bring their programs in conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

EPA Concurrence

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the Environmental Protection Agency (EPA) with respect to any provisions of a state program amendment which relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). The Director has determined that this amendment contains no such provisions and the EPA commented that the proposed amendment is unlikely to impact any of its program areas.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM review as a program amendment. Thus, any changes to a State program are not enforceable

until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved programs. In his oversight of the Illinois program, the Director will recognize only the statutes, regulations, and other materials approved by him together with any consistent implementing policies, directives and other materials, and will require the enforcement by Illinois of only such provisions.

VI. Procedural Determinations

Executive Order 12291

On March 30, 1992, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions related to approval or disapproval of State and Tribal abandoned mine land reclamation plans and revisions thereof. Therefore, preparation of a regulatory impact analysis is not necessary and OMB regulatory review is not required.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State and Tribal abandoned mine land reclamation plans and revisions thereof since each such plan is drafted and adopted by a specific State or Tribe, not by OSM. Decisions on proposed State and Tribal abandoned mine land reclamation plans and revisions thereof submitted by a State or Tribe are based on a determination of whether the submittal meets the requirements of title IV of SMCRA (30 U.S.C. 1231–1243) and the Federal regulations at 30 CFR Parts 884 and 888.

National Environmental Policy Act

No environmental impact statement is required for this rule since agency decisions on proposed State and Tribal abandoned mine land reclamation plans and revisions thereof are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department of the Interior (516 DM 6, appendix 8, paragraph 8.4B(29)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements established by SMCRA or previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions in the analyses for the corresponding Federal regulations.

List of Subjects in 30 CFR Part 913

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 2, 1992.

David G. Simpson,

Acting Assistant Director, Eastern Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 913—ILLINOIS

1. The authority citation for part 913 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. In § 913.25, a new paragraph (d) is added to read as follows:

§ 913.25 Approval of abandoned mine land reclamation plan amendments.

* * * * *

(d) The Illinois Abandoned Mine Land Reclamation Plan amendment submitted on August 13, 1992, is approved effective January 14, 1993.

[FR Doc. 93–861 Filed 1–13–93; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 914

Indiana Regulatory Program Amendment

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval of proposed amendments to the Indiana permanent regulatory program (hereinafter referred to as the Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment (Program Amendment Number 92–6) consists of revisions to Indiana's Surface Coal Mining and Reclamation Statute (IC 13–4.1) made during the second regular session of the Indiana General Assembly (1992) under House Enrolled Act (HEA) No. 1298. The revisions concern a newly enacted State reclamation fee, and changes to the Small Operators Assistance Program raising the qualifying annual tonnage from 100,000 tons to 300,000 tons. The proposed changes are intended to incorporate the additional flexibility afforded by the revised Federal regulations.

EFFECTIVE DATE: January 14, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Roger W. Calhoun, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, 575 North Pennsylvania Street, room 301, Indianapolis, IN 46204, Telephone (317) 226–6166.

SUPPLEMENTARY INFORMATION:

I. Background on the Indiana Program

On July 29, 1982, the Indiana program was made effective by the conditional approval of the Secretary of the Interior. Information pertinent to the general background on the Indiana program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Indiana program can be found in the July 26, 1982 **Federal Register** (47 FR 32107). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 914.10, 914.15, and 914.16.

II. Submission of the Amendment

By letter dated July 16, 1992 (Administrative Record No. IND–1106), the Indiana Department of Natural Resources (IDNR) submitted proposed Program Amendment Number 92–6 to the Indiana program at Indiana Code (IC) 13–4.1. The proposed amendment is part of Indiana's 1992 House Enrolled Act No. 1298. The amendment: (1) Adds a new section IC 13–4.1–3–2(c)

concerning a reclamation fee for operators of underground coal mining operations with no support facilities located within Indiana but producing coal in Indiana; (2) changes IC 13–4.1–3–3(c) and IC 13–4.1–3–3.5(a)(1) and (a)(5) concerning Indiana's Small Operators Assistance Program (SOAP) provisions; and (3) repeals IC 13–4.1–1–1.

HEA 1298 contains other provision changes which are not submitted as State program amendments. The changes at IC 13–4.1–6–9(e) and IC 13–4.1–15–1(b) merely clarify existing Indiana program provisions and procedures and the new language does not constitute a change which needs to be submitted as a State program amendment (IND–1072 and IND–1145). The changes at IC 13–7–8.6–5.3, IC 13–7–16.5–9, IC 13–8–5–9, and IC 13–8–10–16 do not pertain to the Indiana program.

OSM announced receipt of the proposed amendment in the October 28, 1992, **Federal Register** (57 FR 48761), and, in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The comment period closed on November 27, 1992. The scheduled public hearing was not held as no one requested an opportunity to provide testimony.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment to the Indiana program. Revisions which are not discussed below concern nonsubstantive wording changes, or revise paragraph notations to reflect organizational changes resulting from this amendment.

1 IC 13–4.1–3–2(c) Reclamation Fee

This new provision is added to provide that until July 1, 1995, all operators of underground coal mining operations with no support facilities located within Indiana, but producing coal from reserves located within Indiana shall pay to the Indiana Department of Natural Resources (IDNR) a reclamation fee. The proposed reclamation fee shall be one cent per ton of coal produced from Indiana, and the fee shall be deposited in the natural resources reclamation division fund. The natural resources reclamation division fund was previously established to receive money appropriated to administer the Indiana program.

SMCRA at section 507(a) and the Federal regulations at 30 CFR 777.17 provide that an application for a surface coal mining and reclamation permit shall be accompanied by a fee determined by the regulatory authority. Such fee may be less than, but shall not exceed, the actual or anticipated cost of reviewing, administering, and enforcing the permit. The Federal provisions also provide that the regulatory authority may develop procedures to allow the fee to be paid over the term of the permit. The Director finds that the proposed fee is consistent with and no less stringent than SMCRA at section 507(a) and no less effective than the Federal regulations at 30 CFR 777.17.

2. IC 13–4.1–3–3(c) Small Operators Assistance Program (SOAP)

Indiana proposes to amend IC 13–4.1–3–3(c) consistent with the change made to section 507(c) of SMCRA by section 6011 of the Federal Omnibus Budget Reconciliation Act of 1990. Section 6011 of the Federal Omnibus Budget Reconciliation Act revises section 507(c) of SMCRA, effective October 1, 1991, to increase from 100,000 tons to 300,000 tons the maximum annual coal production under which a mine operator is eligible for participation in the SOAP program. Indiana is proposing to make a corresponding change in the SOAP eligibility tonnage figures in the Indiana regulations. Indiana proposes to substitute the 300,000 ton eligibility limit for the existing 100,000 ton eligibility limit.

While the State's proposed amendment is in accordance with section 507(c) of SMCRA, as amended by the Federal Omnibus Budget Reconciliation Act of 1990, the Federal regulations at 30 CFR 795.6(a)(2) still provide for a production level of 100,000 tons with respect to operator eligibility under the SOAP program. Thus, there appears to be an inconsistency between the Indiana regulation and the Federal regulation. However, section 507(c) of SMCRA, as amended by the 1990 Act, supersedes in part 30 CFR 795.6(a)(2) to the extent that SOAP applicants may receive grants if their probable total and actual production from all locations during any 12 month period does not exceed 300,000 tons.

Therefore, the Director finds the State's proposal to be no less effective than 30 CFR 795.6(a)(2) as superseded in part by amended section 507(c) of SMCRA.

3. IC 13–4.1–3–3.5(a) (1) and (5) SOAP

Indiana proposes to amend subsections (a) (1) and (5) by changing the cited production levels of 100,000 tons to 300,000 tons with respect to the production limits that must be observed in order for the applicant and/or the applicant's successor to avoid liability for reimbursing the IDNR for costs of laboratory services performed pursuant to IC 13–4.1–3–3(c). The proposed amendment is in accordance with the revision made by Section 6011 of the Federal Omnibus Budget Reconciliation Act of 1990 to section 507(c) of SMCRA in increasing the production level which the operator must meet to be eligible to participate in SOAP. However, in determining applicant liability, the Indiana proposal does not consider those applicants whose eligibility was determined under the 100,000-ton production level.

The Federal regulations at 30 CFR 795.12(a)(2) still provide for a 100,000-ton production level in determining an operator's liability. OSM is proposing to amend its regulations regarding applicant liability at 30 CFR 795.12(a)(2) by deleting reference to the 100,000-ton provision and adding language which refers to the coal tonnage governing SOAP eligibility in effect at the time assistance was approved, thereby defining a transition phase keyed to the time an operator is approved for assistance. In its proposed rule, OSM has indicated its willingness to consider comments on alternatives other than its proposal.

In order not to unduly delay the State's implementation of the new production levels for SOAP eligibility, the Director is approving the State's proposed amendment to the regulations with the understanding that reference to the 300,000-ton production level in determining applicant liability refers to those applicants whose eligibility for SOAP assistance is determined under the 300,000-ton production level effective with the publication of this final rule, and the liability of those applicants whose eligibility was determined under the 100,000-ton production level will continue to be based on 100,000 tons. The Director's approval is further based on the understanding that further amendment to the State's regulations may be required when OSM issues a final notice regarding its changes to 30 CFR part 795.

4. IC 13–4.1–1–1 Legislative Findings

Indiana proposes to delete IC 13–4.1–1–1 in its entirety. The deleted provisions are legislative findings which were incorporated in the Indiana program at its inception, and which are now considered to be outdated (Administrative Record Number IND–

1144). There are no Federal counterparts to the deleted legislative findings. However, the Director finds that the deletion of IC 13–4.1–1–1 does not render the Indiana program less stringent than SMCRA nor less effective than the Federal regulations.

IV. Summary and Disposition of Comments

Agency Comments

Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(11)(i), comments were solicited from various interested Federal agencies. No comments were received concerning the proposed amendments to the Indiana program.

Public Comments

The public comment period and opportunity to request a public hearing was announced in the October 28, 1992, **Federal Register** (57 FR 48761). The comment period closed on November 27, 1992. No comments were received during the comment period, and no one requested an opportunity to testify at the scheduled public hearing so no hearing was held.

V. Director's Decision

Based on the findings above, the Director is approving Indiana's program amendment number 92–6 as submitted by Indiana on July 16, 1992. However, as discussed in Finding 3 above, the approved program amendment does not apply to existing SOAP grantees who were qualified under the 100,000 ton criterion. The Federal regulations at 30 CFR part 914 codifying decisions concerning the Indiana program are being amended to implement this decision. Consistency of State and Federal standards is required by SMCRA.

EPA Concurrence

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the Environmental Protection Agency (EPA) with respect to any provisions of a State program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). The Director has determined that this amendment contains no provisions in these categories and that EPA's concurrence is not required. However, by letter dated September 29, 1992 (Administrative Record Number IND–1154), EPA concurred without comment.

VI. Procedural Determinations

Executive Order 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted the Office of Surface Mining Reclamation and Enforcement (OSM) an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs, actions and program amendments. Therefore, preparation of a regulatory impact analysis is not necessary and OMB regulatory review is not required.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of the Surface Mining Control and Reclamation Act (SMCRA) (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.13 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(c) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 9, 1992.

David G. Simpson,

Acting Assistant Director, Eastern Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 914—INDIANA

1. The authority citation for part 914 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. In § 914.15, paragraph (rr) is added to read as follows:

§ 914.15 Approval of regulatory program amendments.

* * * * *

(rr) The following amendment (Program Amendment Number 92–6) to the Indiana program as submitted to OSM on July 16, 1992, is approved, effective January 14, 1993: IC 13–4.1–3–2(c) concerning a one cent reclamation fee; IC 13–4.1–3–3(c) and IC 13–4.1–3–3.5(a) (1) and (5) which concern the maximum annual coal production under which a mine operator is eligible for participation in the Small Operators Assistance Program (SOAP); and the deletion of IC 13–4.1–1–1 concerning legislative findings.

[FR Doc. 93–863 Filed 1–13–93; 8:45 am]
BILLING CODE 4310–05–M

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30 CFR Part 935

Ohio Regulatory Program; Revision of Administrative Rule

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval of proposed Revised Program Amendment Number 57 to the Ohio permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment was initiated by Ohio and is intended to revise one rule in the Ohio Administrative Code to change the locations at which applicants must file copies of permit applications, revisions, and renewals in order to allow public inspection of those documents.

EFFECTIVE DATE: January 14, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Richard J. Seibel, Director, Columbus Field Office, Office of Surface Mining Reclamation and Enforcement, 2242 South Hamilton Road, room 202, Columbus, Ohio 43232; (614) 866–0578.

SUPPLEMENTARY INFORMATION:

I. Background on the Ohio Program

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Information on the general background of the Ohio program submission, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program, can be found in the August 10, 1982, **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Submission of Amendment

By letter dated May 12, 1992 (Administrative Record Number OH–1698), Ohio submitted proposed Program Amendment Number 57 to revise the Ohio program at Ohio Administrative Code (OAC) 1501:13–5–01(A)(4)(a). In this amendment, Ohio proposed to change the locations at which applicants must file copies of permit applications, revisions, and renewals in order to allow public inspection of those documents.

OSM announced receipt of the proposed amendment in the July 14, 1992, **Federal Register** (57 FR 31163), and, in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on August 13, 1992. The public hearing scheduled for August 10, 1992, was not held as no one requested an opportunity to testify.

In response to a comment made by the Soil Conservation Service of the United States Department of Agriculture (Administrative Record No. OH–1711), Ohio revised Program Amendment Number 57 and resubmitted the amendment by letter dated July 22, 1992 (Administrative Record No. OH–1760). In this revised amendment, Ohio proposed to change the priority order in which the three filing locations were listed at OAC 1501:13–5–01 paragraph (A)(4)(a) in the May 12, 1992, submittal.

OSM announced receipt of proposed Revised Program Amendment Number 57 in the September 23, 1992, **Federal Register** (57 FR 43954), and, in the same notice, opened the public comment period and provided for a public hearing on the adequacy of the proposed amendment. The comment period closed on October 8, 1992. The public hearing scheduled for October 5, 1992, was not held as no one requested an opportunity to testify.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment to the Ohio program.

Ohio is revising Ohio Administrative Code (OAC) 1501:13–5–01 paragraph (A)(4)(a) to read:

(a) The applicant shall make a full copy of the complete application for a permit, a significant permit revision, or a permit renewal available for the public to inspect and copy. This shall be done by filing copy of the application submitted to the Chief at the Division of Reclamation district office responsible for inspection of the proposed operation, or if no such office is maintained in the county where the mining is proposed to occur, the applicant shall file a copy of the application with the county recorder of than county or at the office of the Soil Conservation Service of the United States Department of Agriculture (SCS) located in the county where the mining is proposed to occur.

The current rule at OAC 1501:13–5–01(A)(4)(a) requires that coal mining permit applications, permit revisions and permit renewals be filed for public access with the county recorder where the mining is proposed, or if approved by the Chief, at the Division of Reclamation District office responsible for inspection of the proposed operation if it is determined that that office will be more accessible to local residents than the county courthouse. The proposed rule would make permit applications, revisions, and renewals available for public inspection at the Division of Reclamation office, county courthouse, or the SCS office. The proposed rule, therefore, adds an alternative filing location for accessibility by the public and changes the priority order of these public offices.

The counterpart Federal rule at 30 CFR 773.13(a)(2) states that the applicant shall file a full copy of the application for a permit, significant revision, or renewal of a permit with the recorder at the courthouse of the county where the mining is proposed to occur, or an accessible public office approved by the regulatory authority. The intent behind the local filing requirement is the accessibility to the local residents.

The proposed rule is similar to its Federal counterpart except that it adds the SCS as an alternative filing location. The SCS maintains an office in every county in Ohio thereby satisfying the accessibility requirement and fulfilling the intent of the Federal regulations. Therefore, the Director finds that the proposed rule is no less effective than the Federal regulations at 30 CFR 773.13(a)(2).

IV. Summary and Disposition of Comments

Public Comments

The public comment period and opportunity to request a public hearing announced in the July 14, 1992, **Federal Register** (57 FR 31163) closed on August 13, 1992. The public comment period was reopened again in the September 23, 1992, **Federal Register** (57 FR 43954) until October 8, 1992. Comments were received from the Ohio Historic Preservation Office (OHPO). The OHPO did not object to the proposed amendment. The scheduled public hearings were not held as no one requested an opportunity to provide testimony.

Agency Comments

Pursuant to section 503(b) of SMCRA and the implementing regulations at 30 CFR 732.17(h)(11)(i), comments were solicited from various Federal agencies with an actual or potential interest in the Ohio Program. The U.S. Army Corps of Engineers and the U.S. Department of Labor, Mine Safety and Health Administration, responded that they had no comments on the proposed amendment.

The SCS accepted the proposed amendment as written (Administrative

Record No. OH–1711 and OH–1770). However, the SCS recommended that the Soil and Water Conservation District office (SWCD) be identified as the location in which to file permit applications rather than the SCS. The SCS maintained that this would be appropriate since SCS programs and activities in Ohio are carried out through the local SWCD office. Ohio has considered SCS's comment, but has decided to use SCS as a filing location (Administrative Record No. OH–1797). The SWCD offices are jointly funded by the State of Ohio and individual counties. Since funding of these offices could vary from county to county, there is the possibility that certain offices could be eliminated or understaffed thereby reducing public accessibility to permit applications, revisions, and renewals. Ohio, therefore, has chosen the SCS rather than the SWCD as a filing location. As discussed above, the Director has determined that Ohio's selection of the SCS as an alternative filing location is no less effective than the Federal regulations.

V. Director's Decision

Based on the above findings, the Director is approving Ohio Revised Program Amendment Number 57, as submitted by Ohio on May 12, 1992, and revised and resubmitted by letter dated July 22, 1992.

The Federal regulations at 30 CFR part 935 codifying decisions concerning the Ohio program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to conform their programs with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

EPA Concurrence

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the Environmental Protection Agency (EPA) with respect to any provisions of a State program amendment which relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). The Director has determined that this amendment contains no such provisions and that EPA concurrence is, therefore, unnecessary. However, by letters dated July 24, 1992 (Administrative Record No. OH–1751) and September 29, 1992 (Administrative Record No. OH–1784), EPA submitted its concurrence without comment.

VI. Procedural Determinations

Executive Order No. 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs, actions and program amendments. Therefore, preparation of a regulatory impact analysis is not necessary and OMB regulatory review is not required.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the requirements of 30 CFR parts 730, 731 and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA [30 U.S.C. 1292(d)] provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507 *et seq.*

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 21, 1992.

Alfred Whitehouse,

Acting Assistant Director, Eastern Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 935—OHIO

1. The authority citation for part 935 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. In § 935.15, a new paragraph (kkk) is added to read as follows:

§ 935.15 Approval of regulatory program amendments.

* * * * *

(kkk) The following amendment to the Ohio regulatory program, as submitted to OSM on May 12, 1992, and revised and resubmitted on July 22, 1992, is approved, effective January 14, 1992. Revised Amendment Number 57 which consists of revisions to the Ohio Administrative Code (OAC) at 1501:13–5–01(A)(4) paragraph (a) concerning where applicants must file copies of permit applications, revisions, and renewals in order to allow public inspection of those documents.

[FR Doc. 93–868 Filed 1–13–93; 8:45 am]

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30 CFR Part 935

Ohio Permanent Regulatory Program; Evaluation of Revegetation Success

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval, with one exception, of

Revised Program Amendment No. 25 to the Ohio permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment consists of a revision to the Ohio Administrative Code (OAC) at 1501:13–9–15(J)(1) and documents which describe Ohio's proposed ocular inspection method. The proposed amendment will determine how the areal extent of vegetative ground cover will be evaluated when making performance bond release decisions on surface coal mined lands.

EFFECTIVE DATE: January 14, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Richard J. Seibel, Director, Columbus Field Office, Office of Surface Mining Reclamation and Enforcement, 2242 South Hamilton Road, room 202, Columbus, Ohio 43232; (614) 866–0578.

SUPPLEMENTARY INFORMATION:

I. Background on the Ohio Program

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Information on the general background of the Ohio program submission, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program, can be found in the August 10, 1982, **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Submission of Amendment

Pursuant to 30 CFR 732.17(f)(1), OSM sent Ohio a letter on November 6, 1985, notifying the State that certain sections of Ohio's regulations were less effective than or inconsistent with the Federal requirements for surface coal mining and reclamation operations (Administrative Record No. OH–0679). One of these rules which was determined by the Director to be deficient was OAC 1501:13–9–15(E) which concerned the method of measuring revegetation success. Ohio responded on May 16, 1986, by submitting proposed Program Amendment No. 25 to the Ohio regulatory program. In his decision on this proposed amendment, the Director found that Ohio's proposed method of evaluating revegetation as set forth in OAC 1501:13–9–15 was less effective than the Federal rules at 30 CFR 816.116. The Director reached this decision because the Ohio program did not include a statistically valid sampling technique for the evaluation of revegetation and because the existing method of using ocular inspections had not been justified to show that it has the equivalent of a 90 percent confidence level or is no less effective than the Federal standard. Therefore, pursuant to 30 CFR 732.17, the Director promulgated 30 CFR 935.16(f), which required Ohio to amend its program to include a statistically valid technique for the evaluation of revegetation to augment its existing method to be as effective as the Federal rules at 30 CFR 816.116(a) (July 17, 1987; 52 FR 26959).

Ohio responded on November 3, 1987, by submitting administrative record information pertaining to 30 CFR 935.16(f). At Ohio's request, OSM agreed to conduct a study of the Ohio method of evaluating revegetation success and to defer action until this study was completed. The study was completed and OSM announced the findings in the December 15, 1989, **Federal Register** (54 FR 51395). The Director found that the administrative record information submitted by Ohio and the study, which was conducted jointly by OSM and Ohio, had not demonstrated that Ohio's existing method of evaluating the success of revegetation was no less effective than the Federal rules at 30 CFR 816.116(a).

By letter dated December 12, 1989 (Administrative Record No. OH–1245), Ohio proposed a continuation of Revised Program Amendment No. 25. In this continuation, Ohio proposed to revise section 1501:13–9–15 of the OAC to include a statistically valid method of evaluating revegetation success in order to satisfy the OSM requirement at 30 CFR 935.16(f). This method would be used on "questionable" areas. The ocular method would be retained as the primary means of ground cover evaluation.

On January 8, 1990 (Administration Record No. OH–1259), OSM published a notice in the **Federal Register** (55 FR 649) announcing receipt of Ohio's proposed continuation of Revised Program Amendment No. 25 and inviting public comment on its adequacy. The public comment period ended on February 7, 1990.

By letter dated March 23, 1990 (Administrative Record No. OH–1292), OSM notified Ohio that the proposed revisions to OAC section 1501:13–9–15 were less effective than the Federal regulations at 30 CFR 816.116(a) because Ohio proposed to use statistically valid sampling methods only on "questionable" areas and that the Federal regulations required "statistically valid sampling techniques in all situations regardless of the outcome of any prior or accompanying ocular evaluation."

By letter dated July 24, 1990 (Ohio Administrative Record No. OH–1343), Ohio submitted further proposed revisions to OAC section 1501:13–9–15 which were intended to respond to OSM's comments of March 23, 1990. Ohio proposed to revise paragraph (I)(1) to specify that success of revegetation shall be measured using a statistically valid sampling technique with a ninety percent statistical confidence interval (i.e. one-sided test with 0.10 alpha error). Ohio also proposed to revise paragraph (I)(3)(c)(iv) to delete the requirement that, for Phase III bond release, species planted must meet the standard that no single areas with less than thirty percent cover shall exceed the lesser of three thousand square feet or 0.3 percent of the land affected.

On August 10, 1990, OSM published a notice in the **Federal Register** (55 FR 32643) announcing receipt of Ohio's additional revisions to the continuation of Revised Program Amendment No. 25 and inviting public comment on its adequacy. The public comment period ended on September 10, 1990.

By letter dated October 24, 1990 (Administrative Record No. OH–1398), OSM provided Ohio with its questions and comments about the additional revisions submitted on July 24, 1990. OSM requested that Ohio provide the details of Ohio's statistically valid sampling method for OSM's review and approval. OSM also requested that Ohio provide a justification for the proposed deletion of the vegetation standard limiting the size of areas with less than thirty percent vegetative cover (barren area standard). On December 19, 1990, OSM agreed to a time extension for Ohio to respond to the October 24, 1990, letter and provided further clarification of the issues involved (Administrative Record No. OH–1418).

By letter dated March 1, 1991 (Administrative Record No. OH–1471), Ohio submitted administrative record information in support of the revisions proposed on July 24, 1990, and responded to OSM's comments of October 24, 1990. In its response, Ohio provided information on its proposed method of sampling revegetation success and rationale for deleting the proposed barren area standard. OSM reopened the public comment period in the March 27, 1991, **Federal Register** (56 FR 12691). The comment period closed on April 26, 1991.

By letter dated March 21, 1991 (Administrative Record No. OH–1489), Ohio withdrew its March 1, 1991, submission and its July 24, 1990, proposed revisions to OAC 1501:13–9–15 paragraphs (I)(1) and (I)(3)(c)(iv). OSM announced Ohio's withdrawal in the May 7, 1991, **Federal Register** (56 FR 21113).

By letter dated June 18, 1991, Ohio submitted an informal version of Revised Program Amendment No. 25 for preliminary review by OSM. This informal submission proposed that Ohio will use two visual estimates of revegetation success followed by statistical verification of those visual estimates. In this informal submission, Ohio proposed to retain the revegetation standard limiting the size of areas with less than thirty percent vegetative cover.

By letter dated August 9, 1991 (Administrative Record No. OH–1556), Ohio withdrew the informal submission of June 18, 1991, and resubmitted a formal version of Revised Program Amendment No. 25. In this formal amendment submission, Ohio proposed revisions to OAC section 1501:13–9–15 to delete paragraph (I)(3)(c)(i)(d) limiting the size of areas with less than thirty percent vegetative cover and to add new paragraph (I)(3)(c)(ii) stating that "Success of the ground-cover (for phase III bond release for herbaceous species only) shall be measured using a statistically valid sampling technique with a ninety per cent statistical confidence interval (i.e. one-sided test with 0.10 alpha error)."

As part of its August 9, 1991, resubmission, Ohio also reinstated the March 1, 1991, Administrative Record information which provided the details of Ohio's proposed use of the Rennie-Farmer Stick Method of sampling ground cover. The March 1, 1991, Administrative Record information also provided Ohio's reasons for proposing the deletion of its barren area standard.

On August 27, 1991, OSM published a notice in the **Federal Register** (56 FR 42299) announcing receipt of Ohio's August 9, 1991, submission of Revised Program Amendment No. 25 and inviting public comment on its adequacy. The public comment period ended on September 26, 1991.

By letter dated January 3, 1992 (Administrative Record No. OH–1623), OSM provided Ohio with its questions and comments about the August 9, 1991, submission of the amendment. OSM requested that Ohio provide the details of Ohio's procedure for statistical testing of the sampling results. OSM also requested that Ohio provide a justification that Ohio's proposed standard of 70 percent ground cover is comparable to unmined sites in the State. Finally, OSM requested that Ohio further revise the rule to require statistically valid sampling for ground cover, production, and stocking. OSM found that Ohio's current system was not compatible with statistical sampling and that Ohio had inadvertently mixed two sampling methods together.

By letter dated February 10, 1992 (Administrative Record No. OH–1647), Ohio requested a meeting between Ohio, OSM, and Ohio Agricultural Research and Development Center (OARDC) personnel to clarify the issues and concerns expressed in OSM's January 3, 1992, letter. On March 31, 1992, representatives of Ohio, OSM, and the OARDC met at OARDC to discuss those issues (Administrative Record OH–1672 and OH–1683).

By letter dated June 22, 1992 (Administrative Record No. OH–1725), Ohio submitted a new version of Revised Program Amendment No. 25 and withdrew its August 9, 1991, submission. The new submission is intended to address the issues in OSM's January 3, 1992, letter. The June 22, 1992, submission proposes to revise OAC 1501:13–9–05 paragraph (J)(1) to incorporate additional language previously proposed in Ohio's July 24, 1990, submission of paragraph (I)(1) and in Ohio's August 9, 1991, submission of paragraph (I)(3)(c)(ii). Accompanying this proposed rule change, Ohio submitted four documents. These documents discuss the statistical validity of a 100-percent population census, describe Ohio's ocular method of ground cover evaluation, and discuss how inspectors will be trained to implement the Ohio method.

On August 18, 1992, OSM published a notice in the **Federal Register** (57 FR 37136) announcing receipt of Ohio's June 22, 1992, submission of Revised Program Amendment No. 25 and invited public comment on its adequacy. The public comment period ended on September 17, 1992.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment to the Ohio program.

The proposed amendment consists of two parts: a proposed one-sentence addition to Ohio's rules at OAC 1501:13–9–15(J)(1) and documents pertaining to a proposed ocular inspection method for evaluating vegetative ground cover when making performance bond release decisions. The proposed regulatory language reads as follows: "Success of revegetation shall be measured using a statistically valid sampling technique with a ninety percent statistical confidence interval (i.e. one-sided test with 0.10 alpha error)." The proposed language is substantively identical to the last sentence in 30 CFR 816.116(a)(2). The Director, therefore, finds that the rule language is no less effective than the Federal rules.

The second part of the amendment consists of documents describing Ohio's proposed ocular method of ground cover evaluation plus supporting statements concerning the method's statistical validity and the training which Ohio inspectors will undergo prior to using the method. This submission was in response to 30 CFR 935.16(f) which required that by May 31, 1990, Ohio small amend its program to include a statistically valid technique for the evaluation of revegetation success to augment or replace its current method to be as effective as 30 CFR 816.116(a). This Federal rule requires that statistically valid sampling techniques for measuring success shall be selected by the State regulatory authority and included in an approved regulatory program.

The second part of Ohio's June 22, 1992, submission is substantively identical to previous State submissions which the Director reviewed in the July 17, 1987, **Federal Register** (52 FR 26966) and in the December 15, 1989, **Federal Register** (54 FR 51397). Ohio described its June 22, 1992, proposal to OSM as follows:

> Ohio's four-tiered vegetative cover standard requires that, at a minimum, at least 89 percent of the area being evaluated for bond release has at least 75 percent cover, no more than 10 percent of the area has between 30 and 75 percent cover (i.e. sparse), no more than one percent of the area has less than 30 percent cover (i.e. barren), and that there exists no single tract greater than either 3,000 square feet or 0.3 percent cover of the total area with less than 30 percent cover (i.e. single barren area). This system of standards entails visual estimation of the areal extent of vegetation falling within a range of values for ground cover, rather than estimation of the overall percentage of cover.
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> Prior to the bond release inspection, the inspector reviews the planting plan contained in the permit file and the portion of the permit application map representing the area for which the bond release has been requested. The inspector calculates the total square footage of the bond release area and determines the maximum square footage of sparse (i.e. 10 percent of the release area), barren area (i.e. one percent of the release area), and the maximum extent of single barren area (0.3 percent of the release area or 3,000 square feet, whichever is less) within

which the vegetative cover would be determined to be successful.

The inspector assigned to the permit is accompanied by another inspector or the district office supervisor at the time of the actual bond release inspection. Upon arrival at the bond release site, the inspectors determine the most efficient route over the bond release area to ensure that the entire area can be visually evaluated. As the inspectors walk the route, any portion of the area which is observed to have less than 75 percent ground cover is visually segregated and measured by tape measure or pacing, and the results are recorded on the inspection form. Further measurements are taken within the segregated area if it is determined by visual observation that barren portions (less than 30 percent cover) are interspersed with sparse (between 30 and 75 percent cover). If any single barren exceeds the lesser of 3,000 square feet or 0.3 percent of the total bond release area, the inspector terminates the inspection and the bond release is immediately denied.

Upon completion of the inspection, if no single barren area larger than the acceptable limit exists, the inspector tallies the total square footage of sparse and barren area. If both categories fall within the acceptable limits calculated prior to the inspection, and if no other conditions exist for which bond release would be denied in accordance with Chapter 1513 of the Ohio Revised Code and administrative rules, the bond release request is approved.

Ohio has argued that the above ocular method is a 100-percent sampling of the vegetative cover on sites considered for bond release and that such sampling is just a special case of simple random sampling (Administrative Record No. OH–1725). OSM rejects this argument. The Ohio method is an ocular estimate of percent cover by category; it is not a measurement since no discrete points are sampled and the distance from the observer to the point observed is not fixed. A 100-percent census requires measurement of 100 percent of the area which the Ohio technique does not accomplish (Administrative Record No. OH–1795). Furthermore, there is no estimate of the mean and variance, both of which are necessary to implement the proposed language at OAC 1501:13–9–15(J)(1). The proposed ocular method of evaluating ground cover does not implement the proposed rule at OAC 1501:13–9–15(J)(1). The proposed rule language and the ocular inspection method submitted by Ohio are not consistent with each other. To perform a statistical test, a sample must be taken and a mean and variance calculated. This is not possible given Ohio's proposed ocular method. The State recognized this in its previous proposal when it stated that "Ohio has not need [sic] to conform to a 90 percent statistical confidence interval because it does not utilize a sampling technique" (July 17, 1987; 52 FR at 26967).

In the Fall of 1988, OSM and Ohio jointly conducted a study of randomly selected mining sites upon which Ohio had approved bond release (Administrative Record No. OH–1196). The purpose of the study was to compare the results of Ohio's proposed ocular method of evaluating vegetative ground cover with those obtained by using a statistically valid method. The study, which was reported in the December 15, 1989, **Federal Register** (54 FR 51395) concluded that Ohio's ocular method, which is the same method proposed on June 22, 1992, was not as effective as a statistically valid method. Accordingly, the Director found that Ohio had not demonstrated that its method of evaluating the success of revegetation is no less effective than the Federal rules at 30 CFR 816.116(a). No new field studies have been submitted by Ohio to refute these findings and conclusions. Furthermore, the Director is unaware of any studies sponsored by universities, government agencies, or other parties which demonstrate that ocular estimation of the areal extent of ground cover is no less effective than the sampling methods approvable under 30 CFR 816.116(a).

In developing the Federal rules at 30 CFR 816.116(a), OSM considered the use of ocular methods but rejected them in the final rulemaking. OSM made this decision because the ocular method whereby an inspector visually inspects the site and determines whether success has been achieved, is highly dependent upon the training, experience and objectivity of the inspector. Ocular methods were believed to provide results that were too variable for bond release decision making (March 23, 1982; 47 FR at 12599). This belief is supported by others who have studied the subject of ground cover measurement. In 1982, Raelson and McKee, two agronomists at Pennsylvania State University, studied the measurement of plant cover to evaluate revegetation success on surface coal mines (Administrative Record No. OH–1796). They surveyed the literature on the methods available for measuring ground cover such as the quadrat sampling method, line-intercept method, point-frequency method and the visual estimation method. They arrived at the following conclusions concerning the visual estimation method:

> The visual estimate method is fast. It was designed to provide initial survey information on the vegetation of large areas for which detailed measurements are not possible. It is, however, highly inaccurate. Results of many studies have shown that even well trained field observers can differ by twenty-five or more percent or more in their assessment of the cover of the same area. Greig Smith (1964) pointed out that the accuracy of the method decreases through the day as observers become tired and less alert. In addition, cover estimates, even by the same observer, can vary throughout the day and from day to day. The visual estimate of cover method requires an objective standard to calibrate the observer's 'eye.' The visual estimation method, while often used, is not well suited for purposes of enforcing legal reclamation standards.

A field exercise by the authors on a reclaimed surface mine which compared visual, quadrat, and point frequency methods of ground cover estimation supported the statement that visual estimates are inherently subjective.

Ohio's proposed ocular method is a refinement of the visual method studied by Raelson and McKee. It involves the estimation of three cover classes instead of a single visual estimate and observers receive training in making such estimates. Nevertheless, the Director believes that it involves greater subjectivity than other methods acceptable under 30 CFR 816.116(a)(1).

In summary, the Director finds that Ohio has not demonstrated that its proposed ocular method is no less effective than statistically valid sampling techniques required under 30 CFR 816.116(a)(1). He rejects Ohio's argument that the proposed ocular method is a 100-percent sample and that it qualifies as a statistically valid sampling technique acceptable for making performance bond release decisions. Furthermore, its use as proposed by Ohio would result in an inconsistency between proposed rule language at OAC 1501:13–9–15(J)(1) and actual practice during inspections.

This decision is consistent with decisions on other proposed State program amendments, where the Director has not approved ocular estimation of revegetation success. See, "[D]etermination of percent moisture content and dry forage production based on representative subsamples of ocularly estimated stratified samples is not consistent with the Federal requirements." 56 FR 6559, 6561 (February 19, 1991)—Kansas; "[O]cular estimation of species cover, vegetative cover and total ground cover" is less effective. 51 FR 42209, 42212 (November 24, 1986)—Wyoming; "[T]he Secretary finds that the portion of the State's Technical Handbook which allows the use of the ocular method for determining success is less effective than 30 CFR 816.116 and 817.116 which only allow valid statistical sampling

techniques for this purpose." 50 FR 28324, 28332 (July 11, 1985)—West Virginia.

IV. Summary and Disposition of Comments

Pursuant to section 503(b) of SMCRA and the implementing regulations at 30 CFR 732.17(h)(11)(i), comments were solicited from various Federal agencies with an actual or potential interest in the Ohio program. The U.S. Department of Agriculture, Soil Conservation Service; the U.S. Army Corps of Engineers and the U.S. Department of Labor, Mine Safety and Health Administration responded but did not have any substantive comments.

No public comments were received for the June 22, 1992, submission. However, in response to an earlier program amendment submission, there was a comment by the Ohio Mining and Reclamation Association (the "OMRA"). The OMRA disagreed with OSM's determination that Ohio's current method for measuring revegetation was not statistically valid. The OMRA argued that Ohio's method is statistically valid because the inspectors review the entire permit area. It also argued Ohio's current system hasn't posed a problem and that to change this system would not improve the method of evaluating revegetation.

The Director disagrees with the OMRA. As discussed in the Director's Findings, Ohio's ocular method for evaluating revegetation success is not statistically valid and does not meet the 90 percent statistical confidence interval. As discussed in the Findings, Ohio's current system has posed a problem. That is, the system is based on the subjective judgment of each inspector, so that the results of each inspection cannot be repeated with any degree of certainty. This is demonstrated by the joint study conducted by OSM and Ohio, the results of which was reported in the December 15, 1989, **Federal Register** (54 FR 51397). In that study, OSM determined that there was a wide confidence interval between the three observers, which is not allowed under the Federal rules at 30 CFR 816.116(a). "[S]tatistically valid techniques and a nationwide standard of statistical confidence are necessary to insure objective, standardized and equitable evaluations of revegetation success." 51 FR 4485, 4493 (February 5, 1986).

V. Director's Decision

Based on the above findings, the Director is approving, with one exception, Revised Program Amendment No. 25, as submitted by Ohio on June 22, 1992. The Director has determined that the proposed revision to OAC 1501:13–9–15(J)(1) is no less effective than the Federal rules at 30 CFR 816.116(a)(2). However, the proposed ocular method for evaluating ground cover which was submitted as part of the June 22, 1992, amendment has been determined by the Director to be not as effective as 30 CFR 816.116(a)(1) which requires that statistically valid sampling techniques for measuring success be included as part of approved State regulatory programs. Therefore, the amendment requirement for the Ohio program at 30 CFR 935.16(f) has not been fully satisfied and remains outstanding. Specifically, Ohio must amend its program to include a statistically valid sampling technique for evaluating the areal extent of ground cover.

The Federal regulations at 30 CFR part 935 codifying decisions concerning the Ohio program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to conform their programs with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

EPA Concurrence

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the Environmental Protection Agency (EPA) with respect to any provisions of a State program amendment which relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). The Director has determined that this amendment contains no such provisions and that EPA concurrence is therefore, unnecessary. However, by letter dated September 22, 1992 (Administrative Record No. OH–1775), EPA submitted its concurrence without comment.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to a State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved programs. In the oversight of the Ohio program, the Director will recognize only the approved program, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Ohio of such provisions.

VI. Procedural Determinations

Executive Order 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted the Office of Surface Mining Reclamation and Enforcement (OSM) an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs, actions and program amendments. Therefore, preparation of a regulatory impact analysis is not necessary and OMB regulatory review is not required.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of the Surface Mining Control and Reclamation Act (SMCRA) (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.13 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(c) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 24, 1992.

Jeffrey D. Jarrett,

Acting Assistant Director, Eastern Support Center.

For the reasons set out in the preamble, title 30 Chapter VII, subchapter T of the Code of Federal regulations is amended as set forth below:

PART 935—OHIO

1. The authority citation for part 935 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. In § 935.15, a new paragraph (jjj) is added to read as follows:

§ 935.15 Approval of regulatory program amendments.

* * * * *

(jjj) The following amendment to the Ohio regulatory program, as submitted to OSM on June 22, 1992, with one exception, is approved, effective January 14, 1993: The approved amendment consists of a revision to the Ohio Administrative Code at 1501:13–9–15(J)(1) which pertains to standards for measuring success of revegetation. OSM is not approving Ohio's proposed ocular method of ground cover evaluation.

3. In § 935.16(f) is revised to read as follows:

§ 935.16 Required regulatory program amendments.

* * * * *

(f) By May 14, 1993, Ohio shall amend its program to include a statistically valid technique for the evaluation of revegetation success to augment or replace its current method to be as effective as 30 CFR 816.116(a).

[FR Doc. 93–873 Filed 1–13–93; 8:45 am]
BILLING CODE 4310–05–M

30 CFR Part 938

Pennsylvania Regulatory Program; Regulatory Reform

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: OSM is announcing the approval of a proposed amendment to the Pennsylvania permanent regulatory program (hereinafter referred to as the Pennsylvania program) approved under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment defines the term "historical resource," requires that permitting decisions take into account the effect of the proposal coal mining on properties listed on or eligible for listing on the National Register of Historic Places (NRHP), and describes permit application informational requirements pertaining to archaeological, cultural and historical resources listed on or eligible for listing on the NRHP within the permit and adjacent areas including identification of the steps to be taken to protect the historic resources.

EFFECTIVE DATE: January 14, 1993.

FOR FURTHER INFORMATION CONTACT: Robert J. Biggi, Director, Harrisburg Field Office, Office of Surface Mining Reclamation and Enforcement, Harrisburg Transportation Center, Third Floor, suite 3C, 4th and Market Streets, Harrisburg, Pennsylvania 17101. Telephone (717) 782–4036.

SUPPLEMENTARY INFORMATION:

I. Background on the Pennslyvania Program

The Secretary of the Interior conditionally approved the Pennsylvania program on July 31, 1982. Information on the background of the Pennsylvania program including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Pennsylvania program can be found in the July 30, 1982, **Federal Register** (47 FR 33050). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 938.11, 938.12, 938.15 and 938.16.

II. Submission of Amendment

By letter dated December 18, 1991 (Administrative Record Number PA 803.00), Pennsylvania submitted a State program amendment to address four outstanding part 732 Notifications, listed below:

1. *Historic Properties,* June 9, 1987, Administrative Record Number PA 651
2. *Regulatory Reform Review II,* December 16, 1988, Administrative Record Number PA 723.
3. *Ownership and Control,* May 11, 1989, Administrative Record Number PA 773.
4. *Regulatory Reform Review III,* January 2, 1990, Administrative Record Number PA 787.03.

Other revisions are contained in the proposed amendment package to address provisions necessary for Pennsylvania to implement amendments to the Pennsylvania Surface Mining Conservation and Reclamation Act (Pub. L. No. 1570, Act 171 of December 12, 1986) and changes to clarify existing regulations.

OSM announced receipt of the proposed amendment in the April 13, 1992, **Federal Register** (57 FR 12785), and, in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The comment period closed on May 13, 1992. At the request of the Pennsylvania Coal Association, a public meeting was held on June 30, 1992.

To simplify the processing of the large amendment package, OSM separated the package into smaller amendments, according to subject matter, which then would be handled in individual final rules. This final rule addresses all the revisions proposed by Pennsylvania in response to the June 9, 1987, part 732 Notification (Administrative Record No. PA–651) concerning cultural and historical resources and other related State initiated changes to bring the Pennsylvania program into compliance with the Federal program.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.17, are the Director's findings concerning the proposed amendment to the Pennsylvania program. Nonsubstantive changes, which are proposed throughout these rules, to make grammatical corrections and to correct subsection letter notations are not specifically discussed.

1. Section 86.1 Definitions—Historical Resources

Pennsylvania proposes to add a definition of "historic resource" to section 86.1. Under the proposed rules "historic resource" means:

"A building, structure, object, district, place, site or area significant in the history, architecture, maritime heritage, archaeology or culture of this Commonwealth, its communities or the nation. The term 'historic resource' includes the terms 'cultural resource,' 'archaeological resource,' 'historic place,' 'historic property,' 'archaeological site' and 'archaeological property' as used in Chapters 86–90 of this Title."

Although the Federal regulations do not define "historic resource," the proposed definition is not inconsistent with the use of the term in the Federal regulations in reference to the NRHP. Therefore, the Director finds the proposed definition of "historic resources" will not render Pennsylvania's rules less effective than the counterpart Federal regulations.

2 Section 86.37(a)(6) Criteria for Permit Approval or Denial

Pennsylvania proposes to revise this rule to include language to require that the regulatory authority, as part of the written findings for permit application approval, take into account the effects of the proposed coal mining activities on properties listed or eligible for listing on the NRHP. In addition, the proposal further revises the rule to provide that such a finding may be supported in part by inclusion of appropriate permit conditions or operational plan changes to protect historic resources, or a documented decision that no additional protective measures are necessary.

Since the proposed revision to section 86.37(a)(6) is substantively identical to the Federal counterpart regulation at § 773.15(c)(11), the Director finds that the proposed rules are no less effective than that Federal regulation.

3. Section 86.102 Areas Where Mining is Prohibited or Limited

Pennsylvania proposes to revise section 86.102 to add language to extend the restriction on surface mining activities which will affect a publicly-owned park or a place included on the NRHP to include such places "eligible for inclusion on" the NRHP. The counterpart Federal regulation at 30 CFR 761.11(c) is similar, except that it does not include publicly-owned parks or places "eligible for inclusion" on the NRHP. Since the proposed rules would extend the protection of publicly-owned parks or places eligible for listing, the Director finds that the added language would not render the State rules less effective than the counterpart Federal regulations.

4. Sections 87.42(2), 88.22(2), 88.491(a)(1)(ii), 89.38(a), and 90.11(a)(3) General Environmental Resource Information

Pennsylvania proposes to revise its rules concerning the informational requirements of coal mining permit applications to include the nature of archaeological, as well as cultural and historic resources within the permit or adjacent areas which are listed on or eligible for listing on the NRHP. In addition, the rules provide that the regulatory authority may require the applicant to evaluate the identified historic resources through collection of additional information, field investigations or other appropriate analysis. In its issue letter to Pennsylvania (Administrative Record No. PA–803.12), OSM noted that section 88.491(a)(1)(ii) did not require information on historic resources located within the areas adjacent to the proposed permit area. Pennsylvania, in its response (Administrative Record No. PA–803.14) resolved OSM's concern by clarifying that the requirement for information on historic resources within areas adjacent to the permit for all anthracite mining activities is contained in 88.22(2).

Therefore, the Director finds that Pennsylvania's proposed rules are substantively identical and no less effective than the Federal counterpart regulations at 30 CFR 779.12(b) and 783.12(b).

5. Sections 87.54(a)(9), 88.31(a)(9), 88.491(i)(7), and 90.21(a)(9) Maps, Cross Sections, and Related Information

Pennsylvania proposes to revise its rules concerning the requirement to submit, as part of a coal mining permit application, maps and plans showing the boundaries of any public park and location of cultural or historical resource listed on the NRHP. The proposed rule extends this requirement to those sites which are eligible for listing on the NRHP. Since the proposed rules are substantively identical to the respective Federal regulations at 30 CFR 779.24(i) and 783.24(i), the Director finds them to be no less effective than these Federal regulations.

6. Sections 87.77, 88.56, 88.381(c)(9), 88.492(f), 89.38 (b) & (c), and 90.40 Protection of Public Parks and Historic Places

Pennsylvania is proposing to revise its rules to require that each permit application describe the measures that will be used to protect or minimize adverse impacts of the proposed coal mining operations on public parks and historic places. Since the measures proposed by the State are substantively identical to the corresponding Federal regulations at 30 CFR 780.31 and 784.17, the Director finds that they are no less effective than the Federal rules.

IV. Summary and Disposition of Comments

Public Comment

The public comment period and opportunity to request a public hearing announced in the April 13, 1992, **Federal Register** ended on May 13, 1992. Written comments and a request for a public meeting were received from the Pennsylvania Coal Association (PCA). None of the comments pertained to the cultural and historical provisions contained in the amendment package. The public meeting was held on June 30, 1992, and comments presented by the PCA (Administrative Record No. PA–803.15). However, these comments did not pertain to any of the issues contained in this final rule and are, therefore, not discussed in this final rule.

Agency Comments

Pursuant to section 503(b) of SMCRA and the implementing regulations at 30 CFR 732.17(h)(ii)(i), comments were solicited from various Federal and State agencies with an actual or potential interest in the Pennsylvania program, including the Pennsylvania Historical Museum Commission and the Pennsylvania Advisory Council on Historical Preservation. Responses were received from the Department of Labor, Mine Safety and Health Administration, Districts 1 and 2; the Department of Interior, Bureau of Mines; and the Department of Agriculture, Soil Conservation Service. The responses did not contain any comments concerning revision to the State's cultural and historical rules.

V. Director's Decision

Based on the findings discussed above, the Director is approving Pennsylvania's program amendment pertaining to cultural and historical protection provisions of its rules as submitted on December 18, 1991.

Effect of the Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus any changes

to the State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In the oversight of the Pennsylvania program, the Director will recognize only the statutes, regulations and other materials approved by him, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Pennsylvania of only such provisions.

EPA Concurrence

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the Environmental Protection Agency (EPA) with respect to any provisions of a State program amendment which relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 et seq.) or the Clean Air Act (42 U.S.C. 7401 et seq.). The Director has determined that this amendment contains no such provisions and that EPA concurrence is, therefore, unnecessary.

VI. Procedural Determinations

Executive Order 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted the OSM an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs, actions and program amendments. Therefore, preparation of a regulatory impact analysis is not necessary and OMB regulatory review is not required.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731 and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 938

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 4, 1992.

Jeffrey D. Jarrett,

Acting Assistant Director, Eastern Support Center.

For the reasons set forth in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 938—PENNSYLVANIA

1. The authority citation for part 938 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 938.15, is amended by adding a new paragraph (x) to read as follows:

§ 938.15 Approval of regulatory program amendments.

* * * * *

(x) The following amendments to the Pennsylvania regulatory program were approved effective January 14, 1993,

86.1 Definitions: "historic resource."
86.37(a)(6) Criteria for permit approval or denial.
86.102 Areas where mining is prohibited or limited.
87.42(2): General environmental resource information.
87.54(a)(9) Maps, cross sections, and related information.
87.77 Protection of public parks and historic places.
88.22(2) General environmental resource information.
88.31(a)(9) Maps and plans.
88.56 Protection of public parks and historic places.
88.381(c)(9) General requirements; protection of public parks and historic places.
88.491(a)(1)(ii) Minimal requirements for information on environmental resources.
88.491(i)(7) Maps and cross sections.
88.492(f) Protection of public parks and historic places.
89.38(a) Archaeological and historical resources and public parks.
89.38(b)&(c) Archaeological and historical resources and public parks.
90.11(a)(3) General; nature of archaeological, cultural and historic resources.
90.21(a)(9) Maps and cross sections.
90.40 Protection of public parks and historic places.

[FR Doc. 93–860 Filed 1–13–93; 8:45 am]
BILLING CODE 4310–05–M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Judge Advocate General of the Navy has determined that USS JOHN PAUL JONES (DDG 53) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special functions as a naval destroyer. The intended effect of this rule is to warn

mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: December 8, 1992.

FOR FURTHER INFORMATION CONTACT: Captain R.R. Rossi, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332–2400, Telephone number: (703) 325–9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR part 706. This amendment provides notice that the Judge Advocate General of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS JOHN PAUL JONES (DDG 53) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS: Annex I, section 3(a) pertaining to the location of the forward masthead light in the forward quarter of the vessel, the placement of the after masthead light, and the horizontal distance between the forward and after masthead lights; Annex I, section 2(f)(i) pertaining to placement of the masthead light or lights above and clear of all other lights and obstructions; and, Annex I, section 3(c) pertaining to placement of task lights not less than 2 meters from the fore and aft centerline of the ship in the athwartship direction; without interfering with its special function as a Navy ship. The Judge Advocate General has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR part 706 is amended as follows:

1. The authority citation for 32 CFR part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

2. Table Four of § 706.2 is amended by:

a. Adding the following vessel to Paragraph 15:

Vessel	Number	Horizontal distance from the fore and aft centerline of the vessel in the athwartship direction
USS JOHN PAUL JONES.	DDG 53	1.89 meters.

b. Adding the following vessel to Paragraph 16:

Vessel	Number	Obstruction angle relative ship's headings
USS JOHN PAUL JONES.	DDG 53	89.47 thru 106.39 degrees.

3. Table Five of § 706.2 is amended by adding the following vessel:

TABLE FIVE

Vessel	Number	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship. Annex I sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. Annex I, sec. 3(a)	Percentage horizontal separation attained.
USS JOHN PAUL JONES	DDG 53	X	X	X	12.5

Dated: December 8, 1992.

Approved:

W.L. Schachte, Jr.,

Rear Admiral, JAGC, U.S. Navy Acting Judge Advocate General.

[FR Doc. 93–906 Filed 1–13–93; 8:45 am]

BILLING CODE 3810–AE–M

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Judge Advocate General of the Navy has determined that USS KEARSARGE (LHD 3) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special functions as a naval amphibious assault ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: December 22, 1992.

FOR FURTHER INFORMATION CONTACT: Captain R.R. Rossi, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332–2400, Telephone number: (703) 325–9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR part 706. This amendment provides notice that the Judge Advocate General of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS KEARSARGE (LHD 3) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS: Rule 21(a), pertaining to the location of the masthead lights over the fore and aft centerline of the ship; Annex 1, section 2(g), pertaining to the distance of the sidelights above the hull; Annex I, section 3(a), pertaining to the location of the forward masthead light in the forward quarter of the ship; the placement of the after masthead light and the horizontal distance between the forward and after masthead lights; and Annex I, section 3(b), pertaining to the positioning of the sidelights in relationship to the forward masthead light, without interfering with its special functions as a Navy ship. The Judge Advocate General of the Navy has also certified that the aforementioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and

contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR part 706 is amended as follows:

1. The authority citation for 32 CFR part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

2. Table II of § 706.2 is amended by adding the following vessel:

TABLE TWO

Vessel number	Masthead lights distance to sted of keel in meters; rule 21 (a)	Forward anchor light distance below flight deck in meters; 2(K), annex I	Forward anchor light, number of rule 30(a)(i)	Aft anchor light, distance below flight deck in meters; rule 21(e) rule 30(a) (ii)	Aft anchor light number of rule 30(a) (ii)	Side lights distance below flight deck in meters 2(g), annex I	Side lights distance forward of forward masthead light in meters; 3(b) annex I	Side lights distance inboard of ship's sides in meters 3(b) annex I
USS KEARSARGE (LHD 3)	8.9	.....	.....	.....	.....	3.0	91	.....

3. Table Five of § 706.2 is amended by adding the following vessel:

TABLE FIVE

Vessel	Number	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship. Annex I sec. 3(a)	After masthead light less than 1/2 ship's length aft of forward masthead light. Annex I, sec. 3(a)	Percentage horizontal separation attained.
USS Kearsage	LHD 3	.....	X	X	39.5

Dated: December 22, 1992.

Approved:

W.L. Schachte, Jr.,

Rear Admiral, JAGC, U.S. Navy Acting Judge Advocate General.

[FR Doc. 93–951 Filed 1–13–93; 8:45 am]

BILLING CODE 3810–AE–M6

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 1 and 10

[Docket No. 920539–2313]

RIN 0651–AA51

Revision of Patent Cooperation Treaty Provisions

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The Patent and Trademark Office (Office) is amending the rules of practice relating to applications filed under the Patent Cooperation Treaty (PCT): (1) To amend the rules in accordance with revised regulations under the PCT; (2) to bring the rules regarding applications entering the national stage under 35 U.S.C. 371 more in line with existing regulations applicable to national applications filed under 35 U.S.C. 111; and (3) to clarify existing practice under the PCT. The changes will result in more streamlined and simplified procedures for filing and prosecuting international and national stage applications under the PCT.

EFFECTIVE DATE: May 1, 1993.

FOR FURTHER INFORMATION CONTACT: Vincent Turner by telephone at (703) 305–9384 or by mail addressed to the Commissioner of Patents and Trademarks, Washington, DC 20231 and marked to the attention of Vincent Turner (Crystal Park 2, room 919).

SUPPLEMENTARY INFORMATION: The Office published a notice of proposed rulemaking relating to revision of the Patent Cooperation Treaty provisions, in the **Federal Register**, 57 FR 29248 (July 1, 1992) and in the Official Gazette, 1140 Off. Gaz. Pat. Office 27 (July 14, 1992). No oral hearing was held. Eight individuals or organizations submitted written comments in response to the notice of proposed rulemaking. The eight written comments are available for public inspection in the Office of the Assistant Commissioner for Patents, room 919, Crystal Park II, 2121 Crystal Drive, Arlington, VA.

Familiarity with the notice of proposed rulemaking is assumed. Changes in the text of the rules published for comment in the notice of proposed rulemaking are discussed. Comments received in writing in response to the notice of proposed rulemaking are discussed.

This rule change will improve filing and processing procedures for applicants both in the filing of international applications and in the filing of national stage applications under 35 U.S.C. 371.

Background

During the first 14 years under the PCT, the annual volume of international patent applications filed in the U.S. Receiving Office has increased from just under 100 to almost 10,000 in fiscal year 1991. The volume of U.S. national stage applications has shown similar growth to the point that the U.S. is now designated more than 10,000 times each year by applicants filing international applications under the PCT. Historically, approximately 60% of those applicants that designate the U.S. enter the national stage in the United States.

On July 8 to 12, 1991, representatives of the patent offices of the member countries, in a series of meetings held in Geneva, Switzerland, agreed upon several changes to the PCT regulations which are designed to make the PCT more user-friendly. These adopted changes require corresponding changes in Title 37, CFR.

The practice under the revised PCT regulations will permit an applicant to

provide, in addition to at least one specified designation, a precautionary designation of all other PCT member countries and regions so that any intended designation which may have been overlooked on filing can be corrected within 15 months of the priority date by confirmation of the designation. Applicants are cautioned, however, that in order for the confirmation of a designation of the U.S. to be valid, the inventor must have been named in the application papers as filed, 37 CFR 1.421(b).

International applications are searched and published prior to the 20-month deadline for entry into the national stage. If a demand for preliminary examination is filed before expiration of 19 months from the priority date, the time for entry into the national stage is extended to 30 months from the priority date and the international application will be subject to preliminary examination under chapter II of the PCT. The practice under the revised PCT regulations permits an applicant to indicate in the demand that preliminary examination is to be based on an accompanying PCT article 34 amendment and, if the amendment is not received with the demand, the applicant will be notified and given a time period within which to file the missing amendment. This new procedure will ensure that examination will go forward based on the desired PCT Article 34 amendment.

Also, the Office is aware that certain applicants have had difficulty in properly filing national stage applications due to the different requirements in the rules for PCT and U.S. national applications. Some differences cannot be avoided due to different procedures required under the PCT from U.S. national practice. It is desirable, however, to minimize these differences and to simplify national stage filing procedures.

International applications have become abandoned for failure to timely provide an oath or declaration, a filing fee and/or an accurate translation. In national practice under 35 U.S.C. 111, if any of these items was not presented at the time of filing, a notice would be mailed to the applicant setting a period of time to provide the missing item(s) and to pay a fee. The amendments to the rules governing entering the national stage will establish a greater degree of uniformity of practice and requirements for filing an application under 35 U.S.C. 111 and entering the national stage in an international application under 35 U.S.C. 371.

Amending § 1.494 and 1.495 results in regulations much like the present § 1.53. The major exception is that a notification of any missing parts in § 1.494 and 1.495 will only be mailed in those instances where the applicant has paid the basic national fee within 20 or 30 months from the priority date depending on whether election of the U.S. under chapter II of the PCT has been made prior to 19 months. Applicants can no longer pay the basic national fee with a surcharge after the 20/30 months deadline. Failure to pay the basic national fee within 20/30 months from the priority date will result in abandonment of the application. Paying the fee gives a clear indication to the Office that the applicant desires to enter the national stage. If the required oath, declaration or translation has not been filed within 20/30 months from the priority date, as appropriate, the Office will send applicant a notice and provide a period of time to supply the deficiency. Upon paying the basic national fee within 20/30 months from the priority date, the applicant will have the opportunity to inform the Office of a U.S. correspondence address, if any. Thus, the Office will avoid unnecessary handling of approximately 40% of those applications that designate the U.S. but do not enter the national stage, and will be able to send a notice to a U.S. correspondence address in most cases.

Often at 20 or 30 months from the priority date, the only communication which has been received by the Office is a copy of the international application from the International Bureau with the address of the foreign attorney or agent who represented the applicant in the international stage. The foreign attorney or agent may not be conversant in English or knowledgeable about U.S. practice, factors which often contribute to complicating the processing of applications. Thus, the new practice, which requires payment of the basic national fee on or before 20 or 30 months from the priority date, has several advantages: (1) It will enable the applicant to identify the U.S. attorney or agent for correspondence from the Office; (2) the Office, after a check of the national stage papers at 20 or 30 months, will mail a notice identifying any deficiencies and affording applicant a period for correction of those deficiencies; and (3) as in national practice under § 1.53, it will enable applicants to extend the period of time under § 1.136 for submission of a proper oath, declaration or translation.

The changes to §§ 1.494 and 1.495 address the problems which have been most frequently encountered in entering the national stage in the United States. The new practice of notifying applicants of the omission of a proper oath, declaration or translation and setting an extendable period of time for correction will allow applicants greater flexibility in the time for submission of these documents, thus avoiding the consequence of abandonment and potential loss of rights in the United States.

Implementation

The rule changes which reflect corresponding amendments in the PCT regulations were implemented on 01 July 1992 when the amendments became effective. The remaining rule changes will be effective on 01 May 1993. Setting a date for the rules to take effect several months in the future will allow time for applicants to change their procedures to conform to these rules.

Those international applications entering the national stage under § 1.494 where 20 months from the priority date expires on, or before, 30 April 1993 are under the old rule (§ 1.494 effective 01 July 1987) and those international applications entering the national stage under § 1.495 where 30 months from the priority date expires on, or before, 30 April 1993 are under the old rule (§ 1.495 effective 01 July 1987). Those international applications entering the national stage under section 1.494 where 20 months from the priority date expires on, or after, 01 May 1993 are under the new rule (§ 1.494 effective 01 May 1993) and those international applications entering the national stage under § 1.495 where 30 months from the priority date expires on, or after, 01 May 1993 are under the new rule (§ 1.495 effective 01 May 1993). For example:

(1) If a copy of an international application (which designates the U.S.) that has a priority date of 30 August 1991 is filed in the Office by 30 April 1993 (within 20 months from the priority date), applicant may enter the national stage under 37 CFR 1.494 by submitting any required English translation, the basic national fee and the oath or declaration not later than 30 June 1993. Of course, the payment of the surcharge and processing fee (37 CFR 1.492(e) and (f)) would also be due.

(2) If a copy of an international application (which elected the U.S. before expiration of 19 months from the priority date) that has a priority date of 30 October 1990 is filed in the Office by 30 April 1993 (within 30 months from the priority date), applicant may enter the national stage by submitting any required English translation, the basic national fee and the oath or declaration not later than 30 June 1993. Of course, the payment of the surcharge and processing fee (37 CFR 1.492(e) and (f)) would also be due.

(3) If a copy of an international application (which designates the U.S.) that has a priority date of 01 September 1991 is filed in the Office by 03 May 1993 (within 20 months from the priority date—01–02 May 1993 being a Saturday and Sunday, respectively), then applicant must pay the basic national fee by 03 May 1993 to avoid abandonment of the application. If the basic national fee is timely paid, a notice will then be sent to applicant giving a time period within which to file the oath or declaration and any required translation (new § 1.494(c)).

(4) Any international application having a priority date of 01 September 1991, or later, is under the new rule. Thus, if applicant files papers for the national stage indicated to be under the procedure of the old rule (§ 1.494) in the Office before 01 May 1993 (i.e., before expiration of 20 months from the priority date) but omits the basic national fee, the application will, nonetheless, become abandoned at midnight on 03 May 1993 (after 20 months from the priority date—01–02 May 1993 being a Saturday and Sunday, respectively) because applications where the 20-month deadline expires on or after 01 May 1993 come under the new practice. In accordance with new § 1.494 (i) a copy of the international application must be furnished to the Office, and (ii) the basic national fee must be paid before expiration of 20 months from the priority date.

Response to Comments on the Rules

Eight written comments were received in response to the notice of proposed rulemaking. All of the comments were considered in adopting the changes set forth herein. The comments and responses to the comments follow.

Comment 1. One comment stated that "The proposed addition to § 1.431(b)(1) of 'and the papers filed at the time of receipt of the international application [so] indicate' goes beyond the requirements set forth in the PCT and is contrary to PCT Administrative Instructions, section 329." Two other similar comments were received and urged, in effect, that § 1.431(b)(1) be revised to adopt the procedure set forth in section 329 of the PCT Administrative Instructions.

Response: The suggestion has not been adopted. The provisions adopted in § 1.431(b)(1) are consistent with, and required by, article 11 of the PCT as interpreted by the Office. Section 329 of the PCT Administrative Instructions was issued by the International Bureau after the Bureau was advised that the Office believed new section 329 to be inconsistent with requirements of Article 11 of the Treaty and inconsistent with over 13 years of practice in the United States. In the opinion of the Office, PCT Administrative Instruction 329 is inconsistent with PCT Article 11 and Rule 20.4(a), which require the Office to promptly determine whether the applicant does not obviously lack, by reasons of residence or nationality, the right to file an international application. In accordance with PCT Rule 89.1(b), "The Administrative Instructions shall not be in conflict with the provisions of the Treaty, these regulations, * * *." The United States will not follow Administrative Instruction 329.

Comment 2. One comment stated that in § 1.431(c), the reference to "PCT Rule 15.2" should be to "PCT Rule 15" because PCT Rule 15.1 is also relevant, and the reference to "§ 1.445" should be changed to refer to "PCT Rules 14 and 16.1 because § 1.445 does not cover the European Patent Office (EPO) search fee which is also paid to the USPTO."

Response: The suggestion has not been adopted. The references to Rule 15.2 and § 1.445 are considered proper in the context in which they are used. The references to Rule 15.2 and § 1.445 are not new and have worked well in directing applicants regarding international application requirements. The EPO search fee is not mentioned in § 1.431, but is published in each issue of the Official Gazette for applicant's information.

Comment 3. One comment stated that in § 1.431(d), the words "one designation fee' should be deleted since this is covered by § 1.432(b) and that "timely made" in line 5 be changed to "paid within the one-month period" for clarity.

Response: The first suggestion in the comment is not adopted. The reference to "one designation fee" in § 1.431(d) is repeated in § 1.432(b) to add clarity on this important point. The second suggestion in the comment is not adopted since it would introduce error into § 1.431(d). Indeed, all the fees must be paid timely, and need not be paid within the one-month period set pursuant to § 1.431(c), e.g., some fee(s) may be paid prior to the one-month period. Presumably the one-month period mentioned in the comment refers to a period set pursuant to § 1.431(c) which may not need to be set in every case.

Comment 4. One comment indicated that (in the fourth paragraph of the Supplementary Information section) the discussion of new § 1.432 includes a reference to a "generic" designation of all countries which, instead, should refer to a precautionary designation of all countries except the required specified designation(s).

Response: The appropriate change has been made to the discussion of § 1.432 to clarify that an applicant may provide, in addition to at least one specified designation, a precautionary designation of all other PCT member countries and regions so that any intended designation which may have been overlooked on filing can be corrected within 15 months of the priority date.

Comment 5. One comment stated that in § 1.432(a) and (b) the word "request" should be capitalized in view of § 1.401(d). A corresponding comment was made with respect to § 1.451(a).

Response: This suggestion is adopted since PCT Rule 4.10 requires the designations to appear on the Request (form RO/101) and § 1.432 continues to require that the designation(s) be indicated in the Request on filing. Similarly, with respect to § 1.451(a), the suggestion is adopted.

Comment 6. One comment stated that in § 1.432(a) "or regions" should be changed to "for the purpose of obtaining national or regional patents".

Response: The suggestion is adopted to the extent that § 1.432(a) has been changed by replacing "or regions" with "including an indication that applicant wishes to obtain a regional patent, where applicable." The adopted wording is preferable since it is the same as the wording of PCT Rule 4.9(a)(ii).

Comment 7. One comment objected to the requirement contained in § 1.432(a) that designations in the international application shall be stated as provided in PCT Rule 4.9(a) and section 115 of the Administrative Instructions Under the PCT. Also, the comment urged that the PCT Administrative Instructions should be reproduced in §§ 1.432 and 1.451 so that applicants have access to them.

Response: Section 115 of the PCT Administrative Instructions makes reference to the names and abbreviations of all countries. Inclusion of such a long list would unnecessarily encumber § 1.432(a). The Administrative Instructions are readily available, and a list of countries is provided in the Manual of Patent Examining Procedure (chapter 200). Applicants using a current Request form will inherently comply with PCT Rule 4.9(a) and sections 110 and 115 of the PCT Administrative Instructions.

Comment 8. One comment asked "If an applicant does not pay the fee(s) set out in § 1.432(c)(2) or (3), will he/she be given an additional month to pay the fees described in § 1.432(b)(1) and (2)?"

Response: No extension of time is available to the 15-month deadline of § 1.432(c). The time period set under § 1.432(b) does not apply to section § 1.432(c). If payment for the designations to be confirmed under § 1.432(c) is not received by 15 months from the priority date, those precautionary designations are considered to be withdrawn, PCT Rule 4.9(b).

Comment 9. One comment suggested adding references to PCT Rule 4.9(a) and (b) in various locations in § 1.432.

Response: The suggestion is adopted by adding appropriate references to PCT Rule 4.9(a) and (b).

Comment 10. One comment suggested that the last sentence in § 1.432(b) be moved to become the second sentence of § 1.432(b) and the third sentence be moved to become the last sentence of § 1.432(b).

Response: These suggestions are not adopted since they would not constitute an improvement to § 1.432(b).

Comment 11. One comment suggested that, in § 1.432(c)(3) unconfirmed designations indicated to be "considered withdrawn" should be changed to "regarded as withdrawn by the applicant".

Response: This suggestion has not been adopted because it does not further clarify § 1.432(c)(3). Unconfirmed designations are considered to be withdrawn by the applicant under PCT Rule 4.9(b)(ii) and are also considered to be withdrawn by the Office.

Comment 12. One comment suggested that § 1.446(d) should be expanded to indicate that a refund of the search fee will be given even after the search copy has been transmitted just so long as the withdrawal is effective before start of the international search.

Response: This suggestion has not been adopted since refunds may or may not be appropriate in the noted instance. For example, if the EPO acting as an international searching authority begins the search after withdrawal but before receipt of the withdrawal from the U.S. receiving office, a refund may not be made.

Comment 13. On comment suggested that in § 1.446(e) "demand" should be capitalized in view of § 1.401(g).

Response: This suggestion is adopted.

Comment 14. One comment suggested that the reference in § 1.451(a) to section "201" of the Administrative Instructions should be changed to "115"

Response: This suggestion is adopted since section "201" of the Administrative Instructions has been changed effective July 1, 1992, and is now section "115".

Comment 15. One comment noted that the proposed change in § 1.455(a) does not reflect that a common representative need not be "appointed".

Response: A new sentence has been inserted into § 1.455(a) to address the situation where no common representative or agent has been appointed. Where no common representative or agent has been appointed, the first mentioned applicant who is entitled to file in the U.S. receiving office is considered to be the common representative, PCT Rules 2.2bis and 90.2(b).

Comment 16. One comment noted that the proposed change in § 1.455(a) does not reflect that if a new common representative is appointed, the previous common representative is automatically revoked.

Response: The last sentence of § 1.455(a) has been changed to reflect that the later appointment of an attorney, agent or common representative revokes any earlier appointment unless otherwise indicated.

Comment 17. One comment suggested that "In §§ 1.475(a), 1.488(a) and 1.499(e) reference should be added to PCT Rule 13, Administrative Instructions, section 206, and possibly to Annex B of the Administrative Instructions."

Response: The suggestion is not adopted because it gives no reasons for the proposed change and it is not evident that the change is needed.

Comment 18. One comment stated that in the Supplementary Information discussion of § 1.475(b), the explanation of "specially adapted" was different from the explanation in Annex B, part I of the Administrative Instructions.

Response: The discussion of § 1.475(b) has been revised to conform to Annex B, Part I of the Administrative Instructions.

Comment 19. One comment stated that in § 1.484(b) no need is seen for adding the last two sentences because "The provision relates only to International Searching Authority practice and is set forth in more detail by the PCT Rules."

Response: Section 1.484(b) is directed to conduct of the International Preliminary Examining Authority rather than the International Searching Authority. The explanation in § 1.484(b) is retained because, although it parallels PCT Rule 69.1(e), it informs applicants that delay in submission of an amendment will delay the start of examination. Applicants should be aware that, since the time for issuance of the final report is fixed by PCT Rule 69.2 and may not change, any delay in the start of examination may work to applicants' disadvantage. For example, the minimum time may have to be set for response to any opinions, there may be time for only one opinion and/or there may be less time for interviews.

Comment 20. On comment suggested that § 1.485 should be amended to take into account that amendments are permitted under PCT Rule 66.4bis even after the time period set by the International Preliminary Examining Authority.

Response: This suggestion is not adopted. Section 1.485 sets forth when an amendment may be filed so that it will be considered. Amendments filed at other times may not be considered.

Comment 21. One comment suggested that the beginning of section 1.492 should be changed to reflect that, in view of H.R. 3531, the national stage fees are under 35 U.S.C. 41(a) rather than under 35 U.S.C. 376.

Response: H.R. 3531 was enacted into law (Public Law 102–204). Accordingly, the suggestion in the comment has been adopted by revising the introductory language in § 1.492 to remove the reference to 35 U.S.C. 376.

Comment 22. One comment urged that in the Discussion of Specific Rules for §§ 1.494(b) and 1.495(b), the discussion should be modified to clarify that the applicant need only check "his or her" files to be sure that the Bureau's notice regarding transmittal of a copy of the international application has been received.

Response: The language has been revised to eliminate any ambiguity.

Comment 23. One comment suggested that "as filed" in § 1.494(c) should be set off by commas as in § 1.495(c).

Response: Section 1.494(c) has been changed as suggested.

Comment 24. One comment questioned the phrases "accurate translation" and "proper translation" as used in the Supplementary Information discussion and stated that these phrases do not further explain the word "translation" as used in the statute. Another comment suggested that the rule should provide for correction of errors in the translation without penalty of abandonment or surcharge.

Response: The statute (35 U.S.C. 371(c)(2)) requires that applicant file a translation of the international application to avoid abandonment (35 U.S.C. 371(d)). The Office has received purported translations which include amendments to the text of the international application and other inconsistencies with the text of the non-English language document. It is helpful to explain that a translation must be accurate and a proper translation. The

Office does not inspect a purported translation for all errors, it only inspects for errors which are apparent on the face of the document. For example, where the non-English language international application has 6 claims and the purported translation has 8 claims, obviously the requirement for a proper translation has not been met. Submission of inaccurate translations require additional processing by the Office, thus the requirement for a processing fee is appropriate.

Comment 25. One comment stated that in the Supplementary Information discussion of §§ 1.494 and 1.495 the reference to the U.S. correspondence address should be modified to add "if any" since none is required.

Response: The suggestion has been adopted.

Comment 26. One comment stated that in the preamble of § 1.495(e) there appears to be a contradiction in that the first sentence suggests a translation of the annex may be filed within the time period set under 1.495(c) whereas the second sentence suggests the translation of the annex must be filed by 30 months or "be considered cancelled."

Response: The sentences are compatible. The first sentence applies to the case where the translation, oath or declaration have not been submitted by 30 months. In such case, they (and any annex) may be submitted within the time period of paragraph (c). The second sentence applies to the case where the translation and oath or declaration have been submitted by 30 months, whereupon no additional time is set under paragraph (c). Thus, in the first instance, if applicants are given additional time to submit the translation or oath or declaration, they may also submit the annex in that same additional time. But where the translation and oath or declaration have been submitted by 30 months, an additional time period will not be provided simply for submitting a translation of the annex. Of course, applicant may submit a preliminary amendment under 37 CFR 1.121 including the subject matter of the annex.

Comment 27. One comment suggested that §§ 1.494(b)(3) and 1.495(b)(3) should be amended to permit an extension of time for the basic national fee so that it may be submitted, like the declaration and translation, after 20 and 30 months.

Response: The suggestion is not adopted. Submission of the basic national fee gives the Office a clear indication that applicant intends to enter the national stage. This helps the Office to avoid processing of those 40% of the international applications which designate the U.S. but do not enter the national stage. Also, filing of the basic national fee by 20 or 30 months will ordinarily provide the Office with the correspondence address of the person prosecuting the national stage application. Without this correspondence address, the Office would send any notice of missing parts to the correspondence address in the international application (e.g., the person who prosecuted the international stage and who may not be qualified to prosecute the U.S. national stage). The rules as amended address the greatest hurdle for entry into the national stage which has been submission of the oath or declaration by the 22 or 32-month deadline.

Comment 28. One comment suggested that §§ 1.494(d) and 1.495(d) should indicate that the PCT Article 19 amendments (which have not been received) are not only considered to be cancelled, but are also "disregarded under PCT Rule 49.5(c-bis)."

Response: The suggestion is not adopted because this additional reference to PCT Rule 49.5(c-bis) is not helpful. The indication that the PCT Article 19 amendments are cancelled is in accordance with 35 U.S.C. 371(d). It is standard practice in the examination of a patent application in the United States to disregard amendments that have been cancelled.

Comment 29. One comment suggested that, with respect to § 1.494, "The proposed rules do not make clear the relationship between paragraphs (c) and (g) as to the time period set for later furnishing of the translation into English."

Response: Paragraph (c) provides that applicant will be provided a period of time to file the translation (if the requirements of paragraph (b) have been met) and paragraph (g) provides that the application becomes abandoned if any required translation is not filed within the time period set in paragraph (c). Thus, where the other requirements have been met but the translation has not been provided, paragraph (c) provides a time period for submission of the translation and paragraph (g) provides the sanction (abandonment) for failing to comply within the set period.

Comment 30. One comment questioned whether the time period for translation of any PCT Article 19 amendments should be extendable with any extension for translation of the international application. A corresponding comment was made with respect to § 1.495.

Response: An extension of time for submission of the translation of any PCT Article 19 amendment is not possible in view of the provisions of 35 U.S.C. 371(d).

Comment 31. One comment suggested that §§ 1.494(g) and 1.495(h) should be modified by replacing "the translation" with "any required translation."

Response: The suggestion is adopted. Translations are not required where the international application was filed in English.

Comment 32. One comment suggested that at the beginning of § 1.495(c) after "paragraph (b)" the word "of" should be added.

Response: The suggestion is adopted.

Comment 33. One comment suggested that § 1.495(d) could be deleted since under PCT Rules 70.16 and 74.1 relevant amendments under PCT Article 19 must be annexed to the international preliminary examining report and therefore must be translated under § 1.495(e). It was further noted that superseded PCT Article 19 amendments need not be translated.

Response: The suggestion is not adopted. Section 1.495(d) covers the situation where the PCT Article 19 amendment is not annexed. For example, where applicant enters the national stage in the U.S. and withdraws the international application before issuance of the final report. In this instance, translation of the PCT Article 19 amendments would have to be submitted by the date of commencement of the national stage (which cannot be later than 30 months) or be considered cancelled.

Comment 34. One comment observed that under § 1.495(e) if there is no time period to be set for submission of the translation of the international application and/or the oath or declaration, there is no possibility for extra time (after the 30-month deadline) for submission of a translation of the annex. It was suggested that section 1.495(e) be reworded to permit extra time (after the 30-month deadline) for submission of a translation of the annex even where the translation of the international application and/or oath or declaration had been submitted by 30 months.

Response: The suggestion is not adopted. Where the translation of the international application and/or the oath or declaration have been submitted by 30 months, it is appropriate to promptly forward the application for examination rather than delay examination for a translation of the annex (especially since often it appears that applicant does not wish to proceed on the basis of the annex). Some applicants prefer to submit preliminary amendments under § 1.121 (which may

be done even after 30 months) rather than to submit a translation of the annex.

Comment 35. One comment urged that § 1.495(e) is inconsistent in that it states that the 30-month time limit may not be extended, and then states that if the translation of the international application is not filed within 30 months from the priority date additional time may be set under paragraph (c) of this section.

Response: The two statements are not contradictory. The time period for submission of the translation and oath or declaration is a new time period and is not an extension of the 30-month time limit. The fixed time limit for submission of the basic national fee is 30 months for the priority date. If the basic national fee is not paid by this 30-month deadline, the application is abandoned. If, on the other hand, the basic national fee is paid by 30 months from the priority date, the pendency of the international application continues past 30 months. If the translation or oath or declaration have not been filed by the 30-month deadline (but the basic national fee has been paid), the application is not abandoned and a time period is set for submission of the missing translation and oath or declaration.

Comment 36. One comment asked "Is it the intention of the Patent and Trademark Office to affect, in any way, the current practice of assigning a date on which the section 371(c)(4) requirement (oath or declaration) will be deemed to have been met, if an applicant submits an oath or declaration in response to a Notice of Missing Parts, thereby ultimately affecting the section 102(e) date to which the eventually granted U.S. patent will be entitled?"

Response: Nothing in the new rule will affect the 35 U.S.C. 102(e) date which will continue to be the date that the last of the 35 U.S.C. 371(c) (1), (2) and (4) requirements are fulfilled.

Comment 37. One comment suggested that section 1.821 be clarified to reflect that the notice requiring compliance with paragraphs (b) through (f) is sent by the international searching authority.

Response: The suggestion is not adopted. Section 1.821 does not specify who will send the notice and there is no need to do so in the rule.

Comment 38. One comment questioned as to section 10.9 whether a pro se applicant from Brazil, who is either an individual or a company, would have the right to practice before the U.S. as an international searching or international preliminary examining authority.

Response: Section 10.9 has been amended to clarify that it is not directed to pro se applicants.

Discussion of Specific Rules

The following is a table correlating PCT Rule changes with the new 37 CFR changes. Sections 1.431(b)(1), 1.431(b)(3)(ii), 1.451(a), 1.482(a)(2)(i), 1.492(e), 1.494 and 1.495, which are also amended, are not shown in the table because they are changes that are not required by PCT Rule changes.

RULE CORRELATION TABLE

37 CFR change	PCT rule change
1.431(c)–(e)	16bis, 27.1.
1.432(a)	4.1(b)(iv), 4.9.
1.432(b)	5.5, 16bis.
1.432(c)	15.5
1.434(a)	3.1.
1.445(a)(4)	15.5.
1.446(d)	15.6, 16.2.
1.446(e)	57.6
1.455(a)	90, 2.2bis.
1.475	13.
1.476(a)	13.
1.480(b)	53.1.
1.482(b)	57.5.
1.484(b)	60.1(g), 66, 69.1.
1.485	60.1(g).
1.487	13.
1.488(a)	13.
1.499	13.
1.821(h)	13ter.1(c).
10.9(c)	90.

Section 1.431(b)(1) is amended to clarify that an international filing date will be accorded to an International application filed in the United States where at least one applicant is indicated to be a resident or national of the United States in the papers as filed. If the papers, as filed, indicate a residence or nationality for at least one applicant, the United States Receiving Office can promptly determine whether, as required by PCT Article 11, "the applicant does not obviously lack" the requisite residence or nationality to file an international application in the United States Patent and Trademark Office.

Section 1.431(b)(3)(ii) is amended to add a cross-reference to § 1.432 which sets forth the requirements regarding designations.

Section 1.431(c) is amended to reflect that the United States Receiving Office, rather than the International Bureau, will be responsible for collecting fees not paid in full at the time of filing the international application or within one month thereafter. The change reflects the procedural change under the new PCT Regulations that the Receiving Office, rather than the International Bureau, will be responsible for communicating deficiency notices to the applicant and collecting the necessary fees. Under the procedure in paragraph (c), a notice of any fee deficiency will be mailed by the Receiving Office setting a time period of one month for payment of the fee deficiency and a late payment fee equal to the greater of (1) 50% of the amount of the deficient fees up to a maximum amount equal to the basic fee, or (2) an amount equal to the transmittal fee. The time period of one month for response to this notice cannot be extended.

Section 1.431(d) is eliminated as unnecessary since the United States Receiving Office will take over the responsibility for collecting fees in place of the International Bureau.

Section 1.431(e) is redesignated as 1.431(d) and clarifies that the failure to timely pay the fees pursuant to paragraph (c) will result in the withdrawal of the international application.

Section 1.432(a) is amended to clarify that the applicant must specify, on filing, at least one national or regional designation in order to be granted a filing date for the international application. This specific designation is required whether or not all designations are indicated pursuant to paragraph (c) of this section. The reference to section 201 of the Administrative Instructions has been changed to section 115 to correspond to the change in the Administrative Instructions.

Section 1.432(b) is amended to establish a procedure for the late payment of fees for designations that were specified on filing an international application, and a procedure, pursuant to PCT Rule 16bis.1(c), in accordance with section 321 of the PCT Administrative Instructions for allocating fees, where the amount paid is insufficient to cover all the fees. The payment of the designation fees with a late payment fee (previously termed a "surcharge") is not new. Under the revised PCT regulations, however, the Receiving Office, rather than the International Bureau, will be responsible for communicating deficiency notices to the applicant. The designation fees may be paid, without necessity for a late payment fee, within one year from the priority date or within one month from the date of receipt of the international application if that month expires after the expiration of one year from the priority date. The applicant will be notified and given one month within which to pay any deficient designation fees plus a late payment fee. The amount of the late payment fee is equal to 50% of the deficient fees, but will not be less than the amount of the transmittal fee (currently $200) and will not exceed the amount of the basic fee (currently $525).

The one-month time limit for payment of the deficient designation fees and late payment fee may not be extended. If, after expiration of the one-month time period, at least one designation fee has not been paid (with any late payment fee which is due), the international application will be withdrawn. If, after expiration of the one-month time period, at least one designation fee has been paid (with any late payment fee which is due) but the amount paid is not sufficient to cover the late payment fee and all the designation fees, the amount paid will be allocated, pursuant to PCT Rule 16bis.1(c), in accordance with section 321 of the Administrative Instructions. Section 321 of the Administrative Instructions provides that the amount will be allocated in accordance with any instructions received from the applicant or, if no instructions have been received, in the order in which the designations appear in the request part of the international application. Designations for which no designation fee is timely filed will be withdrawn. In § 1.432(b), the reference to parenthetical numbers (1) and (2) used to describe the late payment fee as proposed has been deleted in the final rule to improve clarity.

New § 1.432(c) establishes a procedure wherein, in addition to the designation(s) under paragraph (a), the applicant could indicate, on filing, all designations permitted under the Treaty and confirm desired designations of countries or regions up to 15 months from the priority date. Section 1.432(c) as promulgated requires that applicant's indication of all designations permitted under the Treaty in addition to the designation(s) under paragraph (a) be made in the Request in accordance with PCT Rule 4.9(b). The confirmation must include both a written notice of the countries or regions being confirmed, the appropriate designation fees and a confirmation fee based on the number of countries or regions being confirmed. If the amount of the fees is insufficient, the Receiving Office will allocate the amount paid in accordance with any priority of designations specified by the applicant or, if no priority is specified, in accordance with section 321 of the Administrative Instructions. A notice reminding applicant of the 15-month deadline will not be provided. Unconfirmed designations will be considered withdrawn.

Section 1.434 is amended to allow applicants to develop their own computer-generated Request form so long as the forms comply with the requirements of sections 102 (h) and (i) of the Administrative Instructions. Printed Request forms will continue to be available from the United States Patent and Trademark Office.

New § 1.445(a)(4) defines the amount of the confirmation fee required for the designations confirmed under § 1.432(c). The confirmation fee is equal to 50% of the sum of the designation fees for the designations being confirmed. For example, a confirmation of four additional designations (at $127 per designation, or $508) would require a $254 confirmation fee. The total amount of the fees due would be $762, which is the sum of $508 and $254.

Section 1.446(d) is amended to clarify that the international (basic and designation, PCT Rule 15.1) and search fees may be refunded under certain circumstances linked to whether the record copy or search copy has been transmitted to the International Bureau or International Searching Authority, respectively. The transmittal fee and any late payment fees will not be refunded, but will be retained to cover Office processing costs. If the record copy or search copy has been transmitted, the Receiving Office cannot refund or authorize the refund of the international or search fees. Any request for a refund filed after the record copy or search copy has been transmitted should be directed to the International Bureau (for the international fee) or the International Searching Authority (for the international search fee) for consideration of whether a refund should be made.

New § 1.446(e) indicates that a refund of the handling fee by the International Preliminary Examining Authority is permitted only in the situations where the demand is considered not to have been submitted or upon withdrawal of the demand before the demand has been sent to the International Bureau. If the demand has been sent to the International Bureau, requests for refund of the handling fee should be directed to the International Bureau.

Section 1.451(a) is amended to clarify that the applicant must specify, on filing, the priority of a previously filed application in order to be granted priority in the international application. The right to priority is not necessarily lost if the claim is not on the Request form, but will be lost if the claim does not appear in the papers presented on filing of the application.

Section 1.455(a) is amended to clarify that the term "common representative" means an applicant appointed by the other applicants or considered to be the representative of the other applicants. Further, since attorneys and agents are registered to practice before the Office rather than licensed, § 1.455(a) has been amended by replacing the word "licensed" with "registered." The paragraph also clarifies who can represent applicants in an international application before the U.S. International Searching Authority or the U.S. International Preliminary Examining Authority, e.g., (1) An attorney or agent registered to practice before the Office, and (2) an attorney or agent not registered to practice before the Office, but authorized to practice before the national office with which the international application was filed and for which the United States is an International Searching Authority or International Preliminary Examining Authority. In the latter case, representation is restricted to practicing before the U.S. International Searching Authority and/or the U.S. International Preliminary Examining Authority. For example, if an international application is filed in the Brazilian Patent Office, an agent authorized to practice before the Brazilian Patent Office may prosecute that application before the U.S. International Searching Authority or the U.S. International Preliminary Examining Authority. Paragraph (a) also provides that, unless otherwise indicated, the appointment of an attorney, agent or common representative revokes any earlier appointment as specified in PCT Rule 90.6(b).

Section 1.475 is amended to adopt the unity of invention principles of PCT Rule 13, as amended. Section 1.475 is further amended to reflect that the same unity of invention principles are applied by the international searching and preliminary examining authorities and during the national stage. Duplicative provisions in §§ 1.487 and 1.499 are deleted.

The principles of unity of invention are used to determine the types of claimed subject matter and the combinations of claims to different categories of invention that are permitted to be included in a single international or national stage patent application. The basis principle is that an application should relate to only one invention or, if there is more than one invention, that applicant would have a right to include in a single application only those inventions which are so linked as to form a single general inventive concept.

Section 1.475(a) is amended to contain both the definition of the requirement for unity of invention, and the unity of invention criteria that must be satisfied, where a group of inventions is claimed, in order to have a right to include multiple inventions in a single application. A group of inventions is linked to form a single general inventive

concept where there is a technical relationship among the inventions that involves at least one common or corresponding special technical feature. The expression "special technical features" is defined as meaning those technical features that define the contribution which each claimed invention, considered as a whole, makes over the prior art. For example, a compound is the common technical feature in an application claiming: (1) The compound per se, (2) a method of making the compound and (3) a method of using the compound. A corresponding technical feature is exemplified by a key defined by certain claimed structural characteristics which correspond to the claimed features of a lock to be used with the claimed key.

Section 1.475(b) is amended to define several combinations of different categories of claims which always fulfill the unity of invention requirements of § 1.475(a) where the same or corresponding special technical feature is claimed. There may be other combinations of different categories of claims which fulfill the requirement for unity of invention, but the determination of unity must be made under § 1.475(a), not § 1.475(b).

In § 1.475(b), a process is "specially adopted" for the manufacture of a product if the claimed process inherently produces the claimed product with the technical relationship defined in § 1.475(a) being present between the claimed process and the claimed product. The expression "specially adapted" as used in this section does not imply that the product could not also be manufactured by a different process.

In § 1.475(b), an apparatus or means is "specifically designed" for carrying out the process when the apparatus or means is suitable for carrying out the process with the technical relationship defined in § 1.475(a) being present between the claimed apparatus or means and the claimed process. The expression "specifically designed" does not imply that the apparatus or means could not be used for carrying out another process, not does it imply that the process could not be carried out using an alternative apparatus or means.

Section 1.475(c) is amended to require that unity of invention might not be present if a combination of categories of invention different from those described in § 1.475(b) are presented in an application. The requirements of § 1.475(a) are always met by the combinations described in § 1.475(b) where the same or corresponding special technical feature is claimed. All other combination must be tested against the unity of invention standard of § 1.475(a).

Section 1.475(d) is amended by deleting reference to the different combinations of categories of invention that always meet the unity of invention standard (now set forth in § 1.475(b)), and to make reference to the determination of the main invention where multiple products, processes of manufacture or uses are claimed. The significance of determining the main invention is set forth in § 1.476(c).

Section 1.475(e) is amended to require that the determination regarding unity of invention be made without regard to whether a group of inventions is claimed in separate claims or as alternatives within a single claim. The basic criteria for unity of invention are the same, regardless of the manner in which applicant chooses to draft a claim or claims.

Section 1.475(f) is deleted since PCT Rule 13 has been amended and the basic principles of unity of invention are incorporated into other portions of § 1.475.

Section 1.476(a) is amended to delete the reference to § 1.475(f) (which is deleted) and PCT Rule 13.

Section 1.480(b) is amended to allow applicants to develop their own computer-generated Demand form so long as the limitations in sections 102 (h) and (i) of the Administrative Instructions are met. Printed Demand forms will continue to be available from the Office.

Section 1.482(a)(2)(i) is amended to clarify that an additional preliminary examination fee may be charged for lack of unity in Chapter II irrespective of whether there was a similar charge in Chapter I. Normally there will be a charge for lack of unity both in Chapter I and in Chapter II. In some instances, although a charge for the search of an additional invention is justified in Chapter I, the examiner chooses to proceed without charging for the search of the additional invention(s). However, circumstances may change (e.g., an amendment submitted with the Demand expanding the claims to the additional invention(s)) in Chapter II so as to warrant the examiner's requirement for an additional fee for examination of examiner's requirement for an additional fee for examination of the additional invention(s).

Section 1.482(b) is amended to remove the reference to the supplement to the handling fee which had been collected for the benefit of the International Bureau and which has been deleted from the PCT regulations. At present, applicants must pay as many supplements to the handling fee as there are languages into which the elected Offices require translations of the international preliminary examination report. Under the new PCT regulations, all countries will accept an English translation of the international preliminary examination report, thus limiting the International Bureau's translation costs. Accordingly, only one handling fee will need to be paid by the applicant, without any supplement, irrespective of the need for a translation of the report.

Section 1.484(b) is amended to permit an applicant to indicate in the demand that international preliminary examination is to begin based on the application as amended rather than on the application as filed. If a PCT Article 19 amendment is not received by the Office by 20 months from the priority date, preliminary examination will proceed. Where the demand indicates examination is to be based on an accompanying PCT Article 34 amendment, but the PCT Article 34 amendment has not been provided to the Office with the demand, the applicant will be notified and given a time period to submit the amendment. Thus, if the applicant wishes preliminary examination based on an amended version of the international application, the demand must so indicate and the amendment (PCT Article 19 or 34) must (1) accompany the demand; or (2) in the case of a PCT Article 19 amendment, be received by 20 months from the priority date; or (3) in the case of the PCT Article 34 amendment, be submitted within the nonextendable time period set by the Office.

Section 1.485 is amended to be consistent with § 1.484 and provides for amendments to be filed with the demand or within a time period set by the International Preliminary Examining Authority.

Section 1.487 is removed as unnecessary because the amendments to § 1.475 address the unity of invention principles to be applied by the International Preliminary Examining Authority.

Section 1.488(a) is amended to replace the reference to § 1.487, which is removed, with a reference to § 1.475.

Section 1.492 is amended to revise the introductory clause to eliminate the reference to 35 U.S.C. 376.

Section 1.492(e) is amended to eliminate the surcharge for filing the basic national fee after 20 or 30 months from the priority date. In accordance with the new practice under §§ 1.494 and 1.495, the basic national fee must be filed no later than 20 months, or 30 months if a timely election was filed,

from the priority date in order to avoid abandonment of the application.

Sections 1.494 and 1.495 is amended to modify the practice for entering the national stage as a designated or elected office by more closely aligning it with national application practice under § 1.53.

Section 1.494(a) is amended to clarify that absence of a Demand form is no longer the controlling event, but rather failure to elect the United States within 19 months of the priority date will trigger the time periods set forth in paragraphs (b) and (c) of this section.

Section 1.494(b) is amended to require that the basic national fee and a copy of the international application must be filed with the Office by 20 months from the priority date to avoid abandonment. The 22-month period for filing the basic national fee with a surcharge in previous rule 1.494(c) has been eliminated. The International Bureau normally provides the copy of the international application to the Office in accordance with PCT Article 20. At the same time, the International Bureau notifies the applicant of the communication to the Office. In accordance with PCT Rule 47.1, that notice shall be accepted by all designated offices as conclusive evidence that the communication has duly taken place. Thus, if the applicant desires to enter the national stage and applicant has received the notice from the International Bureau, applicant need only pay the basic national fee by 20 months from the priority date. The 20-month time limit for submission of the basic national fee and a copy of the international application is not extendable.

Section 1.494(c) is amended to provide that applicants who have provided the basic national fee and a copy of the international application by 20 months from the priority date but who omit a proper translation, oath or declaration will receive a notification setting a time period for submission of the omitted requirements. The time period set in the notice can be extended pursuant to § 1.136. Filing of the oath or declaration later than 20 months will require the payment of the surcharge set forth in § 1.492(e). Filing of the translation later than 20 months will require the payment of the processing fee set forth in § 1.492(f).

Section 1.494(d) is amended to clarify the existing practice that PCT Article 19 amendments must be submitted by 20 months from the priority date, which time may not be extended. Of course, the failure to do so does not result in loss of the subject matter of the PCT Article 19 amendments. The applicant may submit that subject matter in a preliminary amendment filed under § 1.121. In many cases, filing an amendment under § 1.121 is preferable since grammatical or idiomatic errors may be corrected.

Section 1.494(g) is removed in view of the amendments to sections (b), (c) and (d).

Section 1.494(h) is redesignated as 1.494(g) and is amended to specify when an application that fails to enter the national stage becomes abandoned. Abandonment occurs at 20 months from the priority date if the basic national fee and a copy of the international application have not been provided to the Office. If they have been provided to the Office within 20 months and the translation and/or oath or declaration are not filed timely, abandonment occurs upon expiration of the time limit set in the notification pursuant to paragraph (c). Thus, in the latter situation, abandonment would occur at the expiration of the time period set in the notice to file the missing translation, and/or oath or declaration. The phrase "where the United States has been designated but not elected *prior to* 19 months from the priority date" (emphasis added) has been changed to "where the United States has been designated but not elected *by the expiration of* 19 months from the priority date" (emphasis added) for clarity. A corresponding change has been made in § 1.495(h).

Section 1.495(a) is amended to clarify that the election of the U.S. need not be made in the Demand, but can be made subsequently if filed before expiration of 19 months from the priority date to start the time periods set forth in paragraphs (b) and (c) of this section.

Section 1.495(b) is amended to require that the basic national fee and a copy of the international application must be filed with the Office by 30 months from the priority date to avoid abandonment. The 32-month period for filing the basic national fee with a surcharge in previous rule 1.495(c) has been eliminated. The International Bureau normally provides the copy of the international application to the Office in accordance with PCT Article 20. At the same time the International Bureau notifies applicant of the communication to the Office. In accordance with PCT Rule 47.1, that notice shall be accepted by all designated offices as conclusive evidence that the communication has duly taken place. Thus, if the applicant desires to enter the national stage, the applicant normally need only check to be sure that notice from the International Bureau has been received and then pay the basic national fee by 30 months from the priority date. The 30-month time limit for submission of the basic national fee and a copy of the international application is not extendable.

Section 1.495(c) is amended to provide that applicants who have provided the basic national fee and a copy of the international application by 30 months from the priority date, but who omit a proper translation, oath or declaration, will receive a notification setting a time period for submission of the omitted requirements. The time period set in the notice can be extended pursuant to § 1.136. Filing of the oath or declaration later than 30 months will require the payment of the surcharge set forth in § 1.492(e). Filing of the translation later than 30 months will require the payment of the processing fee set forth in § 1.492(f).

Section 1.495(d) is amended to clarify the existing and continuing practice that the PCT Article 19 amendments must be submitted by 30 months from the priority date. The deadline for submitting PCT Article 19 amendments may not be extended. The failure to do so will not result in loss of the subject matter of the PCT Article 19 amendments. Applicant may submit that subject matter in a preliminary amendment filed under § 1.121. In many cases, filing an amendment under § 1.121 is preferable since grammatical or idiomatic errors may be corrected.

Section 1.495(e) is amended to specify that a translation into English of any annexes to the international preliminary examining report which are not received by 30 months from the priority date may only be submitted within the time period set in paragraph (c) for submission of any omitted translation of the international application, or oath or declaration. If any required translation of the international application and oath or declaration have been provided to the Office by 30 months, a notice under paragraph (c) will not be sent, and if the translation of annexes is not submitted within 30 months, the annexes will be considered cancelled.

Section 1.495(h) is removed in view of the amendments to sections (b), (c), (d) and (e).

Section 1.495(i) is redesignated as 1.495(h) and specifies when an application that fails to enter the national stage becomes abandoned if the United States was elected prior to 19 months from the priority date. Abandonment occurs at 30 months from the priority date if the basic national fee and a copy of the international application have not been provided to the Office. If they have been provided to

the Office within 30 months and the translation and/or oath or declaration are not filed timely, abandonment occurs upon expiration of the time limit set in the notification pursuant to paragraph (c). Thus, in the latter situation, abandonment would occur at the expiration of the time period set in the notice to file the missing translation, and/or oath or declaration.

Section 1.499 is amended by removing paragraphs (a) through (e) because the amendments to § 1.475 address the unity of invention principles to be applied in the national stage. The reference to the official action being called a requirement for restriction has been eliminated as unnecessary.

Section 1.821(h) is amended to provide that if applicant fails to timely provide the required computer-readable form, the United States International Searching Authority shall search only to the extent that a meaningful search can be carried out.

Section 10.9 is amended to add a new paragraph (c) to be consistent with section 1.455, clarifying that an attorney or agent having the right to act before the national office with which the international application is filed may represent the applicant before the U.S. International Searching Authority or the U.S. International Preliminary Examining Authority. An individual who has the right to practice before the national office with which an international application is filed, and who is not registered under § 10.6, may not prosecute patent applications in the national stage in the Office.

Other Considerations

The rule changes are in conformity with the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., Executive Orders 12291 and 12612, and the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, et seq.

The General Counsel of the Department of Commerce has certified to the Chief Counsel for Advocacy, Small Business Administration, that the rule changes will not have a significant economic impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)), because the rules provide more streamlined and simplified procedures for filing and prosecuting international and national stage applications under the PCT.

The Patent and Trademark Office has determined that these rule changes are not a major rule under Executive Order 12291. The annual effect on the economy will be less than $100 million. There will be no major increase in costs or prices for customers; individual industries; Federal, state or local government agencies; or geographic regions. There will be no 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 Patent and Trademark Office has also determined that this notice has no federalism implications affecting the relationship between the National Government and the States as outlined in Executive Order 12612.

These rule changes will not impose any additional burden under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, et seq. The paperwork burden imposed by adherence to the PCT is currently approved by the Office of Management and Budget under control number 0651–0021.

Notice is hereby given that pursuant to the authority granted to the Commissioner of Patents and Trademarks by 35 U.S.C. 6, the Patent and Trademark Office amends title 37 of the Code of Federal Regulations as set forth below.

List of Subjects.

37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of Information, Inventions, and patents, Reporting and record keeping requirements, Small businesses.

37 CFR Part 10

Administrative practice and procedure, Inventions and patents, Lawyers, Reporting and record keeping requirements, Trademarks.

For the reasons set forth in the preamble, 37 CFR parts 1 and 10 are amended as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR part 1 continues to read as follows:

Authority: 35 U.S.C. 6 unless otherwise noted.

2. Section 1.431 is amended by removing paragraph (e) and revising paragraphs (b)(1) through (b)(3)(ii), (c) and (d) to read as follows:

§ 1.431 International application requirements.

* * * * *

(b) An international filing date will be accorded by the United States Receiving Office, at the time to receipt of the international application, provided that:

(1) At least one applicant (§ 1.421) is a United States resident or national and the papers filed at the time of receipt of the international application so indicate (35 U.S.C. 361(a), PCT Art. 11(1)(i)).

(2) The international application is in the English language (35 U.S.C. 361(c), PCT Art. 11(1)(ii)).

(3) The international application contains at least the following elements (PCT Art. 11(1)(iii)):

(i) An indication that it is intended as an international application (PCT Rule 4.2);

(ii) The designation of at least one Contracting State of the International Patent Cooperation Union (§ 1.432);

* * * * *

(c) Payment of the basic portion of the international fee (PCT Rule 15.2) and the transmittal and search fees (§ 1.445) may be made in full at the time the international application papers required by paragraph (b) of this section are deposited or within one month thereafter. If the basic transmittal and search fees are not paid within one month from the date of receipt of the international application, applicant will be notified and given one month within which to pay the deficient fees plus a late payment fee equal to the greater of:

(1) 50% of the amount of the deficient fees up to a maximum amount equal to the basic fee, or

(2) an amount equal to the transmittal fee (PCT Rule 16bis).

The one-month time limit set in the notice to pay deficient fees may not be extended.

(d) If the payment needed to cover the transmittal fee, the basic fee, the search fee, one designation fee and the late payment fee pursuant to paragraph (c) of this section is not timely made, the Receiving Office will declare the international application withdrawn under PCT Article 14(3)(a).

3. Section 1.432 is revised to read as follows:

§ 1.432 Designation of States and payment of designation fees.

(a) The designation of States including an indication that applicant wishes to obtain a regional patent, where applicable, shall appear in the Request upon filing and must be indicated as set forth in PCT Rule 4.9 and section 115 of the Administrative Instructions. Applicant must specify at least one national or regional designation on filing of the international application for a filing date to be granted.

(b) If the fees necessary to cover all the national and regional designations specified in the Request are not paid by the applicant within one year from the priority date or within one month from the date of receipt of the international

application if that month expires after the expiration of one year from the priority date, applicant will be notified and given one month within which to pay the deficient designation fees plus a late payment fee equal to the greater of 50% of the amount of the deficient fees up to a maximum amount equal to the basic fee, or an amount equal to the transmittal fee (PCT Rule 16bis). The one-month time limit set in the notification of deficient designation fees may not be extended. Failure to timely pay at least one designation fee will result in the withdrawal of the international application. The one designation fee may be paid:

(1) Within one year from the priority date,

(2) within one month from the date of receipt of the international application if that month expires after the expiration of one year from the priority date, or

(3) with the late payment fee defined in this paragraph within the time set in the notification of the deficient designation fees. If after a notification of deficient designation fees the applicant makes timely payment, but the amount paid is not sufficient to cover the late payment fee and all designation fees, the Receiving Office will, after allocating payment for the basic, search, transmittal and late payment fees, allocate the amount paid in accordance with PCT Rule 16bis.1(c) and withdraw the unpaid designations. The notification of deficient designation fees pursuant to this paragraph may be made simultaneously with any notification pursuant to § 1.431(c).

(c) On filing the international application, in addition to specifying at least one national or regional designation under PCT Rule 4.9(a), applicant may also indicate under PCT Rule 4.9(b) that all other designations permitted under the Treaty are made. The latter indication under PCT Rule 4.9(b) must be made in a statement on the Request that any designation made under this paragraph is subject to confirmation (PCT Rule 4.9(c)) not later than the expiration of 15 months from the priority date by:

(1) Filing a written notice with the United States Receiving Office specifying the national and/or regional designations being confirmed;

(2) Paying the designation fee for each designation being confirmed; and

(3) Paying the confirmation fee specified in § 1.445(a)(4).

Unconfirmed designations will be considered withdrawn. If the amount submitted is not sufficient to cover the designation fee and the confirmation fee for each designation being confirmed, the Receiving Office will allocate the amount paid in accordance with any priority of designations specified by applicant. If applicant does not specify and priority of designations, the allocation of the amount paid will be made in accordance with PCT Rule 16bis.1(c).

4. Section 1.434 is amended by revising paragraph (a) to read as follows:

§ 1.434 The request.

(a) The request shall be made on a standardized form (PCT Rules 3 and 4). Copies of printed Request forms are available from the Patent and Trademark Office. Letters requesting printed forms should be marked "Box PCT."

* * * * *

5. Section 1.445 is amended by adding new paragraph (a)(4) to read as follows:

§ 1.445 International application filing, processing and search fees.

(a) * * *

(4) A confirmation fee (PCT Rule 96) equal to 50% of the sum of designation fees for the national and regional designations being confirmed (§ 1.432(c)).

* * * * *

6. Section 1.446 is amended by revising paragraph (d) and adding paragraph (e) to read as follows:

§ 1.446 Refund of international application filing and processing fees.

* * * * *

(d) The international and search fees will be refunded if no international filing date is accorded or if the application is withdrawn before transmittal of the record copy to the International Bureau (PCT Rules 15.6 and 16.2). The search fee will be refunded if the application is withdrawn before transmittal of the search copy to the International Searching Authority. The transmittal fee will not be refunded.

(e) The handling fee (§ 1.482(b)) will be refunded (PCT Rule 57.6) only if:

(1) The Demand is withdrawn before the Demand has been sent by the International Preliminary Examining Authority to the International Bureau, or

(2) The Demand is considered not to have been submitted (PCT Rule 54.4(a)).

7. Section 1.451 is amended by revising paragraph (a) to read as follows:

§ 1.451 The priority claim and priority document in an international application.

(a) The claim for priority must be made on the Request (PCT Rule 4.10) in a manner complying with sections 110 and 115 of the Administrative Instructions.

* * * * *

8. Section 1.455 is amended by revising paragraph (a) to read as follows:

§ 1.455 Representation in international applications.

(a) Applicants of international applications may be represented by attorneys or agents registered to practice before the Patent and Trademark Office or by an applicant appointed as a common representative (PCT Art. 49, Rules 4.8 and 90 and § 10.10). If applicants have not appointed an attorney or agent or one of the applicants to represent them, and there is more than one applicant, the applicant first named in the request and who is entitled to file in the U.S. Receiving Office shall be considered to be the common representative of all the applicants. An attorney or agent having the right to practice before a national office with which an international application is filed and for which the United States is an International Searching Authority or International Preliminary Examining Authority may be appointed to represent the applicants in the international application before that authority. An attorney or agent may appoint an associate attorney or agent who shall also then be of record (PCT Rule 90.1(d)). The appointment of an attorney or agent, or of a common representative, revokes any earlier appointment unless otherwise indicated (PCT Rule 90.6 (b) and (c)).

* * * * *

9. Section 1.475 is revised to read as follows:

§ 1.475 Unity of invention before the International Searching Authority, the International Preliminary Examining Authority and during the national stage.

(a) An international and a national stage application shall relate to one invention only or to a group of inventions so linked as to form a single general inventive concept ("requirement of unity of invention"). Where a group of inventions is claimed in an application, the requirement of unity of invention shall be fulfilled only when there is a technical relationship among those inventions involving one or more of the same or corresponding special technical features. The expression "special technical features" shall mean those technical features that define a contribution which each of the claimed inventions, considered as a whole, makes over the prior art.

(b) An international or a national stage application containing claims to different categories of invention will be considered to have unity of invention if the claims are drawn only to one of the following combinations of categories:

(1) A product and a process specially adapted for the manufacture of said product; or

(2) A product and a process of use of said product; or

(3) A product, a process specially adapted for the manufacture of the said product, and a use of the said product; or

(4) A process and an apparatus or means specifically designed for carrying out the said process; or

(5) A product, a process specially adapted for the manufacture of the said product, and an apparatus or means specifically designed for carrying out the said process.

(c) If an application contains claims to more or less than one of the combinations of categories of invention set forth in paragraph (b) of this section, unity of invention might not be present.

(d) If multiple products, processes of manufacture or uses are claimed, the first invention of the category first mentioned in the claims of the application and the first recited invention of each of the other categories related thereto will be considered as the main invention in the claims, see PCT Article 17(3)(a) and § 1.476(c).

(e) The determination whether a group of inventions is so linked as to form a single general inventive concept shall be made without regard to whether the inventions are claimed in separate claims or as alternatives within a single claim.

10. Section 1.476 is amended by revising paragraph (a) to read as follows:

§ 1.476 Determination of unity of invention before the International Searching Authority.

(a) Before establishing the international search report, the International Searching Authority will determine whether the international application complies with the requirement of unity of invention as set forth in § 1.475.

* * * * *

11. Section 1.480 is amended by revising paragraph (b) to read as follows:

§ 1.480 Demand for international preliminary examination.

* * * * *

(b) The Demand shall be made on a standardized form. Copies of printed Demand forms are available from the Patent and Trademark Office. Letters requesting printed Demand forms should be marked "Box PCT".

* * * * *

12. Section 1.482 is amended by revising paragraphs (a)(2)(i) and (b) to read as follows:

§ 1.482 International preliminary examination fees.

(a) * * *

(2) An additional preliminary examination fee when required, per additional invention:

(i) Where the International Searching Authority for the international application was the United States Patent and Trademark Office.....$140.00

* * * * *

(b) The handling fee is due on filing the Demand.

13. Section 1.484 is amended by revising paragraph (b) to read as follows:

§ 1.484 Conduct of international preliminary examination.

* * * * *

(b) International preliminary examination will begin promptly upon receipt of a Demand which requests examination based on the application as filed, or as amended by an amendment which has been received by the United States International Preliminary Examining Authority. Where a Demand requests examination based on a PCT Article 19 amendment which has not been received, examination may begin at 20 months without receipt of a PCT Article 19 amendment. Where a Demand requests examination based on a PCT Article 34 amendment which has not been received, applicant will be notified and given a time period within which to submit the amendment. Examination will begin after the earliest of:

(1) Receipt of the amendment;

(2) Receipt of applicant's statement that no amendment will be made; or

(3) Expiration of the time period set in the notification.

No international preliminary examination report will be established prior to issuance of an international search report.

* * * * *

14. Section 1.485 is revised to read as follows:

§ 1.485 Amendments by applicant during international preliminary examination.

(a) The applicant may make amendments at the time of filing of the Demand and within the time limit set by the International Preliminary Examining Authority for response to any notification under § 1.484(b) or to any written opinion. Any such amendments must:

(1) Be made by submitting a replacement sheet for every sheet of the application which differs from the sheet it replaces unless an entire sheet is cancelled, and

(2) Include a description of how the replacement sheet differs from the replaced sheet.

(b) If an amendment cancels an entire sheet of the international application, that amendment shall be communicated in a letter.

§ 1.487 [Removed]

15. Section 1.487 is removed.

16. Section 1.488 is amended by revising paragraph (a) to read as follows:

§ 1.488 Determination of unity of invention before the International Preliminary Examining Authority.

(a) Before establishing any written opinion or the international preliminary examination report, the International Preliminary Examining Authority will determine whether the international application complies with the requirement of unity of invention as set forth in § 1.475.

* * * * *

17. Section 1.492 is amended by revising the introductory clause and paragraph (e) to read as follows:

§ 1.492 National stage fees.

The following fees and charges are established for international applications entering the national stage under 35 U.S.C. 371:

* * * * *

(e) Surcharge for filing the oath or declaration later than 20 months from the priority date pursuant to § 1.494(c) or later than 30 months from the priority date pursuant to § 1.495(c):

By a small entity (§ 1.9(f)).....$65.00
By other than a small entity.....$130.00

* * * * *

18. Section 1.494 is amended by removing paragraph (h) and by revising paragraphs (a), (b), (c), (d) and (g) to read as follows:

§ 1.494 Entering the national stage in the United States of America as a Designated Office.

(a) Where the United States of America has not been elected by the expiration of 19 months from the priority date (see § 1.495), the applicant must fulfill the requirements of PCT Article 22 and 35 U.S.C. 371 within the time periods set forth in paragraphs (b) and (c) of this section in order to prevent the abandonment of the international application as to the United States of America. International applications for which those requirements are timely fulfilled will enter the national stage and obtain an examination as to the patentability of the invention in the United States of America.

(b) To avoid abandonment of the application, the applicant shall furnish

to the United States Patent and Trademark Office not later than the expiration of 20 months from the priority date:

(1) A copy of the international application, unless it has been previously communicated by the International Bureau or unless it was originally filed in the United States Patent and Trademark Office; and

(2) The basic national fee (see § 1.492(a)). The 20-month time limit may not be extended.

(c) If applicant complies with paragraph (b) of this section before expiration of 20 months from the priority date but omits:

(1) a translation of the international application, as filed, into the English language, if it was originally filed in another language (35 U.S.C. 371(c)(2)) and/or

(2) the oath or declaration of the inventor (35 U.S.C. 371(c)(4); see § 1.497), applicant will be so notified and given a period of time within which to file the translation and/or oath or declaration in order to prevent abandonment of the application. The payment of the processing fee set forth in § 1.492(f) is required for acceptance of an English translation later than the expiration of 20 months after the priority date. The payment of the surcharge set forth in § 1.492(e) is required for acceptance of the oath or declaration of the inventor later than the expiration of 20 months after the priority date. A copy of the notification mailed to applicant should accompany any response thereto submitted to the Office.

(d) A copy of any amendments to the claims made under PCT Article 19, and a translation of those amendments into English, if they were made in another language, must be furnished not later than the expiration of 20 months from the priority date. Amendments under PCT Article 19 which are not received by the expiration of 20 months from the priority date will be considered to be cancelled. The 20-month time limit may not be extended.

* * * * *

(g) An international application becomes abandoned as to the United States 20 months from the priority date if the requirements of paragraph (b) of this section have not been complied with within 20 months from the priority date where the United States has been designated but not elected by the expiration of 19 months from the priority date. If the requirements of paragraph (b) of this section are complied with within 20 months from the priority date but any required translation of the international application as filed and/or the oath or declaration are not timely filed, an international application will become abandoned as to the United States upon expiration of the time period set pursuant to paragraph (c) of this section.

19. Section 1.495 is amended by removing paragraph (i) and by revising paragraphs (a), (b), (c), (d), (e) and (h) to read as follows:

§ 1.495 Entering the national stage in the United States of America as an Elected Office.

(a) Where the United States of America has been elected by the expiration of 19 months from the priority date, the applicant must fulfill the requirements of 35 U.S.C. 371 within the time periods set forth in paragraphs (b) and (c) of this section in order to prevent the abandonment of the international application as to the United States of America. International applications for which those requirements are timely fulfilled will enter the national stage and obtain an examination as to the patentability of the invention in the United States of America.

(b) To avoid abandonment of the application the applicant shall furnish to the United States Patent and Trademark Office not later than the expiration of 30 months from the priority date:

(1) A copy of the international application, unless it has been previously communicated by the International Bureau or unless it was originally filed in the United States Patent and Trademark Office; and

(2) The basic national fee (see § 1.492(a)). The 30-month time limit may not be extended.

(c) If applicant complies with paragraph (b) of this section before expiration of 30 months from the priority date but omits:

(1) A translation of the international application, as filed, into the English language, if it was originally filed in another language (35 U.S.C. 371(c)(2)) and/or

(2) The oath or declaration of the inventor (35 U.S.C. 371(c)(4); see § 1.497), applicant will be so notified and given a period of time within which to file the translation and/or oath or declaration in order to prevent abandonment of the application. The payment of the processing fee set forth in § 1.492(f) is required for acceptance of an English translation later than the expiration of 30 months after the priority date. The payment of the surcharge set forth in § 1.492(e) is required for acceptance of the oath or declaration of the inventor later than the expiration of 30 months after the priority date. A copy of the notification mailed to applicant should accompany any response thereto submitted to the Office.

(d) A copy of any amendments to the claims made under PCT Article 19, and a translation of those amendments into English, if they were made in another language, must be furnished not later than the expiration of 30 months from the priority date. Amendments under PCT Article 19 which are not received by the expiration of 30 months from the priority date will be considered to be cancelled. The 30-month time limit may not be extended.

(e) A translation into English of any annexes to the international preliminary examination report, if the annexes were made in another language, must be furnished not later than the expiration of 30 months from the priority date. Translations of the annexes which are not received by the expiration of 30 months from the priority date may be submitted within any period set pursuant to paragraph (c) of this section accompanied by the processing fee set forth in § 1.492(f). Annexes for which translations are not timely received will be considered cancelled. The 30-month time limit may not be extended.

* * * * *

(h) An international application becomes abandoned as to the United States 30 months from the priority date if the requirements of paragraph (b) of this section have not been complied with within 30 months from the priority date and the United States has been elected by the expiration of 19 months from the priority date. If the requirements of paragraph (b) of this section are complied with within 30 months from the priority date but any required translation of the international application as filed and/or the oath or declaration are not timely filed, an international application will become abandoned as to the United States upon expiration of the time period set pursuant to paragraph (c) of this section.

20. Section 1.499 is revised to read as follows:

§ 1.499 Unity of invention during the national stage.

If the examiner find that a national stage application lacks unity of invention under § 1.475, the examiner may in an Office action require the applicant in the response to that action to elect the invention to which the claims shall be restricted. Such requirement may be made before any action on the merits but may be made at any time before the final action at the

discretion of the examiner. Review of any such requirement is provided under §§ 1.143 and 1.144.

21. Section 1.821 is amended by revising paragraph (h) to read as follows:

§ 1.821 Nucleotide and/or amino acid sequence disclosures in patent applications.

* * * * *

(h) If any of the requirements of paragraphs (b) through (f) of this section are not satisfied at the time of filing, in the United States Receiving Office, an international application under the Patent Cooperation Treaty (PCT), applicant has one month from the date of a notice which will be sent requiring compliance with the requirements, or such other time as may be set by the Commissioner, in which to comply. Any submission in response to a requirement under this paragraph must be accompanied by a statement that the submission does not include new matter or go beyond the disclosure in the international application as filed. Such a statement must be a verified statement if made by a person not registered to practice before the Office. If applicant fails to timely provide the required computer readable form, the United States International Searching Authority shall search only to the extent that a meaningful search can be performed.

* * * * *

PART 10—[AMENDED]

22. The authority citation for 37 CFR part 10 will continue to read as follows:

Authority: 5 U.S.C. 500; 15 U.S.C. 1123; 35 U.S.C. 6, 31, 32, 41.

23. Section 10.9 is amended by adding new paragraph (c) to read as follows:

§ 10.9 Limited recognition in patent cases.

* * * * *

(c) An individual not registered under § 10.6 may, if appointed by applicant to do so, prosecute an international application only before the U.S. International Searching Authority and the U.S. International Preliminary Examining Authority, provided: the individual has the right to practice before the national office with which the international application is filed (PCT Art. 49, Rule 90 and § 1.455).

Dated: January 7, 1993.

Douglas B. Comer,

Acting Assistant Secretary and Acting Commissioner of Patents and Trademarks.

[FR Doc. 93–823 Filed 1–13–93; 8:45 am]

BILLING CODE 3510–16–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[FRL–4552–4]

Designation of Areas for Air Quality Planning Purposes; Wyoming; Redesignation of Particulate Matter Attainment Areas

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: In this action EPA is approving a February 11, 1992 request from the Governor of Wyoming to redesignate the Powder River Basin in portions of Campbell and Converse Counties as a separate particulate matter attainment area under Section 107 of the Clean Air Act, as amended (CAA). In addition, EPA is redesignating two additional particulate matter attainment areas within the Powder River Basin which represent the baseline areas of two major sources that had submitted complete prevention of significant (PSD) applications after the major source baseline date. EPA is approving the State's redesignation request because the State has adequately followed the applicable federal requirements and policy. Approval of the section 107 redesignation eliminates the minor source baseline date for particulate matter which previously applied in the Powder River Basin attainment area. According to the State regulations, the minor source baseline date will not be triggered until the submittal of the first complete PSD permit application for a major stationary source or major modification locating in or significantly impacting the Powder River Basin particulate matter attainment area, or January 1, 1996, whichever occurs first. Thus, only after the new minor source baseline date is established will changes in emissions at minor sources affect the increment.

EFFECTIVE DATE: This action will become effective on March 15, 1993 unless notice is received by February 16, 1993 that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Copies of the revisions are available for public inspection between 8 a.m. and 4 p.m. Monday through Friday at the following offices:

Environmental Protection Agency, Region VIII, Air Programs Branch, 999 18th Street, suite 500, Denver, CO 80202–2466.

Air Quality Division, Department of Environmental Quality, 122 West 25th Street, Herschler Building, Cheyenne, Wyoming 82002.

FOR FURTHER INFORMATION CONTACT:

Vicki Stamper, Environmental Protection Agency, Region VIII, Air Programs Branch, suite 500, Denver, CO 80202–2466, (303) 293–1765.

SUPPLEMENTARY INFORMATION:

I. Background of Redesignation Request

The State's regulations had previously established August 7, 1977 as the baseline date for total suspended particulate (TSP), and the entire State was defined as the baseline area. This meant that all major, as well as minor, sources constructed anywhere in the State after August 7, 1977 would consume the available TSP increment. The establishment of a statewide baseline date and baseline area was more stringent than required by the federal PSD regulations. Under the federal regulations, the minor source baseline date for TSP is defined as the earliest date after August 7, 1977 on which the first complete PSD application was submitted by a major stationary source or a major modification (see 40 CFR 52.21(a)(14)(iii)). In addition, the federal definition for "baseline area" provides states with the option of establishing numerous baseline areas under Section 107(d) of the CAA, as long as the baseline areas did not intersect or were not smaller than the area of 1 $\mu g/m^3$ ambient impact of any major stationary source or major modification which established the minor source baseline date or which was subject to PSD permitting requirements (see 40 CFR 52.21(a)(15)).

On September 5, 1990, the State adopted revisions to its regulations, providing definitions for "minor source baseline date" and "baseline area" consistent with the federal definitions and, thus, allowing for the establishment of the Powder River Basin as a separate baseline area with a new minor source baseline date. The regulatory revisions were submitted for approval in the State Implementation Plan (SIP) on November 20, 1990. Because the revisions were consistent with federal requirements, EPA promulgated approval of the revisions on May 24, 1991 (56 FR 23811).

Subsequent to EPA's approval of the regulatory revisions, on February 11, 1992, the State requested formal redesignation of the Powder River Basin as a separate Section 107 particulate matter attainment area, measured in terms of TSP.

II. Technical Adequacy Review of Request

EPA has specific policy governing the redesignation of baseline areas, as discussed in the August 7, 1980 **Federal Register** in which the current federal PSD regulations were adopted (see 45 FR 52676). That notice provides for redefining baseline areas through area redesignations pursuant to Section 107 of the CAA, "as long as no PSD source has located in, or significantly impacted on a clean area being considered for redesignation, the area can be redesignated as a new attainment or unclassifiable area, even if the area [was] previously part of a larger clean area in which the baseline date had been set" (see 45 FR 52716). Under this redesignation policy, an ambient air quality impact greater than or equal to 1 $\mu g/m^3$ is considered to be a significant impact (see 45 FR 52716). EPA's policy was reaffirmed in EPA's October, 1990 draft New Source Review Workshop Manual (see page C.9).

The State's February 11, 1992 submittal consisted of the following: (1) A description of the boundary of the proposed revisions to the Section 107 particulate matter attainment area; (2) a description of the PSD permitting history of the area, which indicated that two major sources in the Powder River Basin, Pacific Power and Light and Hampshire Energy, had submitted complete PSD permit applications after the major source baseline date; (3) a description of the boundaries of the 1 $\mu g/m^3$ significant impact areas for the two major sources in the Powder River Basin; (4) maps of the 1 $\mu g/m^3$ significant impact area of the two major sources; and (5) supporting modeling results which were used to define the 1 $\mu g/m^3$ significant impact areas of the major sources. Basically, the area which the State was requesting redesignation was defined as the area encompassing the Powder River Basin excluding the significant impact areas of the two major sources which had submitted complete PSD permit applications.

EPA's review of the modeled 1 $\mu g/m^3$ impact areas for the two major sources identified deficiencies in the type of model used to estimate the impact areas. EPA's concerns were that the State may have underestimated the impact areas of the two major sources because they did not take into account the effects of complex terrain, as required by EPA's Guideline on Air Quality Models. These deficiencies were discussed with the State in a May 14, 1992 meeting, and it was agreed that EPA would run the required models using the State's data for the major sources and meteorological conditions.

EPA subsequently completed the modeling analysis for the two major sources in the Powder River Basin following the procedures outlined in the Guideline on Air Quality Models. In accordance with the intermediate terrain policy, the highest predicted ambient concentration from the modeling results was used in determining the extent of the 1 $\mu g/m^3$ impact area in elevated terrain areas. The modeling resulted in an increased impact area for the Hampshire Energy site. Specifically, the impact area of the Hampshire Energy site was extended approximately one-half mile both to the east and south of the original modeled boundary. The modeled impact area of Pacific Power and Light remained unchanged. In a July 24, 1992 letter to the State, EPA provided the results of its modeling analyses and the revised boundaries of the 1 $\mu g/m^3$ impact area for the Hampshire Energy site.

The State responded to EPA's modeling results in a September 18, 1992 letter, in which a revised boundary description for the 1 ug/m^3 significant impact area of the Hampshire Energy site consistent with EPA's modeled results was submitted. In that letter, the State requested that the described changes be made part of the Powder River Basin redesignation request submitted to EPA on February 11, 1992, and the EPA proceed with approval of the request.

The State has followed the terms of EPA's redesignation policy in its February 11, 1992 and September 18, 1992 requests to establish the Powder River Basin as a separate Section 107 particulate matter attainment area. Authority for the State's action is provided for in Section 107(d)(3)(D) of the CAA, which states: "the Governor of any State may, on the Governor's own motion, submit to the Administrator a revised designation of any area or portion thereof within the State [and EPA] shall approve such redesignation." Therefore, EPA is approving the State's request to redesignate the Powder River Basin as a Section 107 particulate matter attainment area. In addition, EPA is redesignating the areas which represent the baseline areas for Hampshire Energy and Pacific Power and Light as separate particulate matter attainment areas.

This approval eliminates the minor source baseline date for particulate matter that was previously established in the Powder River Basin attainment area. According to the revised State regulations, the minor source baseline date for the Powder River Basin attainment area will not be triggered until the submittal of the first complete PSD permit application for a major stationary source or major modification locating in or significantly impacting the Powder River Basin particulate matter attainment area, or January 1, 1996, whichever occurs first. Thus, minor source emissions that exist on the Powder River Basin attainment area until the time that the minor source baseline date is triggered will become part of background emissions for the area. Once the minor source baseline date is triggered, all new growth from minor sources will begin consuming increment. The minor source baseline dates for the Hampshire Energy and Pacific and Light particulate matter attainment area are the dates that their respective PSD applications were deemed complete.

Final Action: EPA is approving the State of Wyoming's request to redesignate the Powder River Basin as a Section 107 particulate matter attainment area. The Powder River Basin particulate matter attainment area is defined as follows: That area bounded by Township 40 through 52 North, and Ranges 69 through 73 West, inclusive of the Sixth Principal Meridian, Campbell and Converse Counties, excluding the Pacific Power and Light particulate matter attainment area and the Hampshire Energy particulate matter attainment area. The Pacific Power and Light particulate matter attainment area is defined as follows: NW¼ of Section 27, T50N, R71W, Campbell County, Wyoming. The Hampshire Energy particulate matter attainment area is defined as follows: Section 6 excluding the SW¼; E½ Section 7; Section 17 excluding the SW¼; Section 14 excluding the SE¼; Sections 2, 3, 4, 5, 8, 9, 10, 11, 15, 16 of T48N, R70W and Section 26 excluding the NE¼; SW¼ Section 23; Sections 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33, 34, 35 of T49N, R70W.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

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

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on

January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

Under section 307(b)(1) of the CAA, petitions for judicial review of this section must be filed in the United States Court of Appeals for the appropriate circuit by (60 days from the date of publication). Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review must be filed, and shall not postpone the effectiveness of such rule or action. 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.

Dated: December 23, 1992.

Jack W. McGraw,

Acting Regional Administrator.

40 CFR Part 81 is amended as follows:

PART 81—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

2. Section 81.351 is amended by revising the Wyoming TSP table to read as follows:

§ 81.351 Wyoming.

WYOMING—TSP

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
Trona Industrial Area (Sweetwater County)		X		
Powder River Basin				X
Campbell County (part)				
Converse County (part)				
That area bounded by Township 40 through 52 North, and Ranges 69 through 73 West, inclusive of the Sixth Principal Meridian, Campbell and Converse Counties, excluding the areas defined as the Pacific Power and Light attainment area and the Hampshire Energy attainment area				
Pacific Power and Light Area				X
Campbell County (part)				
That area bounded by NW¼ of Section 27, T50N, R71W, Campbell County, Wyoming				
Hampshire Energy Area				X
Campbell County (part)				
That area bounded by Section 6 excluding that SW¼; E½ Section 7; Section 17 excluding the SW¼; Section 14 excluding the SE¼; Sections 2, 3, 4, 5, 8, 9, 10, 11, 15, 16 of T48N, R70W and Section 26 excluding the NE¼; SW¼ Section 23; Sections 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33, 34, 35 of T49N, R70W				
Rest of State				X

* * * * *

[FR Doc. 93–934 Filed 1–13–93; 8:45 am]

BILLING CODE 6560–50–M

COMMISSION OF CIVIL RIGHTS

45 CFR Part 708

Regulations for Collection by Salary Offset From Indebted Current or Former Employees

AGENCY: United States Commission on Civil Rights .

ACTION: Final regulation.

SUMMARY: This regulation implements the collection procedures of the Debt Collection Act of 1982, Public Law 97–365, codified in 5 U.S.C. 5514. Without the Debt Collection Act of 1982, the U.S. government would be unable to administratively deduct from an employee's current salary any amount to satisfy a debt without the employee's consent. The only exception to this would be the collection of taxes (26 U.S.C. 6331). This regulation permits the Commission to set off an employee's current salary to satisfy a debt to another agency of the United States or to the Commission, and to request another agency to offset a debt to the Commission from the salary of one of their current employees. This authority is necessary since involuntary wage garnishment is not a collection tool available to the Federal government. At the same time, the due process rights of the U.S. employees are protected.

EFFECTIVE DATE: This regulation shall become effective March 15, 1993.

ADDRESSES: Solicitor's Unit, United States Commission on Civil Rights, 624 9th Street, NW., Washington, DC 20425.

Copies of this notice are available on tape for those with impaired visions or other physical handicap. They may be obtained at the above address.

FOR FURTHER INFORMATION CONTACT: Emma Monroig, Solicitor, (202) 376–8351, TDD (202) 376–2683.

Background: Under the Debt Collection Act of 1982, when the head of a Federal agency determines that an employee of an agency is indebted to the United States or is notified by the head of another Federal agency that an agency employee is indebted to the United States, the employee's debt may be offset against his/her salary. Certain due process rights must be afforded to an employee before salary offset deductions begin.

As required by the Debt Collection Act of 1982, this regulation is consistent with salary offset regulations issued by the Office of Personnel Management on July 3, 1984, 49 FR 27472, codified in 5 CFR part 550 subpart K.

PAPERWORK REDUCTION ACT: Under section 3518 of the Paperwork Reduction Act of 1980, 5 CFR 1320.3(c) the information collection provisions contained in this regulation are not subject to review and approval by the Office of Management and Budget.

Executive Order 12291

This rule has been reviewed and determined not to be a "major rule" as defined by Executive Order 12291, dated February 17, 1981 because it will not result in (1) An annual effect on the economy of more than $100 million or more; (2) a major increase in costs and

prices for consumers, individuals, industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

This rule applies only to individual Federal employees. It will have no "significant economic impact upon a substantial number of small entities" within the meaning of section 3(a) of the Regulatory Flexibility Act, Public Law 96–354, 5 U.S.C. 605(b). Accordingly, no regulatory flexibility analysis is required.

List of Subjects in 45 CFR Part 708

Administrative offset, Administrative practice, Claims, Debt collection, Government employee, Wages.

For the reasons set out in the preamble, part 708 of title 45 of the Code of Federal Regulations is added to read as follows:

PART 708—COLLECTION BY SALARY OFFSET FROM INDEBTED CURRENT AND FORMER EMPLOYEES

Sec.

Authority: 5 U.S.C. 5514; sec. 8(1) of E.O. 11609; redesignated in sec. 2–1 of E.O. 12107.

§ 708.1 Purpose and scope.

(a) These regulations provide the procedure pursuant to 5 U.S.C. 5514 and 5 CFR part 550 subpart K for the collection by administrative offset of a Federal employee's salary without his/her consent to satisfy certain debts owed to the Federal government. This procedure applies to all Federal employees who owe debts to the U.S. Commission on Civil Rights ("the Commission"). This provision does not apply when the employee consents to recovery from his/her current pay account.

(b) This procedure does not apply to debts or claims arising under:

(1) The Internal Revenue Code of 1954, as amended (26 U.S.C. 1 et seq.);

(2) The Social Security Act (42 U.S.C. 301 et seq.);

(3) The tariff laws of the United States; or

(4) To any case where collection of a debt by salary offset is explicitly provided for or prohibited by another statute (e.g., travel advances in 5 U.S.C. 5705 and employee training expenses in 5 U.S.C. 4108).

(c) The Commission shall except from salary offset provisions any adjustments to pay arising out of an employee's election of coverage or a change in coverage under a Federal benefits programs requiring periodic payroll deductions from pay, if the amount to be recovered was accumulated over four pay periods or less.

(d) These procedures do not preclude an employee or former employee from requesting a waiver of a salary overpayment under 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C. 716 or in any way questioning the amount or validity of the debt by submitting a subsequent claim to the General Accounting Office (GAO) in accordance with procedures prescribed by the GAO. In addition, this procedure does not preclude an employee from requesting a waiver pursuant to other statutory provisions applicable to the particular debt being collected.

§ 708.2 Policy.

It is the policy of the Commission to apply the procedures(s) in these regulations uniformly and consistently in the collection of internal debts from its current and former employees.

§ 708.3 Definitions.

For the purposes of these regulations the following definitions apply:

(a) *Agency* means (1) an Executive agency as defined in section 105 of title 5 United States Code, including the U.S. Postal Service and the U.S. Postal Rate Commission;

(2) A military department as defined in section 102 of title 5, United States Code;

(3) An agency or court in the judicial branch, including a court as defined in section 610 of title 28, United States Code, the District Court for the Northern Mariana Islands, and the Judicial panel on Multidistrict Litigation;

(4) An agency of the legislative branch, including the U.S. Senate and the U.S. House of Representatives; and

(5) Other independent establishments that are entities of the Federal Government.

(b) *Creditor* agency means the agency to which the debt is owed.

(c) *Debt* means an amount owed to the United States from sources which include loans insured or guaranteed by the United States, and amounts due the United States from fees, leases, rents, royalties, services, sales of real or personal property, overpayments, penalties, damages, interest, fines and forfeitures (except those arising under the Uniform Code of Military Justice), and all other similar sources.

(d) *Assistant Staff Director for Management* means the Assistant Staff Director for Management of the U.S. Commission on Civil rights or his/her absence, or in the event of a vacancy in the position or its elimination, the Personnel Officer.

(e) *Disposable pay* means that part of current basic pay, special pay, incentive pay, retired pay, retainer pay, or in the case of an employee not entitled to basic pay, other authorized pay remaining from an employee's Federal pay after required deductions for social security, Federal, state or local income tax, health insurance premiums, retirement contributions, life insurance premiums, Federal employment taxes, and any other deductions that are required to be withheld by law.

(f) *Employee* means a current employee of an agency, including a current member of the Armed Forces or a Reserve of the Armed Forces (Reserves).

(g) *Former employee* means an employee who is no longer employed with the Commission but is currently employed with another Federal agency.

(h) *FCCS* means the Federal Claims Collection Standards jointly published by the Department of Justice and the General Accounting Office at 4 CFR 101.1 et seq.

(i) *Hearing official* means an individual responsible for conducting any hearing with respect to the existence or amount of a debt claimed, and who renders a decision on the basis of such hearing. A hearing official may not be under the supervision or control of the Assistant Staff Director for Management of the U.S. Commission on Civil Rights.

(j) *Paying agency* means the agency employing the individual who owes the debt and is responsible for authorizing the payment of his or her current pay.

(k) *Pay interval* will normally be the biweekly pay period but may be some regularly recurring period of time in which pay is received.

(l) *Retainer Pay* means the pay above the maximum rate of an employee's grade which he/she is allowed to keep in special situations rather than having

the employee's rate of basic pay reduced.

(m) *Salary offset* means an administrative offset to collect a debt under 5 U.S.C. 5514 by deduction(s) at one or more officially established pay intervals from the current pay account of an employee without his or her consent.

(n) *Waiver* means the cancellation, remission, forgiveness, or non-recovery of a debt allegedly owed by an employee to an agency as permitted or required by 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C. 716, 5 U.S.C. 8346(b) or any other law.

§ 708.4 Applicability.

These regulations are to be followed when:

(a) The U.S. Commission on Civil Rights is owed a debt by an individual who is a current employee of the Commission; or

(b) The U.S. Commission on Civil Rights is owed a debt by an individual currently employed by another Federal agency; or

(c) The Commission employs an individual who owes a debt to another Federal agency.

§ 708.5 Notice.

(a) Deductions shall not be made unless the employee who owes the debt has been provided with written notice signed by the Assistant Staff Director for Management (ASDM) or in his/her absence, or in the event of a vacancy in that position or its elimination the Personnel Officer (or the U.S. Department of Agriculture, National Finance Center acting on behalf of the Commission) of the debt at least 30 days before salary offset commences.

(b) The written notice from the ASDM, acting on behalf of the Commission, as the creditor agency, shall contain:

(1) A statement that the debt is owed and an explanation of its origin, nature, and amount;

(2) The agency's intention to collect the debt by deducting from the employee's current disposable pay account;

(3) The amount, frequency, proposed beginning date, and duration of the intended deduction(s);

(4) An explanation of the requirements concerning the current interest rate, penalties, and administrative costs, including a statement that such charges will be assessed unless excused in accordance with the Federal Claims Collections Standards (4 CFR 101.1 et seq.);

(5) The employee's right to inspect, request, or receive a copy of the government records relating to the debt;

(6) The employee's right to enter into a written repayment schedule for the voluntary repayment of the debt in lieu of offset;

(7) The right to a hearing conducted by an impartial hearing official (either an administrative law judge or an official who is not under the control of the Commission);

(8) The method and time period for petitioning for a hearing;

(9) A statement that the timely filing (i.e., within 15 calendar days) of a petition for a hearing will stay the commencement of collection proceedings;

(10) A statement that a final decision on the hearing (if one is requested) will be issued at the earliest practical date but not later than 60 days after the filing of the petition requesting the hearing unless the employee requests and the hearing official grants a delay in the proceedings.

(11) A statement that an employee knowingly submitting false or frivolous statements (5 CFR part 550.1101), representations, or evidence may subject the employee to disciplinary procedures under 5 U.S.C. chapter 75 and 5 CFR part 752; penalties under the False Claims Act, 31 U.S.C. 3729–3731; or criminal penalties under 18 U.S.C. 286, 287, 1001, and 1002;

(12) A statement of other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made;

(13) A statement that an employee will be promptly refunded any amount paid or deducted for a debt which is later waived or found not valid unless there are applicable contractual or statutory provisions to the contrary; and

(14) The name, address, and phone number of an official who can be contacted concerning the indebtedness.

§ 708.6 Petitions for hearing.

(a) Except as provided in paragraph (d) of this section, an employee who wants a hearing must file a written petition for a hearing to be received by the Assistant Staff Director for Management not later than 15 calendar days from the date of receipt of the Notice of Offset. The petition must state why the employee believes the determination of the Commission concerning the existence or amount of the debt is in error.

(b) The petition must be signed by the employee and should identify and explain with reasonable specificity and brevity the facts, evidence, and witnesses which the employee believes support his/her position.

(c) If the employee objects to the percentage of disposable pay to be deducted from each check, the petition should state the objection and the reasons for it.

(d) If the employee files a petition for a hearing later than the 15 calendar days from the date of receipt of the Notice of Offset, as described in paragraph (a) of this section, the hearing official may accept the request if the employee can show that there was good cause (such as due to circumstances beyond his/her control or because he/she was not informed or aware of the time limit) for failing to meet the deadline date.

(e) An employee will not be granted a hearing and will have his/her disposable pay offset in accordance with the ASDM's offset schedule if he/she fails to show good cause why he/she failed to file the petition for a hearing within the stated time limits.

§ 708.7 Hearing procedures.

(a) If an employee timely files a petition for a hearing under the above procedures, the Assistant Staff Director for Management shall select the time, date, and location for the hearing.

(b) The hearing shall be conducted by an impartial hearing official.

(c) The hearing shall conform to procedures contained in the Federal Claims Collection Standards, 4 CFR 102.3(c).

(d) The Commission, as the creditor agency, will have the burden of proving the existence of the debt.

(e) The employee requesting the hearing shall have the burden of proof to demonstrate that the existence or amount of the debt is in error.

§ 708.8 Written decision.

(a) The hearing official shall issue a written opinion no later than sixty (60) days after the filing of the petition for hearing; or no longer than sixty (60) days from the proceedings if an extension has been granted pursuant to § 708.5(b)(10).

(b) The written opinion will include: A statement of the facts presented to demonstrate the nature and origin of the alleged debt; the hearing official's analysis, findings, and conclusions; the amount and validity of the debt; and if applicable, the repayment schedule.

§ 708.9 Coordinating offset with another Federal agency.

(a) The Commission is the creditor agency when the Assistant Staff Director for Management determines that an employee of another Federal agency owes a delinquent debt to the Commission. The Assistant Staff Director for Management shall, as appropriate:

(1) Arrange for a hearing upon the proper petitioning by the employee;

(2) Certify in writing that the employee of the paying agency owes the debt, the amount, and basis of the debt, the date on which payment is due, the date the Government's right to collect the debt first accrued, and that the Commission's regulations for salary offset have been approved by the Office of Personnel Management;

(3) If the collection must be made in installments, the Commission, as the creditor agency, will advise the paying agency of the amount or percentage of disposable pay to be collected in each installment and the number and the commencement date of the installments;

(4) Advise the paying agency of the actions taken under 5 U.S.C. 5514(a) and provide the dates on which action was taken, unless the employee has consented to salary offset in writing or signed a statement acknowledging receipt of procedures required by law. The written consent or acknowledgement must be sent to the paying agency;

(5) If the employee is in the process of separating, the Commission will submit its debt claim to the paying agency as provided in this part. The paying agency must certify any amounts already collected, notify the employee, and send a copy of the certification of the monies already collected and notice of the employee's separation to the Commission. If the paying agency is aware that the employee is entitled to Civil Service or Foreign Service Retirement and Disability Fund or similar payments, it must provide written notification to the agency responsible for making such payments stating the amount of the debt and indicating that the provisions of this part have been followed; and

(6) If the employee has already separated and all payments due from the paying agency have been paid, the Assistant Staff Director for Management may request, unless otherwise prohibited, that money payable to the employee from the Civil Service Retirement and Disability Fund or other similar funds be collected by administrative offset. The Commission will provide the agency responsible for these payments with a properly certified claim.

(b) The Commission is the paying agency when an employee of this agency owes a debt to another Federal agency which is the creditor agency.

(1) Upon receipt of a properly certified debt claim from a creditor agency, deductions will be scheduled to begin at the next established pay interval.

(2) The Commission must give the employee written notice that it has received a certified debt claim from a creditor agency (including the amount), and the date that deductions will be scheduled to begin and the amount of the deduction.

(3) The Commission shall not review the merits of the creditor agency's determination of the amount of the certified claim or of its validity.

(4) If the employee transfers to another paying agency after the creditor agency has submitted its debt claim but before the debt is collected completely, the Commission must certify the total amount collected to the creditor agency with notice of the employee's transfer. One copy of this certification must be furnished to the employee. The creditor agency will submit a properly certified claim to the new paying agency before collection can be resumed.

(5) When the Commission, as a paying agency, receives an incomplete debt claim from a creditor agency, it must return the debt claim with a notice that procedures under 5 U.S.C. 5514 and this subpart must be provided and a properly certified debt claim received before action will be taken to collect from the employee's current pay account.

§ 708.10 Procedures for salary offset.

(a) Deductions to liquidate an employee's debt will be by the method and in the amount stated in the Assistant Staff Director for Management's written notice of intent to collect from the employee's current pay, unless alternative arrangements for repayment are made.

(b) If the employee filed a petition for a hearing with the Assistant Staff Director for Management before the expiration of the period provided, then deductions will begin after the hearing official has provided the employee with a hearing, and a final written decision has been rendered in favor of the Commission.

(c) A debt will be collected in a lump-sum if possible.

(d) If an employee is financially unable to pay in one lump sum or the amount of the debt exceeds 15 percent of disposable pay for an officially established pay interval, collection must be made in installments. The size of the installment deduction(s) will bear a reasonable relationship to the size of the debt and the deduction will be established for a period not greater than the anticipated period of employment. The deduction for the pay intervals for any period must not exceed 15% of disposable pay unless the employee has agreed in writing to a deduction of a greater amount. If possible, the installment payment will be sufficient in size and frequency to liquidate the debt in no more than three years.

(e) Installment payments may be less than 15 percent of disposable pay if the Assistant Staff Director for Management determines that the 15 percent deduction would create an extreme financial hardship.

(f) Installment payments of less than $25.00 per pay period or $50.00 per month, will only be accepted in the most unusual circumstances.

(g) Unliquidated debts may be offset by the paying agency under 31 U.S.C. 3716 against any financial payment due to a separating employee including but not limited to final salary payment, retired pay, or lump sum leave, etc. as of the date of separation to the extent necessary to liquidate the debt.

(h) If the debt cannot be liquidated by offset from any final payment due a separated employee it may be recovered by the offset in accordance with 31 U.S.C. 3716 from any later payments due the former employee from the United States.

§ 708.11 Refunds.

(a) The Commission will refund promptly any amounts deducted to satisfy debts owned to the Commission when the debt is waived, found not owed to the Commission, or when directed by an administrative or judicial order; or

(b) The creditor agency will promptly return any amounts deducted and forwarded by the Commission to satisfy debts owed to the creditor agency when the debt is waived, found not owed, or when directed by an administrative or judicial order;

(c) Upon receipt of monies returned in accordance with paragraph (b) of this section, the Commission will refund the amount to the current or former employee.

(d) Unless required by law, refunds under this subsection shall not bear interest nor shall liability be conferred to the Commission for debt or refunds owed by other creditor agencies.

§ 708.12 Statute of limitations.

If a debt has been outstanding for more than 10 years after the agency's right to collect the debt first accrued, the agency may not collect by salary offset unless facts material to the government's right to collect were not known and could not reasonably have been known by the official or officials who were charged with the responsibility for discovery and collection of such debts.

§ 708.13 Non-waiver of rights by payments.

An employee's involuntary payment of all or any part of a debt collected under these regulations will not be construed as a waiver of any rights that employee may have under 5 U.S.C. 5514 or any other provision of contract or law unless there are statutory or contractual provisions to the contrary.

§ 708.14 Interest, penalties, and administrative costs.

Charges may be assessed for interest, penalties, and administrative costs in accordance with the Federal Claims Collection Standards, 4 CFR 102.13.

Dated: December 18, 1992.

Emma Monroig,

Solicitor.

[FR Doc. 93–800 Filed 1–13–93; 8:45 am]

BILLING CODE 6335–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 90–337, FCC 92–516]

International Accounting Rates

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: On November 17, 1992, the Commission adopted an Order on Reconsideration denying MCI Telecommunications Corporation's (MCI) request that the Commission only approve accounting rate reductions implemented simultaneously among all competing U.S. carriers and US Sprint Communications Company Limited Partnership's (Sprint) request that the notification and streamlined waiver procedures adopted in Regulation of International Accounting Rates, Phase I, Report and Order (Phase I Report and Order) not be applied to telex and packet switched traffic. The Order on Reconsideration also amends the reporting requirements found in § 64.1001(g) of the Commission's Rules, 47 CFR 64.1001(g) to require that a U.S. common carrier submitting a waiver or notification pursuant to the ISP certify that it has informed the relevant foreign administration that U.S. policy requires that competing U.S. carriers have access to accounting rates negotiated by the filing carrier with the foreign administration on a nondiscriminatory basis.

EFFECTIVE DATE: April 14, 1993.

FOR FURTHER INFORMATION CONTACT: Adam Kupetsky, Attorney, Common Carrier Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order on Reconsideration adopted on November 17, 1992 and released on November 27, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M St., NW., Washington, DC. The complete text of this decision also may be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1990 M St., NW., Washington, DC 20036.

Summary of Order on Reconsideration

1. The Order on Reconsideration denies MCI's and Sprint's petitions for reconsideration of the Commission's Phase I Report and Order.

2. MCI requested that the Commission approve only those accounting rate reductions with a particular foreign administration that are implemented simultaneously among all competing U.S. common carriers. While disagreeing with MCI's specific proposal, the Commission affirmed that Commission policy should be to detect and take steps to eliminate discriminatory treatment of U.S. carriers. As an initial step, the Commission changed its rules to require a U.S. carrier submitting an ISP waiver or notification to certify that it made clear to the foreign administration that FCC policy requires that competing U.S. carriers have access to accounting rates negotiated by the U.S. carrier with a particular foreign administration on a nondiscriminatory basis. The Commission also outlined further measures it may be willing to take should discrimination continue, and noted its authority to establish an accounting rate for a particular service with a particular country.

3. Sprint petitioned for reconsideration of the application of the ISP notification and streamlined waiver procedure to telex and packet services. In denying Sprint's petition, the Commission found that adoption of Sprint's proposal would unnecessarily delay the attainment of lower, more cost-based international accounting rates.

Paperwork Reduction

4. Public reporting burden for this collection of information is estimated to average 2.18 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Send comments regarding this burden estimate or any other aspect of the collection of information, including suggestions for reducing the burden, to the Federal Communications Commission, Records Management Division, room 416, Paperwork Reduction Project (3060–0454), Washington, DC 20554 and to the Office of Management and Budget, Paperwork Reduction Project (3060–0454), Washington, DC 20503.

Ordering Clauses

5. Accordingly, *it is therefore ordered* that the petitions for reconsideration filed by Sprint and MCI are denied.

6. *It is further ordered* that pursuant to authority contained in sections 1, 4, 201–205, 211, 218–220, 303 and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 201–205, 211, 218–220, 303 and 405, part 64 of the Commission's Rules, 47 CFR part 64, IS AMENDED as set forth below.

7. *It is further ordered* that this Order on Reconsideration and the amendment to the rules set forth in Appendix A shall become effective ninety days after publication in the **Federal Register**.

List of Subjects in 47 CFR Part 64

Communications common carriers; Reporting and recordkeeping requirements; Telegraph; Telephone.

Amendatory Text

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

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

Authority: Section 4, 48 Stat. 1066, as amended; 47 U.S.C. 154, unless otherwise noted. Interpret or apply secs. 201, 218, 225, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 201, 218, 225 unless otherwise noted.

2. Paragraph (g) of § 64.1001 is revised to read as follows:

§ 64.1001 International settlements policy and waivers.

* * * * *

(g) Notification letters and waiver requests must contain notarized statements that the filing carrier:

(1) Has not bargained for, nor has knowledge of, exclusive availability of the new accounting rate;

(2) Has not bargained for, nor has any indication that it will receive, more than its proportionate share of return traffic; and

(3) Has informed the foreign administration that U.S. policy requires that competing U.S. carriers have access to accounting rates negotiated by the filing carrier with the foreign

administration on a nondiscriminatory basis.

* * * * *

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 93–805 Filed 1–13–93; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 92–211; RM–8061]

Radio Broadcasting Services; Lumberton, MS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 237C1 for Channel 237C2 at Lumberton, Mississippi, in response to a petition filed by Stone-Lamar Broadcast Services Corporation, and modifies the license for Station WLUN to specify operation on Channel 237C1 in accordance with § 1.420(g) of the Commission's Rules. See 57 FR 44549, September 28, 1992. The coordinates for Channel 237C1 are 30–39–34 and 89–09–59. With this action, this proceeding is terminated.

EFFECTIVE DATE: February 22, 1993.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 92–211, adopted December 7, 1992, and released January 8, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1990 M Street, NW., Suite 640, Washington, DC 20036, (202) 452–1422.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Mississippi, is amended by removing Channel 237C2 and adding Channel 237C1 at Lumberton.

Federal Communications Commission.

Michael C. Ruger,

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

[FR Doc. 93–890 Filed 1–13–93; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 92–219; RM–8039]

Radio Broadcasting Services; Tarkio, MO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 228C3 for Channel 228A at Tarkio, Missouri, and modifies the license for Station KTRX(FM) to specify operation on Channel 228C3, in response to a petition filed by KANZA, Inc. See 57 FR 46369, October 8, 1992. The coordinates for Channel 228C3 at Tarkio are 40–33–50 and 95–15–00. With this action, this proceeding is terminated.

EFFECTIVE DATE: February 22, 1993.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 92–219, adopted December 11, 1992, and released January 8, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1990 M Street, NW., suite 640, Washington, DC 20036, (202) 452–1422.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Missouri, is amended by removing Channel 228A and adding Channel 228C3 at Tarkio.

Federal Communications Commission.

Michael C. Ruger,

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

[FR Doc. 93–886 Filed 1–13–93; 8:45 am]

BILLING CODE 6712–01–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1039

[Ex Parte No. 346 (Sub-No. 27)]

Rail General Exemption Authority; Transportation Equipment

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: The Commission is exempting from its regulation the rail transportation of motor vehicles (STCC 37–11) and motor vehicle parts or accessories (STCC 37–14).[1] The Commission has concluded that regulation of the rail transportation of these commodities is not necessary to carry out the rail transportation policy, and that such regulation is not needed to protect shippers from an abuse of market power. Accordingly, these commodities are being added to the list of exempt commodities in our regulations, as set forth below.

EFFECTIVE DATE: This action is effective on February 13, 1993.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 927–5660. [TDD for hearing impaired: (202) 927–5721].

SUPPLEMENTARY INFORMATION: In a decision served July 9, 1992, 57 FR 30709 (July 10, 1992), we instituted a proceeding to consider whether to exempt from the provisions of 49 U.S.C. subtitle IV the rail transportation of Transportation Equipment (STCC 37). Our analysis of the proposed exemption focused on two Transportation Equipment subcategories, motor vehicles (STCC 37–11) and motor vehicle parts or accessories (STCC 37–14), that, taken together, account for approximately 96 percent of STCC 37 revenue. We concluded, preliminarily, that exemption of the rail transportation of STCCs 37–11 and 37–14 would be consistent with the 49 U.S.C. 10505(a) exemption criteria.

In a decision served August 20, 1992, 57 FR 37763 (August 20, 1992), we narrowed the scope of the proposed exemption to motor vehicles (STCC 37–11) and motor vehicle parts or accessories (STCC 37–14). This had the effect of harmonizing the scope of the proposed exemption and the rationale that we had asserted in support thereof.[2]

[1] STCC is the acronym for the Standard Transportation Commodity Code.

[2] In the decision served July 9, 1992, we had also proposed, as an ancillary measure, the elimination of the 49 CFR 1039.16 exemption applicable to the rail transportation of otherwise regulated new

Continued

Comments have been filed by the Association of American Railroads (AAR) on behalf of itself and its member railroads, the Motor Vehicle Manufacturers Association of the United States, Inc. (MVMA), and Patrick W. Simmons (on behalf of the United Transportation Union, Illinois Legislative Board).

The AAR and the MVMA support the proposed exemption, essentially for the reasons provided in the decision served July 9, 1992.[3]

Mr. Simmons opposes the proposed exemption. He contends that rail carrier employees are injured by reckless competition between rail carriers, because such competition results in pressure by management for employee concessions.

The rail carrier exemption provision, 49 U.S.C. 10505(a), requires us to exempt "a person, class of persons, or a transaction or service" when we find:

(1) That regulation is not necessary to carry out the 49 U.S.C. 10101a rail transportation policy (RTP); and

(2) Either (a) that the transaction or service is of limited scope, or (b) that regulation is not needed to protect shippers from an abuse of market power.

We think that the proposed exemption of motor vehicles and motor vehicle parts or accessories satisfies the section 10505(a) exemption criteria. We are convinced that regulation is not necessary to carry out the RTP. An exemption should not bring about any public health or safety concerns, discourage fair wages or safe and suitable working conditions, result in predatory pricing or practices, or discourage energy conservation. On the contrary, an exemption should result in positive benefits that will promote the RTP. Exemption will relieve administrative and paperwork burdens associated with tariff filing and contract summary filing. It will insulate this traffic from frivolous but potentially burdensome regulatory proceedings. It will allow quick and unhindered rate and service adjustments when changed market conditions mandate them. The proposed exemption should generally: Allow, to the maximum extent possible, competition to establish reasonable rates; minimize the need for Federal regulatory control; and ensure the continuation of a sound rail transportation system.

Mr. Simmons fears that any increase in competition will have an adverse impact on rail labor, in that the increased competitive posture of the railroads will prompt rail management to pressure rail labor for additional concessions. All section 10505 exemptions that increase competition, and indeed all Commission actions that increase competition, would be subject to attack on this basis. Given the several provisions in the RTP that favor competition,[4] we will not find a proposed exemption to be inconsistent with the RTP merely because it tends to increase competition.

We are also convinced that regulation of the rail transportation of STCCs 37–11 and 37–14 is not needed to protect shippers from an abuse of market power. On account of motor carrier competition, geographic competition generally, and various shipper options and powers, there is, overall, effective competition for the rail transportation of motor vehicles and motor vehicles parts and accessories.

We are therefore exempting the rail transportation of motor vehicles (STCC 37–11) and motor vehicle parts or accessories (STCC 37–14) from the provisions of 49 U.S.C. subtitle IV.

Environmental and Energy Considerations

We conclude that this action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Regulatory Flexibility Analysis

We conclude that this action will not have a significant impact on a substantial number of small entities. The shippers of motor vehicles and motor vehicle parts and accessories are, by and large, major corporations.

List of Subjects in 49 CFR Part 1039

Agricultural commodities, Intermodal transportation, Manufactured commodities, Railroads.

Decided: December 30, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons and Phillips. Commissioner Simmons commented with a separate expression.

Sidney L. Strickland, Jr.,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, part 1039 of the Code of Federal Regulations is amended as follows:

highway trailers or containers. This ancillary proposal, designed only to minimize redundancy in our regulations, did not survive the narrowing of the scope of the proposed exemption to STCCs 37–11 and 37–14.

[3] The AAR also supports a similar exemption for used motor vehicles (STCC 41–116). We will consider that matter separately, in Ex Parte No. 346 (Sub-No. 27A), Rail General Exemption Authority—Used Motor Vehicles.

[4] See 49 U.S.C. 10101a(1), (4), and (5).

PART 1039—EXEMPTIONS

1. The authority citation for part 1039 continues to read as follows:

Authority: 49 U.S.C. 10321, 10505, 10708, 10761, 10762, 11105, 11902, 11903, and 11904; and 5 U.S.C. 553

2. In § 1039.11, the material in the chart in paragraph (a), following STCC No. 36, is revised to read as follows:

§ 1039.11 Miscellaneous commodities exemptions.

(a) * * *

STCC No.	STCC tariff	Commodity
*	*	*
37 11 ...	6001–T, eff. 1–1–92.	Motor vehicles.
37 14 ...	.....do	Motor vehicle parts or accessories.
38	6001–Q, eff. 1–14–90.	Instruments, photographic goods, optical goods, watches or clocks.
39	.....do	Miscellaneous products of manufacturing.

* * * * *

[FR Doc. 93–881 Filed 1–13–93; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB66

Endangered and Threatened Wildlife and Plants; Endangered Status for Three Foreign Butterflies

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines endangered status for the Homerus, Corsican, and Luzon peacock swallowtail butterflies, which are found, respectively, in Jamaica, Corsica (France) and Sardinia (Italy) and the Philippines. All occupy restricted ranges and are jeopardized by human habitat disruption and collection. This rule will implement the protection of the Endangered Species Act of 1973 for these three butterflies.

EFFECTIVE DATE: February 16, 1993.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, from 8 a.m. to 4 p.m., Monday through Friday, in room 750, 4401 Fairfax Drive, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Dr. Charles W. Dane, Chief, Office of

Scientific Authority; Mail Stop: Arlington Square, room 725; U.S. Fish and Wildlife Service; Washington, DC 20240 (phone 703–358–1708 or FTS 921–1708; FAX 703–358–2202).

SUPPLEMENTARY INFORMATION:

Background

The swallowtail butterflies of the insect family Papilionidae occur mainly in tropical parts of the world. They are generally large and colorful, and thus of special attraction to people, but also are particularly susceptible to excessive collection and environmental disruption. Four species have been placed on appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (Convention). One of these, Queen Alexandra's birdwing (*Troides alexandrae*) was added to the U.S. List of Endangered and Threatened Wildlife in the **Federal Register** of September 21, 1989 (54 FR 38950–38951). The other three—the Homerus, Corsican, and Luzon peacock swallowtail butterflies—are now classified as endangered by the International Union for Conservation of Nature (IUCN). The Homerus was selected by the IUCN Species Survival Commission as one of 12 critically endangered species that "highlight the serious and often still deteriorating world situation for species" (Fitter 1988). Partly in conjunction with an effort to establish closer alignment between the IUCN classifications, the Convention appendices, and the U.S. Lists of Endangered and Threatened Species, when warranted, the Service, in the **Federal Register** of September 10, 1991 (56 FR 46145–46148), proposed endangered status for the three butterflies described below.

The Homerus swallowtail butterfly (*Papilio homerus*) is the largest member of the family in the Western Hemisphere. It has a wingspan of about 6 inches (150 millimeters). The wings are black or dark brown, the upper surfaces having broad yellow bands and the lower surfaces having narrower yellow bands and blue spots. The species is known only from Jamaica in the West Indies.

The Corsican swallowtail (*Papilio hospiton*) is a short-tailed, black and yellow butterfly, with blue and red markings. Its wingspan is about 3 inches (72–76 millimeters). It is found only on the islands of Corsica (France) and Sardinia (Italy).

The Luzon peacock swallowtail (*Papilio chikae*) is a beautiful green-black, red and purple, long-tailed butterfly. Its forewing length is about 2 inches (55 millimeters).

Summary of Comments and Recommendations

In the proposed rule of September 10, 1991, and associated notifications, all interested parties were requested to submit information that might contribute to development of a final rule. Cables were sent to United States embassies in countries within the ranges of the subject species, requesting new data and the comments of the governments of those countries. Four comments were received. Dr. Tim R. New, Chairman of the IUCN Species Survival Commission Lepidoptera Group, supported the listing of all three butterflies. The Science Office of the U.S. Embassy in Rome collected data supporting the listing of *P. hospiton*. However, both Rudi Mattoni, editor of the Journal of Research on the Lepidoptera, and Professor H. Descimon of the University of Provence in France submitted comments suggesting that *P. hospiton* might not be endangered. Both observed that suitable habitat for this species is still widespread and that overcollecting is not a major problem. Nonetheless, they also indicated that the species is rare and at least potentially jeopardized by habitat destruction. In addition, Professor Descimon pointed out other possible problems, including hybridization, heavy parasitism, and difficulty in enforcing protective laws. These factors, together with information available from other sources, have led the Service to conclude that classification of *P. hospiton* as endangered is appropriate.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the three butterflies named above should be classified as endangered. Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Homerus, Corsican, and Luzon peacock swallowtail butterflies are as follows (information largely from Collins and Morris (1985) and from proposals to add the three species to appendix I of the Convention).

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

Habitat destruction is the main factor in the decline of at least two of these species. The Homerus swallowtail originally was recorded from most parts of Jamaica, but now is restricted to two disjunct areas of virgin forest, each comprising only a few square kilometers. Both populations are continuing to decline, largely because of logging and agricultural activity.

The Corsican swallowtail has declined dramatically on both Corsica and Sardinia. On each island, the food plants of the butterfly are believed by the local people to be poisonous to sheep, and are therefore being destroyed by fires. In addition, developments such as ski resorts have destroyed habitat on Corsica. Populations of the butterfly are now extremely localized.

The Luzon peacock swallowtail is found in a mountainous area, part of which is a popular summer tourist resort. New roads and other developments are reducing available habitat for the butterfly.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Excessive collection by butterfly enthusiasts and commercial interests is a problem for all three species, and is the main factor jeopardizing the Luzon peacock swallowtail. The latter is among the most beautiful and desirable members of the family, and its habitat is becoming easily accessible through road construction. It is readily captured, as its flight is very slow and it is attracted by decoys. Commercial collecting has been intensive and prices on the international market have been remarkably high for this species. In 1983 specimens were being sold in Japan for the equivalent of U.S. $150. In 1986 a dealer in the Philippines reportedly was purchasing pairs from local collectors at high volume and for the equivalent of U.S. $40.

The Corsican swallowtail also has suffered through excessive taking by both local and foreign collectors, who are aware of its rarity. Collecting of the Homerus swallowtail is difficult in its mountainous habitat, but may be a problem since it does command a high price and there are no effective protective measures in place. In 1984 a female was advertised in the United States for $2,800 and a male for $1,575.

C. Disease or Predation

Not now known to be immediate problems, but of potential concern in

any case of a species reduced to very limited numbers or habitat. As noted above, parasitism may be a threat to *P. hospiton*.

D. The Inadequacy of Existing Regulatory Mechanisms

The Homerus swallowtail is not covered by any specific conservation measures. The Corsican swallowtail is protected from direct taking on Corsica under French law, but the Sardinian population is not protected. There are no regulatory measures on either island to prevent habitat destruction, which is the main problem. The Luzon peacock swallowtail and its habitat are completely unprotected. Being on Appendix I of the Convention helps to control international trade in these species, but does not affect environmental disruption or local collecting.

E. Other Natural or Manmade Factors Affecting its Continued Existence

None now known.

The decision to determine endangered status for the Homerus, Corsican, and Luzon peacock swallowtail butterflies was based on an assessment of the best available scientific information, and of past, present, and probable future threats to these insects. All three have suffered substantial losses in habitat and/or numbers in recent years and are vulnerable to human exploitation and disturbance. If conservation measures are not implemented, further declines are likely to occur, increasing the danger of extinction for these butterflies. Critical habitat is not being determined, as such designation is not applicable to foreign species.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened pursuant to the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages conservation measures by Federal, international, and private agencies, groups, and individuals.

Section 7(a) of the Act, as amended, and as implemented by regulations at 50 CFR part 402, requires Federal agencies to evaluate their actions that are to be conducted within the United States or on the high seas, with respect to any species that is proposed or listed as endangered or threatened and with respect to its proposed or designated critical habitat (if any). Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a proposed Federal action may affect a listed species, the responsible Federal agency must enter into formal consultation with the Service. No such activities are currently known with respect to the species covered by this rule.

Section 8(a) of the Act authorizes the provision of limited financial assistance for the development and management of programs that the Secretary of the Interior determines to be necessary or useful for the conservation of endangered species in foreign countries. Sections 8(b) and 8(c) of the Act authorize the Secretary to encourage conservation programs for foreign endangered species, and to provide assistance for such programs, in the form of personnel and the training of personnel.

Section 9 of the Act, and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any endangered wildlife. It also is illegal to possess, sell, deliver, transport, or ship any such wildlife that has been taken in violation of the Act. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22. Such permits are available for scientific purposes, to enhance propagation or survival, or for incidental take in connection with otherwise lawful activities. All such permits also must be consistent with the purposes and policies of the Act, as required by section 10(d). In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available.

The Service will review these species to determine whether any of them should be placed on the Annex of the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere, which is implemented through section 8A(e) of the Act, and whether they should be considered for other appropriate international agreements, including the Cartagena Convention's Protocol for Specially Protected Areas and Wildlife.

National Environmental Policy Act

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

Literature Cited

Collins, N.M., and M.G. Morris. 1985. Threatened swallowtail butterflies of the world. The IUCN red data book. International Union for Conservation of Nature, Gland, Switzerland, 401 pp.

Fitter, M. 1988. Twelve critically endangered species. Species (Newsletter of the International Union for Conservation of Nature Species Survival Commission) 10:22–24.

Author

The primary author of this rule is Ronald M. Nowak, Office of Scientific Authority, U.S. Fish and Wildlife Service, Washington, DC 20240 (phone 703–358–1708 or FTS 921–1708).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulations Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is hereby amended as set forth below:

Part 17—[Amended]

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order under INSECTS, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(c) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
INSECTS							
•	•	•	•	•	•	•	•
Butterfly, Corsican swallowtail.	*Papilio hospiton*	Corsica, Sardinia	Entire	E	486	NA	NA
•	•	•	•	•	•	•	•
Butterfly, Homerus swallowtail.	*Papilio homerus*	Jamaica	Entire	E	486	NA	NA
•	•	•	•	•	•	•	•
Butterfly, Luzon peacock swallowtail.	*Papilio chikae*	Phillippines	Entire	E	486	NA	NA
•	•	•	•	•	•	•	•

Dated: October 1, 1992.

Bruce Blanchard,

Acting Director.

[FR Doc. 93–856 Filed 1–13–93; 8:45 am]

BILLING CODE 4310–55–M

Proposed Rules

Federal Register
Vol. 58, No. 9
Thursday, January 14, 1993

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 92-140-1]

Brucellosis in Cattle; State and Area Classifications

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: We are amending the brucellosis regulations concerning the interstate movement of cattle by changing the classification of Oregon from Class A to Class Free. We have determined that Oregon now meets the standards for Class Free status. This action relieves certain restrictions on the interstate movement of cattle from Oregon.

DATES: Interim rule effective January 14, 1993. Consideration will be given only to comments received on or before March 15, 1993.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 92-140-1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT:

Dr. John D. Kopec, Senior Staff Veterinarian, Cattle Diseases and Surveillance Staff, VS, APHIS, USDA, room 729, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-6188.

SUPPLEMENTARY INFORMATION:

Background

Brucellosis is a contagious disease affecting animals and man, caused by bacteria of the genus *Brucella*.

The brucellosis regulations contained in 9 CFR part 78 (referred to below as the regulations) provide a system for classifying States or portions of States according to the rate of *Brucella* infection present, and the general effectiveness of a brucellosis control and eradication program. The classifications are Class Free, Class A, Class B, and Class C. States or areas that do not meet the minimum standards for Class C are required to be placed under Federal quarantine.

The brucellosis Class Free classification is based on a finding of no known brucellosis in cattle for the 12 months preceding classification as Class Free. The Class C classification is for States or areas with the highest rate of brucellosis. Class B and Class A fall between these two extremes. Restrictions on moving cattle interstate become less stringent as a State approaches or achieves Class Free status.

The standards for the different classifications of States or areas entail maintaining (1) a cattle herd infection rate not to exceed a stated level during 12 consecutive months; (2) a rate of infection in the cattle population (based on the percentage of brucellosis reactors found in the Market Cattle Identification (MCI) program—a program of testing at stockyards, farms, ranches, and slaughter establishments) not to exceed a stated level; (3) a surveillance system that includes testing of dairy herds, participation of all recognized slaughtering establishments in the MCI program, identification and monitoring of herds at high risk of infection (including herds adjacent to infected herds and herds from which infected animals have been sold or received), and having an individual herd plan in effect within a stated number of days after the herd owner is notified of the finding of brucellosis in a herd he or she owns; and (4) minimum procedural standards for administering the program.

Before the effective date of this interim rule, Oregon was classified as a Class A State because of its herd infection rate and its MCI reactor prevalence rate.

To attain and maintain Class Free status, a State or area must (1) remain free from field strain *Brucella abortus* infection for 12 consecutive months or longer; (2) maintain for 12 consecutive months an MCI reactor prevalence rate not to exceed one reactor per 2,000 cattle tested (0.050 percent); and (3) have a specified surveillance system, as described above, including an approved individual herd plan in effect within 15 days of locating the source herd or recipient herd.

After reviewing the brucellosis program records for Oregon, we have concluded that the State meets the standards for Class Free status. Therefore, we are removing Oregon from the list of Class A States in § 78.41(b) and adding it to the list of Class Free States in § 78.41(a). This action relieves certain restrictions on moving cattle interstate from Oregon.

Immediate Action

Robert Melland, Administrator of the Animal and Plant Health Inspection Service, has determined that there is good cause to publish this interim rule without prior opportunity for public comment. Immediate action is warranted to remove unnecessary restrictions on the interstate movement of cattle from Oregon.

Since prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest under these conditions, there is good cause under 5 U.S.C. 553 to make it effective upon publication. We will consider comments that are received within 60 days of publication of this interim rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual

industries, Federal, State or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

Cattle moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Changing the brucellosis status of Oregon from Class A to Class Free will promote economic growth by reducing certain testing and other requirements governing the interstate movement of cattle from the State. Testing requirements for cattle moved interstate for immediate slaughter or to quarantined feedlots are not affected by this change. Cattle from certified brucellosis-free herds moving interstate are not affected by this change.

The groups affected by this action will be herd owners in Oregon, as well as buyers and importers of cattle from the State.

There are an estimated 23,000 herds in Oregon, 98 percent of which are owned by small entities that would be affected by this rule. Most of these herds are not certified-free. Test-eligible cattle offered for sale from other than certified-free herds must have a negative test under present Class A status regulations, but not under regulations concerning Class Free status. In 1991, Oregon tested 25,081 cattle under the Class A status regulations for change-of-ownership. This testing costs approximately $3.25 per head, or $81,513.00. If such testing were distributed equally among all herds affected by this rule, Class Free status would have less than $5.00 per herd.

Therefore, we believe that changing the brucellosis status for Oregon would not have a significant economic on the small entities affected by this interim rule.

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

Executive Order 12372

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

Executive Order 12778

This interim rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

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

List of Subjects in 9 CFR Part 78

Animal diseases, Bison, Cattle, Hogs, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 9 CFR part 78 is amended as follows:

PART 78—BRUCELLOSIS

1. The authority citation for part 78 continues to read as follows:

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

§ 78.41 [Amended]

2. Section 78.41, paragraph (a), is amended by adding "Oregon," immediately after "Ohio,".

3. Section 78.41, paragraph (b), is amended by removing "Oregon,".

Done in Washington, DC, this 8th day of January 1993.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 93–948 Filed 1–13–93; 8:45 am]

BILLING CODE 3410–34–M

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9 CFR Part 92

[Docket 92–167–1]

Limited Ports; Baudette, MN

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the animal importation regulations by adding Baudette, MN, to the list of limited ports of entry for ruminants and swine and ruminant and swine products (such as test specimens of ruminants and swine) that do not appear to require restraint and holding inspection facilities. We have determined that inspection facilities and Animal and Plant Health Inspection Service personnel are available to provide inspection service for this location. This proposed action would provide importers with an alternative port through which to import certain ruminants and swine and ruminant and swine products.

DATES: Consideration will be given only to comments received on or before March 15, 1993.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, ALPHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. please state that your comments refer to Docket No. 92–167–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Joyce Bowling, Staff Veterinarian, Import-Export Animals Staff, VS, APHIS, USDA, room 766, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782 (301) 436–8170.

SUPPLEMENTARY INFORMATION:

Background

The animal importation regulations (contained in 9 CFR part 92 and referred to below as the regulations), among other things, list ports that have inspection or quarantine facilities for ruminants and ruminant products and for swine and swine products offered for entry into the United States. Section 92.403(e) designates limited ports for the importation of ruminants and ruminant products (such as ruminant test specimens) that do not appear to require restraint and holding inspection facilities. Section 92.503(e) designates limited ports having inspection facilities for the entry of swine and swine products (such as swine test specimens) that do not appear to require restraint and holding inspection facilities.

Beaudette, MN does not have the facilities to hold large animals or to restrain animals that need to be individually inspected before entering the United States. However, Animal and Plant Health Inspection Service personnel are available to provide inspection services at Baudette, MN. Therefore, we are proposing to amend §§ 92.403(e) and 92.503(e) of the regulations by adding Baudette, MN, as a limited port. This action would provide importers an alternative limited port of entry in Minnesota for certain ruminants and swine and ruminant and swine products.

Executive Order 12291 and Regulatory Flexibility Act

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

We anticipate that the addition of Baudette, MN, to the list of limited ports for the importation of ruminants and swine and ruminant and swine products would not cause a substantial change in the number of these animals or products entering the United States or in the number of persons importing them.

The entities affected by this proposed rule would be those importers who would wish to use the new ports. We believe that most of these entities would be considered small entities, but we do not know how many of them would opt to use a new limited port if one were to become available. Minnesota already has a limited port for the entry of ruminants and ruminant products and swine and swine products. The addition of a limited port at Baudette would provide importers with an alternate and, in some cases, a more conveniently located limited port, thereby making importations easier. We do not anticipate that there will be a significant economic impact on any small entities as a result of this proposed rule.

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

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted:

(1) All State and local laws and regulations that are in conflict with this rule will be preempted;

(2) No retroactive effect will be given to this rule; and

(3) Administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

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

Regulatory Reform: Less Burdensome of More Efficient Alternatives

The Department of Agriculture is committed to carrying out its statutory and regulatory mandates in a manner that best serves the public interest. Therefore, where legal discretion permits, the Department actively seeks to promulgate regulations that promote economic growth, create jobs, are minimally burdensome, and are easy for the public to understand, use, or comply with. In short, the Department is committed to issuing regulations that maximize net benefits to society and minimize costs imposed by those regulations. This principle is articulated in President Bush's January 28, 1992, memorandum to agency heads, and in Executive Orders 12291 and 12498. The Department applies this principle to the full extent possible, consistent with law.

The Department has developed and reviewed this regulatory proposal in accordance with these principles. Nonetheless, the Department believes that public input from all interested persons can be invaluable to ensuring that the final regulatory product is minimally burdensome and maximally efficient. Therefore, the Department specifically seeks comments and suggestions from the public regarding any less burdensome or more efficient alternative that would accomplish the purposes described in the proposal. Comments suggesting less burdensome or more efficient alternatives should be addressed to the agency as provided in this notice.

List of Subjects in 9 CFR Part 92

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 92 would be amended as follows:

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

1. The authority citation for part 92 would continue to read as follows:

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

§ 92.403 [Amended]

2. Paragraph (e) of § 92.403 would be amended by adding "Baudette and" immediately before "Minneapolis".

§ 92.503 [Amended]

3. Paragraph (e) of § 92.503 would be amended by adding "Beaudette and" immediately before "Minneapolis".

Done in Washington, DC, this 8th day of January 1993.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 93–925 Filed 1–13–93; 8:45 am]

BILLING CODE 3410–34–M

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9 CFR Part 92

[Docket No. 92–103–1]

Ports Designated for Importation of Birds and Poultry; Port Canaveral, FL

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations concerning the importation of animals and animal products by adding Port Canaveral, FL, to the list of ports designated for the importation of pet birds, performing or theatrical birds, performing or theatrical poultry, and certain other poultry and poultry products, such as poultry test specimens, or hatching eggs and day old chicks, which do not appear to require restraint and holding facilities. This action would provide an alternative port of entry for these birds and poultry, and poultry products, thereby facilitating their importation into the United States.

DATES: Consideration will be given only to comments received on or before February 16, 1993.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 92–103–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Keith Hand, Senior Staff Veterinarian, Import-Export Animals Staff, VS, APHIS, USDA, room 768, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–5097.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 92 (referred to below as the regulations) contain, among other things, provisions concerning the importation of birds and poultry into the United States. These provisions are designed to prevent the introduction of exotic Newcastle disease and other communicable diseases of poultry into the United States.

Section 92.102(a) lists special ports designated for the importation of pet birds imported under the provisions of § 92.101(c)(3). Section 92.203(d) designates limited ports available for the entry of poultry and poultry products, such as poultry test specimens, or hatching eggs and day old chicks, which do not appear to require restraint and holding facilities. In accordance with § 92.101(f), performing or theatrical birds may be imported at the ports of entry listed in § 92.102(a) or § 92.203(d). And, in accordance with § 92.201(c), performing or theatrical poultry may be imported at the ports listed in § 92.203(d).

Pet birds, performing or theatrical birds, and performing or theatrical poultry are generally imported in small numbers and in carrying cases or cages, and do not require restraint and holding facilities. It appears that Port Canaveral, FL, could be used for the importation of these birds and poultry, and for certain other poultry and poultry products that do not require restraint and holding facilities. Therefore, we propose to add Port Canaveral, FL, to the list of ports in §§ 92.102(a) and 92.203(d).

Executive Order 12291 and Regulatory Flexibility Act

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

This proposed rule, if adopted, would affect owners of pet birds, performing or theatrical birds, performing or theatrical poultry and certain other poultry and poultry products, imported into the United States. This proposed rule would benefit them by providing an alternative port of entry. The convenience this alternative port would provide would not result in any significant economic benefit. Further, we do not expect that this proposed rule, if adopted, would result in any increase in the number of these birds and poultry, and poultry products, imported into the United States.

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

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted:

(1) All State and local laws and regulations that are inconsistent with this rule will be preempted;

(2) No retroactive effect will be given to this rule; and

(3) Administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C., 3051 *et seq.*).

Regulatory Reform: Less Burdensome or More Efficient Alternatives

The Department of Agriculture is committed to carrying out its statutory and regulatory mandates in a manner that best serves the public interest. Therefore, where legal discretion permits, the Department actively seeks to promulgate regulations that promote economic growth, create jobs, are minimally burdensome, and are easy for the public to understand, use, or comply with. In short, the Department is committed to issuing regulations that maximize net benefits to society and minimize costs imposed by those regulations. This principle is articulated in President Bush's January 28, 1992, memorandum to agency heads, and in Executive Orders 12291 and 12498. The Department applies this principle to the full extent possible, consistent with law.

The Department has developed and reviewed this regulatory proposal in accordance with these principles. Nonetheless, the Department believes that public input from all interested persons can be invaluable to ensuring that the final regulatory product is minimally burdensome and maximally efficient. Therefore, the Department specifically seeks comments and suggestions from the public regarding any less burdensome or more efficient alternative that would accomplish the purposes described in the proposal. Comments suggesting less burdensome or more efficient alternatives should be addressed to the agency as provided in this notice.

List of Subjects in 9 CFR Part 92

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

Accordingly, 9 CFR Part 92 would be amended as follows:

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

1. The authority citation for part 92 would continue to read as follows:

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

§ 92.102 [Amended]

2. In § 92.102, paragraph (a) would be amended by adding "and Port Canaveral" immediately after "Miami".

§ 92.203 [Amended]

3. In § 92.203, paragraph (d) would be amended by adding "Port Canaveral," immediately after "Jacksonville,".

Done in Washington, DC, this 8th day of January 1993.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 93–924 Filed 1–13–93; 8:45 am]

BILLING CODE 3410–34–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 20

Radiological Criteria for Decommissioning of NRC-licensed Facilities; Workshop

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of workshop.

SUMMARY: The Nuclear Regulatory Commission (NRC) is preparing to initiate an enhanced participatory rulemaking on establishing the

radiological criteria for the decommissioning of NRC-licensed facilities. The Commission intends to enhance the participation of affected interests in the rulemaking by soliciting commentary from these interests on the rulemaking issues before the staff develops the draft proposed rule. The Commission plans to conduct a series of workshops to solicit commentary from affected interests on the fundamental approaches and issues that must be addressed in establishing the radiological criteria for decommissioning. The first workshop will be held in Chicago, Illinois on January 27 and 28, 1993 and will be open to the public.

DATES: January 27, 1993 for 9 a.m. to 6 p.m.; January 28, 1993 from 8:30 a.m. to 4:30 p.m.

As discussed later in this notice, the workshop discussions will focus on the issues and approaches identified in a Rulemaking Issues Paper prepared by the NRC staff. The Commission will accept written comments on the Rulemaking Issues Paper from the public, as well as from workshop participants. Written comments should be submitted by May 28, 1993.

ADDRESSES: The workshop will be held at the Park Hyatt Hotel, 800 North Michigan Avenue, Chicago, Illinois.

Send written comments on the Rulemaking Issues Paper to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. ATTN: Docketing and Service Branch. Hand deliver comments to 11555 Rockville Pike, Rockville, Maryland between 7:45 a.m. and 4:15 p.m. on Federal workdays. The Rulemaking Issues Paper is available from Francis X. Cameron (See **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Francis X. Cameron, Special Counsel for Public Liaison and Waste Management, Office of the General Counsel, Washington, DC 20555, Telephone: 301–504–1642.

SUPPLEMENTARY INFORMATION:

Background

The NRC has the statutory responsibility for protection of health and safety related to the use of source, byproduct, and special nuclear material under the Atomic Energy Act. The NRC believes that one portion of this responsibility is to ensure the safe and timely decommissioning of nuclear facilities which it licenses and to provide guidance to licensees on how to plan for and prepare their sites for decommissioning. Once licensed activities have ceased, licensees are required to decommission their facilities so that their licenses may be terminated. This requires that the radioactivity in land, groundwater, buildings, and equipment resulting from the licensed operation be reduced to levels that allow the property to be released for unrestricted use. Licensees must then demonstrate that all facilities have been properly decontaminated and that radioactive material has been transferred to authorized recipients. Confirmatory surveys are conducted by NRC, where appropriate, to verify that sites meet NRC radiological criteria for decommissioning.

The types of nuclear fuel cycle facilities that will require decommissioning include nuclear power plants; non-power (research and test) reactors; fuel fabrication plants, uranium hexafluoride production plants, and independent spent fuel storage installations. In addition there are currently about 24,000 materials licensees. About one third of these are NRC licensees, while the remainder are licensed by Agreement States acting under the authority of the Atomic Energy Act, section 274.

These Licensees include universities, medical institutions, radioactive source manufacturers, and companies that use radioisotopes for industrial purposes. About 50% of NRC's 7,500 materials licensees use either sealed radioactive sources or small amounts of short-lived radioactive materials. Decommissioning of these facilities should be relatively simple because there is usually little or no residual radioactive contamination. Of the remaining 50%, a small number (e.g. radioactive source manufacturers, radiopharmaceutical producers, and radioactive ore processors) conduct operations that could produce substantial radioactive contamination in portions of the facility. These facilities, like the fuel cycle facilities identified above, must be decontaminated before they can be safely released for unrestricted use.

Several hundred NRC and Agreement State licenses are terminated each year. The majority of these licenses involve limited operations, produce little or no radioactive contamination, and do not present complex decommissioning problems or potential risks to public health or the environment from residual contamination. However, as the nuclear industry matures, it is expected that more and more of the larger nuclear facilities that have been operating for a number of years will reach the end of their useful lives and be decommissioned. Therefore, both the number and complexity of facilities that will require decommissioning is expected to increase.

The Commission believes that there is a need to incorporate into its regulations radiological criteria for termination of licenses and release of land and structures for unrestricted use. The intent of this action would be to provide a clear and consistent regulatory basis for determining the extent to which lands and structures must be decontaminated before a site can be decommissioned. The Commission believes that inclusion of criteria in the regulations would result in more efficient and consistent licensing actions related to the numerous and frequently complex site decontamination and decommissioning activities anticipated in the future. A rulemaking effort would also provide an opportunity to reassess the basis for the residual contamination levels contained in existing guidance in light of changes in basic radiation protection standards and decommissioning experience obtained during the past 15 years.

The new criteria would apply to the decommissioning of power reactors, non-power reactors, fuel reprocessing plants, fuel fabrication plants, uranium hexafluoride production plants, independent spent fuel storage installations, and materials licenses. The criteria would apply to nuclear facilities that operate through their normal lifetime, as well as to those that may be shut down prematurely. The proposed criteria would not apply to uranium (other than source material) mines and mill tailings, high-level waste repositories, or low-level waste disposal facilities.

Until the new criteria are in place, the Commission intends to proceed with the decommissioning of nuclear facilities on a site-specific basis as the need arises considering existing criteria. Case and activity-specific risk decisions will continue to be made as necessary during the pendency of this process.

The Enhanced Participatory Rulemaking

The Commission believes it is desirable to provide for early and comprehensive input from affected interests on important public health and safety issues, such as the development of radiological criteria for decommissioning. Accordingly, the Commission is initiating an enhancing participatory rulemaking to establish these criteria. The objective of the rulemaking is to enhance the participation of affected interests in the rulemaking by soliciting commentary from these interests on the rulemaking issues before the NRC staff develops the draft proposed rule. The NRC staff will consider this commentary in the

development of the draft proposed rule, as well as document how these comments were considered in arriving at a regulatory approach. The Commission believes that this will be an effective method for illuminating the decision making process on complex and controversial public health and safety issues. This approach will ensure that the important issues have been identified; will assist in identifying potential information gaps or implementation problems; and will facilitate the development of potential solutions to address the concerns that affected interests may have in regard to the rulemaking.

The early involvement of affected interests in the development of the draft proposed rule will be accomplished through a series of workshops. A workshop format was selected because it will provide representatives of the affected interests with an opportunity to discuss the rulemaking issues with one another and to question one another about their respective positions and concerns. Although the workshops are intended to foster a clearer understanding of the positions and concerns of the affected interests, as well as to identify areas of agreement and disagreement, it is not the intent of the workshop process to attempt to develop a consensus agreement on the rulemaking issues. In addition to the commentary from the workshop participants, the workshops will be open to the public and the public will be provided with the opportunity to comment on the rulemaking issues and the workshop discussions at discrete intervals during the workshops.

The normal process for conducting Commission rulemakings is NRC staff development of a draft proposed rule for Commission review and approval, publication of the proposed rule for public comment, consideration of the comment by the NRC staff, and preparation of a draft final rule for Commission approval. In the enhanced participatory rulemaking, not only will comments be solicited before the NRC staff prepares a draft proposed rule, but the mechanism for soliciting there early comments will also provide an opportunity for the affected interests and the NRC staff to discuss the issues with each other, rather than relying on the traditional one-to-one written correspondence with the NRC staff. After Commission review and approval of the draft proposed rule that is developed using the workshop commentary, the general process of issuing the proposed rule for public comment, NRC staff evaluation of comments, and preparation of a draft final rule for Commission approval, will occur.

Participants

In order to have a manageable discussion among the workshop participants, the number of participants in each workshop must be limited. Based on discussions with experts on workshop facilitation, the NRC staff believes that the optimum size of the workshop group is fifteen to twenty participants. Due to differing levels of interest in each region, the actual number of participants in any one workshop, as well as the number of participants that represent a particular interest in any one workshop, may vary. Invitations to attend the workshops will be extended by the NRC staff using several selection criteria. First, to ensure that the Commission has the benefit of the spectrum of viewpoints on the issues, the NRC staff is attempting to achieve the participation of the full range of interests that may be affected by the rulemaking. The NRC staff has identified several general interests that will be used to select specific workshop participants—State governments, local governments, tribal governments, Federal agencies, citizens groups, nuclear utilities, fuel cycle facilities, and non-fuel cycle facilities. In addition to these interests, the staff also plans to invite representatives from the contracting industry that performs decommissioning work and representatives from professional societies, such as the Health Physics Society and the American Nuclear Society. The NRC anticipates that most of the participants will be representatives of organizations. However, it is also possible that there may be a few participants who, because of their expertise and influence, will participate without any organizational affiliation.

The second selection criterion is the ability of the participant to knowledgeably discuss the full range of the rulemaking issues. The NRC staff wishes to ensure that the workshops will elicit informed discussions of options and approaches, and the rationale for those options and approaches, rather than simple statements of opinion. The NRC staff's identification of potential participants has been based on an evaluation of such factors as the extent of a potential participant's experience with a broad range of radiation protection issues and types of nuclear facilities, specific experience with the decommissioning issue, and the extent of a potential participant's substantive comment and participation on previous Commission regulatory or licensing actions.

The third criterion emphasizes participation from organizations within the region encompassed by the workshop. As much as practicable, those organizations that primarily operate within the region, as opposed to regional units of national organizations, will have priority in terms of participating in the corresponding regional workshops. Organizations with a national standing will be part of the "national" workshop to be held in Washington, DC.

Workshop Format

To assure that each workshop addresses the issues in a consistent manner, the workshops will have a common pre-defined scope and agenda focused on the Rulemaking Issues Paper discussed below. However, the workshop format will be sufficiently flexible to allow for the introduction of any additional issues that the participants may want to raise. At each workshop, the NRC staff will begin each discussion period with a brief overview of the workshop will be devoted to a discussion of the issues by the participants. The workshop commentary will be transcribed and made available to participants and to the public.

Personnel from The Keystone Center, a nonprofit organization located in Keystone, Colorado, will serve as neutral facilitators for each workshop. The facilitators will chair the workshop sessions and ensure that participants are given an opportunity to express their viewpoints, assist participants in articulating their interests, ensure that participants are given the opportunity to question each other about their respective viewpoints, and assist in keeping the discussion moving at a pace that will allow all major issue areas to be addressed.

Rulemaking Issues Paper

The NRC staff has prepared a Rulemaking Issues Paper to be used as a focal point for the workshop discussions. This paper, which will be distributed to participants in advance of the workshops, sets forth in neutral terms the issues that must be addressed in the rulemaking, as well as background information on the nature and extent of the problem to be addressed. In framing the issues and approaches discussed in the Rulemaking Issues Paper, the NRC staff has attempted to anticipate the variety of views that exist on these approaches and issues. The paper will provide assistance to the participants as they prepare for the workshops, suggest the

workshop agenda, and establish the level of technical discussion that can be expected at the workshops. The workshop discussions are intended to be used by the staff in developing the draft proposed rule. Prior to the workshops no staff positions will be taken on the rulemaking approaches and issues identified in the Rulemaking Issues Paper. As noted earlier, to the extent that the Rulemaking Issues Paper fails to identify a pertinent issue, this may be corrected at the workshop sessions.

The discussion of issues is divided into two parts. First are two primary issues dealing with: (1) The objectives for developing radiological criteria; and (2) application of practicality considerations. The objectives constitute the fundamental approach to the establishment of the radiological criteria, and the NRC staff has identified four distinct possibilities including:

(1) Risk Limits, which is the establishment of limiting values above which the risks to the public are deemed unacceptable, but allows for criteria to be set below the limit using practicality considerations;

(2) Risk Goals, where a goal is selected and practicality considerations are used to establish criteria as close to the goal as practical;

(3) Best Effort, where the technology for decontamination considered to be the best available is applied; and

(4) Return to Preexisting Background, where the decontamination would continue until the radiological conditions were the same as existed prior to the licensed activities.

Following the primary issues are several secondary issues that are related to the discussions of the primary issues, but which the NRC staff believe warrant separate presentations and discussions. These secondary issues include the time frame for dose calculation, the individuals or groups to be protected, the use of separate criteria for specific exposure pathways such as groundwater, the treatment of radon, and the treatment of previously buried materials.

The Rulemaking Issues Paper will be provided to each potential workshop participant. Additional copies will be available to members of the public in attendance at the workshop. Copies will also be available from the NRC staff contact identified above. In addition to the comments on the Rulemaking Issues Paper provided at the workshops, the Commission is also receptive to the submittal of written comments on the rulemaking issues, as noted under the heading **DATES**.

Dated at Rockville, MD this 9th day of January, 1993.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 93–850 Filed 1–13–93; 8:45 am]

BILLING CODE 7590–01M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92–CE–20–AD]

Airworthiness Directives; Avions Mudry & Cie Model CAP 10B Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to supersede Airworthiness Directive (AD) 80–24–51, which currently requires inspecting both the center wing lower skin and main spar upper flange at the wing root areas for cracks on certain Avions Mudry & Cie Model CAP 10B airplanes, and repairing any cracked part. An accident investigation has revealed cracking and failure of the wing main spar in the vicinity of a bolt hole at the wing root area on one of the affected airplanes that was in compliance with the existing AD. The proposed action would require installing an inspection opening in the wing, repetitively inspecting the upper and lower wing spar caps for cracks, and repairing any cracks. The actions specified by the proposed AD are intended to prevent fatigue failure of the wing spar, which could lead to loss of control of the airplane.

DATES: Comments must be received on or before March 26, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92–CE–20–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that is discussed in the proposed AD may be obtained from Avions Mudry & Cie, B.P. 214, 27300 Bernay, France; Telephone (33) 32 43 47 34; Facsimile (33) 32 43 47 90. This information may also be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond A. Stoer, Program Officer, Brussels Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B–1000 Brussels, Belgium; Telephone (322) 513.38.30 ext. 2710; Facsimile (322) 230.68.99; or Mr. William Timberlake, Project Officer, Small Airplane Directorate, Airplane Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; Telephone (816) 426–6932; Facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 92–CE–20–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92–CE–20–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

AD 80–24–51, Amendment 39–4119, currently requires inspecting both the center wing lower skin and main spar upper flange in the wing root areas for cracks on certain Avions Mudry & Cie Model CAP 10B airplanes, and repairing any cracked part.

An accident investigation of a recent in-flight failure of one of the referenced airplanes has revealed cracking and failure of the wing main spar in the vicinity of a bolt hole at the wing root. In addition, two other Avions Mudry & Cie Model CAP 10B airplanes have developed cracks in the same general areas, which were detected during inspections conducted after the referenced accident. All three of the referenced airplanes were in compliance with AD 80–24–51.

Avions Mudry & Cie has issued Service Bulletin (SB) CAP10B No. 15 (ATA 57–003) and SB CAP10B No. 16 (ATA 57–004), both dated April 14, 1992. These service bulletins specify procedures for installing an inspection opening in the wing, and inspecting the upper and lower wing spar caps.

The affected airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. The Direction Generale De L'Aviation Civile (DGAC), which is the airworthiness authority for France, recently issued similar AD action in order to assure the continued airworthiness of these airplanes in France. After examining the circumstances and reviewing all available information related to the accident and incidents described above, the FAA has determined that AD action should be proposed for products of this type design that are operated in the United States.

Since an unsafe condition has been identified that is likely to exist or develop in other Avions Mudry & Cie Model CAP 10B airplanes of the same type design, the proposed AD would supersede AD 80–24–51 with a new AD that would require installing an inspection opening in the wing, repetitively inspecting the upper and lower wing spar caps for cracks, and repairing any cracks. The proposed actions would be accomplished in accordance with the service bulletins referenced above.

The FAA estimates that 24 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 25 hours per airplane to accomplish the proposed action, and that the average labor rate is approximately $55 an hour. Parts are fabricated from commonly available spruce or plywood. The cost of the spruce or plywood would vary, but $50 is used for the purpose of this proposed AD. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $34,200.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13—[AMENDED]

2. Section 39.13 is amended by removing AD 80–24–51, Amendment 39–4119, and by adding the following new airworthiness directive:

Avions Mudry & Cie: Docket No. 92–CE–20–AD. Supersedes AD 80–24–51, Amendment 39–4119. Applicability: Model CAP 10B airplanes (all serial numbers), certificated in any category. Compliance: Required as indicated, unless already accomplished.

To prevent fatigue failure of the wing spar, which could lead to loss of control of the airplane, accomplish the following:

(a) For airplanes having a serial number of 263 or lower, within the next 100 hours TIS, install a permanent inspection opening in the wing in accordance with the Technical Instructions section of Avions Mudry & Cie Service Bulletin (SB) CAP10B No. 16 (ATA 57–004), dated April 27, 1992.

Note 1: The installation specified in paragraph (a) of this AD is incorporated during production for airplanes having a serial number of 264 or higher.

(b) For all serial number airplanes, within the next 100 hours TIS and thereafter at intervals not to exceed 1,000 hours TIS, inspect the upper and lower wing spar caps for cracks in accordance with the Technical Instructions section of Avions Mudry & Cie SB CAP10B No. 15 (ATA 57–003), dated April 14, 1992. If cracks are found, prior to further flight, obtain a repair scheme from the manufacturer through the Manager, Brussels Aircraft Certification Office, at the address specified in paragraph (d) of this AD, and incorporate this repair scheme.

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

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

(d) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B–1000 Brussels, Belgium. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels Aircraft Certification Office.

(e) All persons affected by this directive may obtain copies of the documents referred to herein upon request to Avions Mudry & Cie, B.P. 214, 27300 Bernay, France; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(f) This amendment supersedes AD 80–24–51, Amendment 39–4119.

Issued in Kansas City, Missouri, on January 8, 1993.

Gerald W. Pierce,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–840 Filed 1–13–93; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 92–NM–132–AD]

Airworthiness Directives; McDonnell Douglas Model DC–6 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness

directive (AD) that is applicable to certain McDonnell Douglas Model DC–6 series airplanes. This proposal would require the implementation of a supplemental structural inspection program either by the accomplishment of specific inspections or by the revision of the FAA-approved maintenance program to include such a program. This proposal is prompted by a structural reevaluation, which has identified certain significant structural components to inspect for fatigue cracks as these airplanes approach and exceed the manufacturer's original design life. Fatigue cracks in these areas, if not detected and corrected in a timely manner, could compromise the structural integrity of these airplanes.

DATES: Comments must be received by March 11, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–132–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846–0001, Attention: Business Unit Manager, Technical Publications—Technical Administrative Support, C1–L5B. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office (ACO), 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Wahib Mina, Aerospace Engineer, Los Angeles Aircraft Certification Office, ANM–120L, FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5324; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–NM–132–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–132–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A significant number of transport category airplanes are approaching their design life goal. It is expected that these airplanes will continue to be operated beyond this point. The incidence of fatigue cracking on these airplanes is expected to increase as airplanes reach and exceed this goal. In order to evaluate the impact of increased fatigue cracking with respect to maintaining the safe design of the McDonnell Douglas Model DC–6 airplane structure, the manufacturer has conducted a structural reassessment of these airplanes using engineering evaluation techniques. The criteria for this reassessment are contained in FAA Advisory Circular (AC) 91–60, "Continued Airworthiness of Older Airplanes."

In response to AC–91–60, McDonnell Douglas Corporation initiated the development of a Supplemental Inspection Document (SID) for Models DC–6, DC–6A, DC–6B, C–118A, and R6D–1 series airplanes, (hereinafter referred to as "Model DC–6"). McDonnell Douglas Corporation coordinated its efforts with the operators of Model DC–6 series airplanes. To make maximum use of service experience and existing maintenance programs, Model DC–6 operators have participated with the manufacturer and the FAA in generating the Model DC–6 SID.

McDonnell Douglas Corporation developed criteria and guidelines for: (1) Selecting the major areas of the structure, identified as Principal Structural Elements (PSE), which are candidates for supplemental inspection by using the latest engineering analysis techniques; and (2) analyzing existing inspection programs. This supplemental inspection program evaluates the adequacy of current normal maintenance inspection programs to detect fatigue damage, and provides detailed non-destructive inspection procedures to supplement the operators' existing inspection programs, as necessary.

The program was established upon the evaluation of each PSE selected. A PSE is defined as "that structure whose failure, if it remained undetected, could lead to the loss of the aircraft." Selection of a PSE is influenced by the susceptibility of a structural area, part, or element to fatigue, corrosion, stress corrosion, or accidental damage.

The FAA has reviewed and approved McDonnell Douglas Corporation SID Report No. L26–014, dated January 1992, which describes the structural supplemental inspection procedures of all Model DC–6 series airplanes.

The DC–6 SID, Chapters I, II, III, and IV, addresses five basic issues:

1. Identification of the selected PSE's;
2. When to accomplish inspection;
3. Frequency of inspection;
4. Number of inspections required; and
5. Non-destructive inspection (NDI) procedures for detecting cracks.

The SID inspection program is based on Model DC–6 current usage, durability assessment of the structure using current analysis techniques, and selection of the current non-destructive inspection methods. In order to implement the SID inspection program, each operator must compare its current structural maintenance program to the SID requirements for each PSE. If the current inspections equal or exceed the SID requirements for a given PSE, no supplemental inspections would be required for that PSE under the SID program. However, if the opposite is true, supplemental inspections in the form of more frequent inspections or more sensitive NDI methods, or both, would be necessary in addition to the operator's normal maintenance program.

Since the emphasis of the SID program is on aging aircraft, the inspection program emphasis is on the high time aircraft of each PSE population. The date and flight hours (or landings) at which modification or replacement of a PSE is made, would be required to be reported by the operator

to the manufacturer for each applicable airplane by fuselage number and/or factory serial number and PSE number. That particular configuration is then evaluated by McDonnell Douglas Corporation. The inspection threshold and interval will be established, and a change, if needed, will be published in the next revision of the SID.

Inspection Program

The expected fatigue life of each PSE is determined by a demonstrated life, either by service experience or by analysis. The time when the supplemental inspections are to begin or be completed is determined from the expected fatigue life and crack propagation characteristics of each PSE. All inspections are to be accomplished before the airplane exceeds the fatigue life threshold.

The results of the supplemental inspections are to be reported to the manufacturer on a form provided in the SID. This information will be presented in the periodic revisions for the SID.

Effects of Existing Maintenance Programs

In developing the SID, the manufacturer, operators, and the FAA reviewed the operation and maintenance practices of existing maintenance programs with respect to the basic requirements of the SID program. As a result, the McDonnell Douglas DC–6 SID allows affected operators to take credit for maintenance already being performed, and gives the operators flexibility in revising their maintenance programs to incorporate this supplemental program for their airplanes.

Proposed Requirements of this AD Action

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require the implementation of a supplemental structural inspection program, and the repair or replacement of any cracked structure detected during the inspections. Operators would have the option to implement the program either by the accomplishment of specific inspections or by revising the FAA-approved maintenance program to include such a program. Paragraph (a) of the proposal provides for accomplishment of the specific inspections described in the referenced SID; the intent of this paragraph is to address those operators that are not operating under an FAA-approved maintenance/inspection program. Paragraph (b) provides an alternative method of compliance to those operators that operate under such a program; this alternative procedure allows these operators to revise their FAA-approved maintenance/inspection programs to include a schedule for the supplemental structural inspections.

Economic Impact

There are approximately 75 McDonnell Douglas Model DC–6 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 57 airplanes of U.S. registry would be affected by this proposed AD. Of these 57 airplanes, 13 are operated pressurized and 44 are operated non-pressurized.

For the 13 pressurized airplanes, the FAA estimates that it would take approximately 330 work hours per airplane to accomplish the proposed inspection actions, at an average labor rate of $55 per work hour. Based on these figures, the total cost impact on U.S. operators of pressurized Model DC–6 series airplanes of $235,950, or $18,150 per airplane.

For the 44 non-pressurized airplanes, the FAA estimates that it would take approximately 210 work hours per airplane to accomplish the proposed inspection actions, at an average labor rate of $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators of non-pressurized Model DC–6 series airplanes of $508,200, or $11,550 per airplane.

Based on the figures discussed above, the total cost impact of this proposed AD on U.S. operators is estimated to be $744,150. This total cost figure assumes that no operator has yet accomplished the requirements of this proposed AD action.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

McDonnell Douglas: Docket 92–NM–132–AD.

Applicability: All Model DC–6, DC–6A, DC–6B, C–118A, and R6D–1 series airplanes; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure the continuing structural integrity of these airplanes, accomplish the following:

(a) Except as provided by paragraph (b) of this AD, inspect each Principal Structural Element (PSE) defined in Chapter 1, Section 6, and Chapter III, of McDonnell Douglas Corporation Report No. L26–014, DC–6 Supplemental Inspection Document (SID), dated January 1992 (hereafter referred to as "the SID"), in accordance with the non-destructive inspection methods set forth in Chapter II of the SID, and in accordance with the schedule specified in paragraphs (a)(1) and (a)(2) of this AD:

(1) Complete the initial inspection of each PSE specified in Chapter I, Section 6, and Chapter III of the SID as follows:

(i) For PSE's that have not yet reached their inspection threshold as of one year after the effective date of this AD, the initial inspection must be accomplished no later that the threshold specified.

(ii) For PSE's that have exceeded their inspection threshold as of one year after the effective date of this AD, the initial inspection must be accomplished within on repeat (R) interval for the PSE, measured from a date one year after the effective date of this AD.

(2) Subsequent inspections must be accomplished at intervals not to exceed the

intervals specified in Chapter III, Section 1, of the SID for the specific NDI sequence code used at the previous inspection.

(b) As an alternative to the requirements of paragraph (a) of this AD: Within one year after the effective date of this AD, incorporate a revision into the FAA-approved maintenance inspection program which provides for inspection of the PSE's defined in Chapter I, Section 6, and Chapter III of the SID. The non-destructive inspection techniques set forth in the SID provide acceptable methods for accomplishing the inspections required by this AD.

(c) Discrepant structure detected during the inspections required by this AD must be replaced or repaired prior to further flight, in accordance with the McDonnell Douglas DC–6 Structural Repair Manual; or in accordance with data approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate.

(d) All inspection results (positive or negative) must be reported to the McDonnell Douglas Corporation in accordance with the instructions in the SID. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Certification Office (ACO), FAA Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

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

Issued in Renton, Washington, on January 8, 1993.

N. B. Martenson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–837 Filed 1–13–93; 8:45 am]

BILLING CODE 4910–13–U

Research and Special Programs Administration

14 CFR Part 234

[Docket No. 48524; Notice 93–1]

RIN 2137–AB94

Amendments to the On-Time Disclosure Rule; Extension of Comment Period

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On December 11, 1992, RSPA published a notice of proposed rulemaking (NPRM) in the **Federal Register** to amend the on-time flight reporting requirements. The NPRM provided a 30-day comment period, ending January 11, 1993. The Air Transport Association of America (ATA) requested that the comment period be extended for one month. ATA stated that the NPRM raises significant operational and cost issues for the affected carriers, and the holiday season will impede ATA's efforts to prepare a consolidated industry response to the NPRM. RSPA is extending the comment period for an additional 30 days to allow industry time to evaluate the proposal and facilitate the submission of comments.

DATES: The comment period is extended from January 11, 1993, to February 11, 1993.

ADDRESSES: Comments to this docket should be directed to the Docket Clerk, Docket 48524, room 4107, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Comments should identify the docket number and be submitted in duplicate to the above address. Receipt of comments will be acknowledged if the commenter includes a stamped, self-addressed postcard on which the following statement is made: Comments on Docket 48524. The Docket Clerk will time- and date-stamp the postcard and return it to the commenter. All comments will be available for examination in the Rules Docket both before and after the closing date for comments.

FOR FURTHER INFORMATION CONTACT:

Bernard Stankus, Office of Airline Statistics, DAI–10, Research and Special Programs Administration, Department of Transportation, at the address above. Telephone: (202) 366–4387.

Issued in Washington, DC, on January 8, 1993.

Alan I. Roberts,

Acting Administrator, Research and Special Programs Administration.

[FR Doc. 93–894 Filed 1–13–93; 8:45 am]

BILLING CODE 4910–62–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

Schedules of Controlled Substances Temporary Placement of Alpha-ethyltryptamine Into Schedule I

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of intent.

SUMMARY: The Administrator of the Drug Enforcement Administration (DEA) is issuing this notice of intent to temporarily place alpha-ethyltryptamine into Schedule I of the Controlled Substances Act (CSA) pursuant to the temporary scheduling provisions of the CSA (21 U.S.C. 811(h)). This intended action is based on the finding by the DEA Administrator that the placement of alpha-ethyltryptamine in Schedule I of the CSA is necessary to avoid an imminent hazard to the public safety. Finalization of this action will impose the criminal sanctions and regulatory controls of Schedule I on the manufacture, distribution, and possession of alpha-ethyltryptamine.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr. Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307–7183.

SUPPLEMENTARY INFORMATION: The Comprehensive Crime Control Act of 1984 (Pub. L. 98–473), which was signed into law on October 12, 1984, amended section 201 of the Controlled Substances Act (CSA) (21 U.S.C. 811) to give the Attorney General the authority to temporarily place a substance into Schedule I of the CSA if he finds that such action is necessary to avoid an imminent hazard to the public safety. A substance may be temporarily scheduled under the emergency provision of the CSA if that substance is not listed in any other schedule under section 202 of the CSA (21 U.S.C. 812) or if there is no approval or exemption in effect under 21 U.S.C. 355 for the substance. The Attorney General has delegated his authority under 21 U.S.C. 811 to the Administrator of DEA (28 CFR 0.100). In making a finding that placing a substance temporarily in Schedule I of the CSA is necessary to avoid an imminent hazard to the public safety the Administrator is required to consider three of the eight factors set forth in section 201(c) of the CSA (21 U.S.C. 811(c)). These factors are as follows: (4) History and current pattern of abuse; (5) The scope, duration and

significance of abuse; and (6) What, if any, risk there is to the public health.

Alpha-ethyltryptamine has been classified as a central nervous system (CNS) stimulant as well as a tryptamine hallucinogen. Chemically it is α-ethyl-1H-indole-3-ethanamine or 3-(2-aminobutyl)indole. It is structurally similar to N,N–dimethyltryptamine (DMT) and N,N–diethyltryptamine (DET) both of which are hallucinogens controlled in Schedule I of the CSA. Available data indicates that alpha-ethyltryptamine produces some pharmacological effects qualitatively similar to those of other Schedule I hallucinogens.

DEA first encountered alpha-ethyltryptamine in 1986 at a clandestine laboratory in Nevada. Several exhibits of alpha-ethyltryptamine have been analyzed by DEA and state forensic laboratories since 1989. Individuals in Colorado and Arizona have purchased several kilograms of this substance as the acetate salt from chemical supply companies and have distributed and sold quantities to individuals for the purpose of human consumption. Touted as an MDMA (3, 4-methylenedioxymethamphetamine)-like substance, it has been trafficked as "TRIP" or "ET". Distribution and use has been primarily among high school and college-aged individuals. In Arizona, the death of a 19 year old female was attributed to acute alpha-ethyltryptamine toxicity. Illicit use has been documented in both Germany and Spain where two deaths have resulted from alpha-ethyltryptamine overdose.

Alpha-ethyltryptamine acetate was marketed by the Upjohn Company in 1961 as an antidepressant under the trade name of Monase. After less than one year of marketing, Upjohn withdrew its New Drug Application when it became apparent that Monase administration was associated with the development of agranulocytosis. Recent scientific data would also suggest that this substance may produce neurotoxicity similar to the neuro-toxic effects produced by MDMA and PCA (para-chloroamphetamine).

The continued uncontrolled availability of alpha-ethyltryptamine, its CNS stimulatory and hallucinogenic properties similar to those of DMT, DET and MDMA, its association with agranulocytosis and possible neurotoxicity, pose an imminent hazard to public safety. DEA is not aware of any therapeutic use of this substance in the United States.

In accordance with the provisions of section 201(h) of the CSA (21 U.S.C. 811(h)) and 28 CFR 0.100 the Administrator has considered the three factors required for a determination of whether temporarily scheduling alpha-ethyltryptamine under the CSA is necessary to avoid an imminent hazard to the public safety. Based on a consideration of these factors and other relevant information, the Administrator finds that placement of alpha-ethyltryptamine into Schedule I of the CSA is necessary to avoid an imminent hazard to the public safety.

As required by section 201(h)(4) of the CSA (21 U.S.C. 811(h)(4)), the Administrator has notified the Assistant Secretary for Health, delegate of the Secretary of Health and Human Services, of his intention to temporarily place alpha-ethyltryptamine into Schedule I of the CSA. Comments submitted by the Assistant Secretary for Health in response to this notification including whether there is an exemption or approval in effect for alpha-ethyltryptamine under the Federal Food, Drug and Cosmetic Act, shall be taken into consideration before a final order is published. Because the Administrator finds that it is necessary to temporarily place alpha-ethyltryptamine into Schedule I to avoid an imminent hazard to the public safety, the final order, if issued, will be effective on the date of publication of the **Federal Register**. Further, it is the intention of the Administrator to issue such a final order as soon as possible after the expiration of thirty days from the date of publication of this notice and the date that notification was transmitted to the Assistant Secretary for Health.

The Administrator of the Drug Enforcement Administration hereby certifies that this notice of intent to temporarily place alpha-ethyltryptamine into Schedule I of the CSA will have no significant impact upon entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 801 *et seq.*

The temporary scheduling of alpha-ethyltryptamine is not a major rule for the purposes of Executive Order (E.O.) 12291 of February 17, 1981. It has been determined that drug scheduling matters are not subject to review by the Office of Management and Budget (OMB) pursuant to the provisions of E.O. 12291. Accordingly, this proposed emergency scheduling action is not subject to provisions of E.O. 12778 which are contingent upon review by OMB. This regulation both responds to an emergency situation posing an imminent danger to the public safety, and is essential to a criminal law enforcement function of the United States. Accordingly, it is not subject to a moratorium on regulations ordered by the President of the United States in his memorandum of January 28, 1992, as amended.

This action has been analyzed in accordance with the principles and criteria in E.O. 12291, and it has been determined that the temporary placement of alpha-ethyltryptamine into Schedule I of the CSA does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs, Reporting and record keeping requirements.

Under the authority vested in the Attorney General by section 201(h) of the CSA (21 U.S.C. 811(h)), and delegated to the Administrator of the DEA by Department of Justice regulations (28 CFR 0.100), the Administrator hereby intends to order that 21 CFR part 1308 be amended as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

1. The authority citation for 21 CFR part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871b, unless otherwise noted.

2. Section 1308.11 is amended by adding paragraph (g)(5) to read as follows:

§ 1308.11 Schedule I

* * * * *

(g) * * *

(1) N-[1-benzyl-4-piperidyl]-N-phenylpropanamide (benzylfentanyl), its optical isomers, salts and salts of isomers	9818
(2) N-[1-(2-thienyl)methyl-4-piperidyl]-N-phenylpropanamide (thenylfentanyl), its optical isomers, salts and salts of isomers	9834
(5) alpha-ethyltryptamine, its optical isomers, salts and salts of isomers	7249

Some other names: etryptamine; α-ethyl-1H-indole-3-ethanamine; 3-(2-aminobutyl) indole.

Date: January 8, 1993.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 93–878 Filed 1–13–93; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 26 and 301

[PS-73-88; PS-32-90]

RIN 1545-AL75; 1545-A089

Generation-Skipping Transfer Tax; Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed Income Tax Regulations relating to the generation-skipping transfer tax imposed under chapter 13 of the Internal Revenue Code.

DATES: The public hearing will be held on Wednesday, April 21, 1993, beginning at 10 a.m. Requests to speak and outlines of oral comments must be received by Wednesday, March 31, 1993.

ADDRESSES: The public hearing will be held in the IRS Commissioner's Conference Room, room 3313, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Requests to speak and outlines of oral comments should be submitted to the Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R [PS-73-88; PS-32-90], room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Mike Slaughter of the Regulation Unit, Assistant Chief Counsel (Corporate), 202-622-7190 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations that would apply additions to the Generation-Skipping Transfer Regulations (26 CFR part 26) under sections 2601 through 2663 of the Internal Revenue Code (Code). The proposed regulations were published in the **Federal Register** for Thursday, December 24, 1992 (57 FR 61356 and 61353).

The preamble of the proposed regulations inadvertently made reference to the public hearing being held on February 18, 1993, and the outline of oral comments being due on February 1, 1993. Those dates are inaccurate. The public hearing is scheduled for April 21, 1993, and the outline of oral comments is due on March 31, 1993.

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Wednesday, March 31, 1993, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or groups of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by the questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Cynthia E. Grigsby,

Alternate Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 93-661 Filed 1-13-93; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

Indiana Regulatory Program Amendment

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing receipt of a proposed amendment submitted by Indiana as a modification to the State's regulatory program (hereinafter referred to as the Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA)

The amendment (Program Amendment 92-7) submitted consists of proposed changes to the Indiana Surface Mining Rules concerning subsidence liability. This amendment is intended to revise the permitting requirements and the performance standards for subsidence control applicable to underground coal mining operations.

This document sets forth the times and locations that the Indiana program and the proposed amendment to that program will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed for a public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m. on February 16, 1993; if requested, a public hearing on the proposed amendment is scheduled for 1 p.m. on February 8, 1993; and, requests to present oral testimony at the hearing must be received on or before 4 p.m. on January 29, 1993.

ADDRESSES: Written comments and requests to testify at the hearing should be directed to Mr. Roger W. Calhoun, Director, Indianapolis Field Office, at the address listed below. If a hearing is requested, it will be held at the same address.

Copies of the Indiana program, the amendment, a listing of any scheduled public meetings, and all written comments received in response to this document will be available for public review at the following locations, during normal business hours, Monday through Friday, excluding holidays:

Office of Surface Mining Reclamation and Enforcement, Indianapolis Field Office, Minton-Capehart Federal Building, 575 North Pennsylvania Street, room 301, Indianapolis, IN 46204. Telephone: (317) 226-6166.

Indiana Department of Natural Resources, 402 West Washington Street, room 295, Indianapolis, IN 46204. Telephone: (317) 232-1547.

Each requester may receive, free of charge, one copy of the proposed amendment by contacting the OSM Indianapolis Field Office.

FOR FURTHER INFORMATION CONTACT: Mr. Roger W. Calhoun, Director, telephone (317) 226-6166.

SUPPLEMENTARY INFORMATION:

I. Background on the Indiana Program

On July 29, 1982, the Indiana program was made effective by the conditional approval of the Secretary of the Interior. Information pertinent to the general background on the Indiana program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Indiana program can be found in the July 26, 1982, **Federal Register** (47 FR 32107). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 914.10, 914.15, and 914.16.

II. Discussion of the Proposed Amendment

By letter dated December 2, 1992, (Administrative Record No. IND–1175), the Indiana Department of Natural Resources (IDNR) submitted a proposed amendment to the Indiana program at 310 Indiana Administrative Code (IAC) 12–3–87.1, 12–3–130.1 and 12–3–131.1.

The proposed amendment consists of the addition of the following Indiana rules:

1. 310 IAC 12–3–87.1 Underground Mining Permit Applications; Reclamation Plan; Subsidence Control Plan.

This provision would require the identification in the permit application of existing structures and renewable resource lands in the proposed permit area and whether any subsidence would cause damage or diminution of value. If damage or diminution of value could occur, a subsidence control plan is required which contains: A description of the mining method; a map of underground workings, planned subsidence areas, and areas where prevention or minimization measures will be taken; a description of physical conditions which would affect subsidence and related damage; subsidence monitoring: a description of subsidence control measures; a description of anticipated effects of any planned subsidence; a description of subsidence mitigation and remedial measures; and other information specified by the director of IDNR.

2. 310 IAC 12–5–130.1 Underground Mining; Subsidence Control; General Requirements.

This provision would require a permittee to either adopt measures which prevent subsidence from causing material damage, maximize mine stability, and maintain the value and use of lands; or adopt mining technology which provides for planned subsidence in a predictable and controlled manner. The permittee shall comply with the approved subsidence control plan. The permittee shall correct material damage caused to surface lands, and, to the extent required under Indiana law, correct damage to structures or facilities by repair or compensation. The rule identifies structures where mining shall not be conducted beneath or adjacent to unless the subsidence control plan demonstrates that subsidence will not cause material damage to, or reduce the reasonably foreseeable use of such structures. The rule identifies when the director of IDNR may or must limit or suspend coal extraction. This provision also requires the submittal of a detailed report of the underground workings including: Maps, descriptions of workings, and confidentiality request.

3. 310 IAC 12–5–131.1 Underground Mining; Subsidence Control; Public Notice.

This provision requires notification of proposed underground mining to owners and occupants of surface property and structures and pipeline operators. The provision also specifies the availability and contents of the notices.

The full text of the proposed program amendment submitted by Indiana is available for public inspection at the addresses listed above. The Director now seeks public comment on whether the proposed amendment is no less effective than the Federal regulations. If approved, the amendment will become part of the Indiana program.

III. Public Comment Procedures

In accordance with provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendment proposed by Indiana satisfies the requirements of 30 CFR 732.15 for the approval of State program amendments. If the amendment is deemed adequate, it will become part of the Indiana program.

Written Comments

Written comments should be specific, pertain only to issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Indianapolis Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by the close of business on January 29, 1993. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons who desire to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting at the Indianapolis Field Office by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted in advance at the locations listed above under **ADDRESSES**. A summary of the meeting will be included in the Administrative Record.

IV. Procedural Determinations

Executive Order 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted the Office of Surface Mining Reclamation and Enforcement (OSM) an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs, actions and program amendments. Therefore, preparation of a regulatory impact analysis is not necessary and OMB regulatory review is not required.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of the Surface Mining Control and Reclamation Act (SMCRA) (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.13 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(c) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 24, 1992.

Jeffrey D. Jarrett,

Acting Assistant Director Eastern Support Center

[FR Doc. 93–871 Filed 1–13–93; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 914

Indiana Abandoned Mine Land Reclamation Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing the receipt of a proposed amendment to the Indiana Abandoned Mine Land Reclamation (AMLR) Program (hereinafter referred to as the Indiana Program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. 1201 *et seq.*, as amended. The proposed amendment is intended to provide the policies and procedures with which Indiana would conduct the Abandoned Mine Land Reclamation emergency program on behalf of OSM.

This notice sets forth the times and locations that the Indiana program and the proposed amendment to that program will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m. on February 16, 1993. If requested, a public hearing on the proposed amendments will be held at 1 p.m. on February 8, 1993. Requests to present oral testimony at the hearing must be received on or before 4 p.m. on January 29, 1993.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand-delivered to Mr. Roger W. Calhoun, Director, Indianapolis Field Office, at the address listed below. If a hearing is requested, it will be held at the same address.

Copies of the Indiana program, the proposed amendment, a listing of any scheduled public meetings and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays:

Office of Surface Mining Reclamation and Enforcement, Indianapolis Field Office, Minton-Capehart Federal Building, 575 N. Pennsylvania Street, room 301, Indianapolis, IN 46204, Telephone: (317) 226–6166

Indiana Department of Natural Resources, 402 West Washington Street, room 295, Indianapolis, IN 46204, Telephone: (317) 232–1547

Each requester may receive, free of charge, one copy of the proposed amendment by contacting the OSM Indianapolis Field Office.

FOR FURTHER INFORMATION CONTACT: Mr. Roger W. Calhoun, Director, Indianapolis Field Office, (317) 226–6700.

SUPPLEMENTARY INFORMATION:

I. Background on the Indiana Program

On July 29, 1982, the Indiana program was made effective by approval of the Secretary of the Interior. Information pertinent to the general background on Indiana's program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Indiana program can be found in the July 26, 1982, Federal Register (47 FR 32110). Subsequent actions concerning the conditions of approval and AMLR program amendments are identified at 30 CFR 914.20 and 914.25.

Section 410 of SMCRA authorizes the Secretary to use funds under the AMLR program to abate or control emergency situations in which adverse effects of past coal mining pose an immediate danger to the public health, safety, or general welfare. On September 29, 1982 (47 FR 42729), OSM invited States to amend their AMLR Plans for the purpose of undertaking emergency reclamation programs on behalf of OSM. States would have to demonstrate that they have the statutory authority to undertake emergencies, the technical capability to design and supervise the emergency work, and the administrative mechanisms to quickly respond to emergencies either directly or through contractors.

Under the provisions of 30 CFR 884.15, any State may submit proposed amendments to its approved AMLR Plan. If the proposed amendments change the scope of major policies followed by the State in the conduct of its AMLR program, the Director must follow the procedures set out in 30 CFR 884.14 in reviewing and approving or disapproving the proposed amendments.

The proposed assumption of the AMLR emergency program on behalf of OSM is a major addition to the Indiana AMLR program. To assure the emergency program, Indiana must revise the Indiana Plan to include conducting the AML emergency program. This amendment proposed changes to the Indiana Plan to authorize Indiana to conduct the AMLR emergency program on behalf of OSM. This proposed rule begins OSM's review process on Indiana's Program Amendment.

II. Discussion of the Proposed Amendment

By letter received November 17, 1992 (Administrative Record No. IND–1171), the Indiana Department of Natural Resources (IDNR), Division of Reclamation, submitted a proposed Program Amendment to the Indiana Program. This amendment is intended to demonstrate Indiana's capability to effectively perform the AMLR emergency program on behalf of OSM. In support of the proposed amendment, Indiana also submitted responses to

OSM's September 29, 1982, guidelines for State proposals to assume the emergency program (47 FR 42729).

Indiana's proposed revisions to the Indiana Program are briefly summarized below:

1. The proposed amendment would allow Indiana to assume the administration of the AMLR emergency program on behalf of OSM. The following information is contained in Indiana's formal submission to OSM:

A. The agency designated by the Governor as authorized to receive grants and administer an emergency program.

B. A legal opinion from the chief legal officer that the designated agency has the authority under State law to conduct the emergency program in accordance with the requirements of section 410 of title IV of the Act.

C. A description of the policies and procedures to be followed by the designated agency in conducting the reclamation program including:

(1) The purpose of the emergency reclamation program.

(2) The coordination of emergency reclamation work between the State, OSM and any Indian Tribe reclamation program located within the State.

(3) Policies and procedures regarding land acquisition on emergency projects in connection with 30 CFR 879.11(b)(2).

(4) Policies and procedures regarding emergency reclamation on private land under 30 CFR part 882, and on public lands.

(5) Policies and procedures regarding emergency project rights-of-entry under 30 CFR 877.14 and other realty functions.

(6) Public participation and involvement in the preparation of the State emergency program.

D. A description of the administrative and managerial structure to be used in conducting the emergency reclamation program including:

(1) The organization of the designated agency's emergency program.

(2) A description of the adequacy of staff numbers and technical skills to be committed to the emergency program.

(3) Administrative procedures for (a) investigating and reporting emergency complaints; (b) determining eligibility; (c) rights-of-entry and necessary appraisals; (d) project supervision; and (e) final project inspection and preparation and submission of final project reports.

(4) The purchasing and procurement systems to be used by the agency which will quickly respond to emergency situations.

(5) The accounting system to be used by the agency.

(6) Technical capability to design and supervise the emergency work.

E. A general description, derived from available data, of emergency reclamation activities to be conducted, including known or suspected geographical areas within the State, including:

(1) A map locator showing the general location of known or suspected emergencies.

(2) A description of the problems causing these emergencies.

F. Narrative description which supports the State's position that the procedures, personnel and other proposed aspects of its program give evidence of its abilities to promptly and effectively mitigate the full range of anticipated emergency conditions.

2. After assuming the emergency program Indiana would conduct potential emergency site investigations, and following OSM concurrence that an emergency situation exists, perform remedial reclamation.

3. Minor wording changes may occur in other sections of the plan, but do not substantively change the plan.

The full text of proposed program amendment submitted by Indiana is available for public inspection at the addresses listed above. The Director now seeks public comment on whether the proposed amendment is no less effective than the Federal regulations. If approved, the amendment will become part of the Indiana program.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 884.15, OSM is now seeking comment on whether the amendment proposed by Indiana satisfies the applicable requirements for the approval of State AMLR program amendments. If the amendment is deemed adequate, it will become part of the Indiana program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Indianapolis Field office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by close of business on January 29, 1993. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons who desire to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the Indianapolis Field Office by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings will be open to the public and, if possible, notices of the meetings will be posted in advance at the locations listed above under **ADDRESSES.** A summary of meeting will be included in the Administrative Record.

Executive Order 12291

On March 30, 1992, the Office of Management and Budget (OMB) granted the Office of Surface Mining Reclamation and Enforcement (OSM) an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions related to approval or disapproval of State and Tribal abandoned mine land reclamation plans and revisions thereof. Therefore, preparation of a regulatory impact analysis is not necessary and OMB regulatory review is not required.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State and Tribal abandoned mine land reclamation plans and revisions thereof since each such plan is drafted and adopted by a specific State or Tribe, not by OSM. Decisions on proposed State and Tribal abandoned mine land reclamation plans and revisions thereof submitted by a State or Tribe are based on a determination of

whether the submittal meets the requirements of title IV of the Surface Mining Control and Reclamation Act (SMCRA) (30 U.S.C. 1231–1243) and the Federal regulations at 30 CFR parts 884 and 888.

National Environmental Policy Act

No environmental impact statement is required for this rule since agency decisions on proposed State and Tribal abandoned mine land reclamation plans and revisions thereof are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department of the Interior (516 DM 6, appendix 8, paragraph 8.4B(29)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State (or Tribal) submittal which is the subject of this rule is based upon Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements established by SMCRA or previously promulgated by OSM will be implemented by the State (or Tribe). In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions in the analyses for the corresponding Federal regulations.

List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 16, 1992.

Jeffrey Jarrett,

Acting Assistant Director, Eastern Support Center.

[FR Doc. 93–866 Filed 1–13–93; 8:45 am]

BILLING CODE 4310–05–M

30 CFR Part 915

Iowa Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: OSM is announcing the receipt of a proposed amendment to the Iowa permanent regulatory program (the "Iowa program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of changes to provisions of the Iowa regulations pertaining to permanent regulatory program, exemption for coal extraction incidental to the extraction of other minerals, restriction of financial interests of State employees, exemption for coal extraction incident to government-financed highway or other construction, protection of employees, initial regulatory program, areas unsuitable for mining, permits for operations and exploration, small operator assistance, bonding and insurance, permanent program performance standards, inspection and enforcement, blaster certification, and contested cases and public hearings. The amendment is intended to revise the State program to be consistent with the corresponding Federal standards, clarify ambiguities, and improve operational efficiency.

This notice sets forth the times and locations that the Iowa program and proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received by 4 p.m., c.s.t. on February 16, 1993. If requested, a public hearing on the proposed amendment will be held on February 8, 1993. Requests to present oral testimony at the hearing must be received by 4 p.m., c.s.t. on January 29, 1993.

ADDRESSES: Written comments should be mailed or hand delivered to Jerry R. Ennis at the address listed below.

Copies of the Iowa program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Kansas City Field Office.

Jerry R. Ennis, Director, Kansas City Field Office, Office of Surface Mining Reclamation and Enforcement, 934 Wyandotte, Room 500, Kansas City, MO 64105; Telephone: (816) 374–6405.

Department of Agriculture and Land Stewardship, Division of Soil Conservation, Wallace State Office Building, East 9th and Grand Streets, Des Moines, Iowa 50319; Telephone: (515) 281–6147.

FOR FURTHER INFORMATION CONTACT: Jerry R. Ennis, Telephone: (816) 374–6405.

SUPPLEMENTARY INFORMATION:

I. Background on the Iowa Program

On January 21, 1981, the Secretary of Interior conditionally approved the Iowa Program. General background information on the Iowa program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Iowa program can be found in the January 21, 1981, **Federal Register** (46 FR 5885). Subsequent actions concerning Iowa's program and program amendments can be found at 30 CFR 915.15 and 915.16.

II. Discussion of Proposed Amendment

From October 1, 1983, to December 20, 1989, a number of changes were made to Federal regulations concerning surface coal mining and reclamation operations. During this time period, pursuant to Federal regulations at 30 CFR 732.17, OSM notified Iowa in four separate 732 letters, listed below, that the State rules must be amended to be consistent with the revised Federal regulations.

1. Regulatory Reform Review II, December 12, 1988, Administrative Record Number IA–336.

2. Ownership and Control, May 11, 1989, Administrative Record Number IA–340.

3. Regulatory Reform Review III, November 28, 1989, Administrative Record Number IA–347.

4. Incidental Coal Extraction, February 7, 1990, Administrative Record Number IA–349.

By letter dated November 23, 1992 (Administrative Record No. IA–372), Iowa submitted a proposed amendment to its program pursuant to SMCRA. Iowa submitted the proposed amendment with the intent of satisfying the outstanding 732 letters from OSM and the required program amendments at 30 CFR 915.16(a) (56 FR 56578). The amendment also contains nonsubstantive revisions to eliminate editorial and typographical errors.

The substantive changes proposed by Iowa are discussed briefly below:

(1) IAC 27–40.1 (3) and (4) Professional Land Surveyor

Iowa proposes to delete the provisions that authorize land surveyors to prepare and certify cross-sections, maps, and plans anywhere in the Iowa program.

(2) IAC 27–40.1(5) Registered Professional Engineer

Iowa proposes to require, throughout the Iowa program, that professional engineers performing design or certification work in conjunction with the program be registered in Iowa.

(3) IAC 27–40.3(83) General

Iowa proposes to replace the incorporation by reference of 30 CFR part 700 as in effect on July 1, 1987, with the Federal rules as in effect on July 1, 1992.

(4) IAC 27–40.4(83) Permanent Regulatory Program and Exemption for Coal Extraction Incidental to the Extraction of Other Minerals.

Iowa proposes to replace the Incorporation by reference of 30 CFR part 701 as in effect on July 1, 1987, with the Federal rules as in effect on July 1, 1992. Iowa also proposes to adopt by reference the Federal rules concerning exemption for coal extraction incidental to the extraction of other minerals at 30 CFR part 702, as in effect on July 1, 1992.

(5) IAC 27–40.4(7) Administrative Review

Iowa proposes to delete the Federal rule at 30 CFR 702.11(f) and replace it with a similar provision that includes State specific regulatory citations.

(6) IAC 27–40.4(8) Revocation and Enforcement

Iowa proposes to delete the Federal rules at 30 CFR 702.17(c) (2) and (3) and replace them with similar provisions that include State specific regulatory citations.

(7) IAC 27–40.4(9) Previously Mined Area

Iowa proposes to delete its incorporation of the Federal definition of "previously mined area" at 30 CFR 701.5 and replace it with a definition that would mean land previously mined on which there were no surface coal mining operations subject to the standards of the SMCRA; all highwalls created after August 3, 1977, and all fully reclaimed sites would be excluded from the definition.

(8) IAC 27–40.4(10) Full Water Year

Iowa proposes to add at its incorporation of 30 CFR 701.5 a definition of "full water year," to mean at a minimum the 9 month period from March through November.

(9) IAC 27–40.5(83) Restrictions on Financial Interests of State Employees

Iowa proposes to replace the incorporation by reference of 30 CFR part 705 as in effect on July 1, 1987, with the Federal rules as in effect on July 1, 1992.

(10) IAC 27–40.6(83) Exemptions for Coal Extraction Incident to Government-Financed Highway or Other Construction

Iowa proposes to replace the incorporation by reference of 30 CFR part 707 as in effect on July 1, 1987, with the Federal rules as in effect on July 1, 1992.

(11) IAC 27–40.7(83) Protection of Employees

Iowa proposes to replace the incorporation by reference of 30 CFR part 865 as in effect on July 1, 1987, with the Federal rules as in effect on July 1, 1992.

(12) IAC 27–40.11(83) Initial Program

Iowa proposes to replace the incorporation by reference of 30 CFR part 710 as in effect on July 1, 1987, with the Federal rules as in effect on July 1, 1992.

(13) IAC 27–40.12(83) General Performance Standards—Initial Program

Iowa proposes to replace the incorporation by reference of 30 CFR part 715 as in effect on July 1, 1987, with the Federal rules as in effect on July 1, 1992.

(14) IAC 27–40.13(83) Special Performance Standards—Initial Program

Iowa proposes to replace the incorporation by reference of 30 CFR part 716 as in effect on July 1, 1987, with the Federal rules as in effect on July 1, 1992.

(15) IAC 27–40.21(83) Areas Designated by an Act of Congress

Iowa proposes to replace the incorporation by reference of 30 CFR part 761 as in effect on July 1, 1987, with the Federal rules as in effect on July 1, 1992.

(16) IAC 27–40.21(5) Procedures

Iowa proposes to delete the requirement at 30 CFR 761.12(c) that where the proposed operation would include Federal lands within the boundaries of any national forest, and the applicant seeks a determination that mining is permissible under 30 CFR 761.11(B), the applicant shall submit a permit application to the Director for processing under subchapter D of this chapter. The provision proposed for deletion also requires that before acting on the permit application, the Director shall ensure that the Secretary's determination has been received and the findings required by section 522(e)(2) of the Act have been made.

(17) IAC 27–40.22(83) Criteria for designating areas as unsuitable for surface coal mining operations.

Iowa proposes to replace the incorporation by reference of 30 CFR part 762 as in effect on July 1, 1987, with the Federal rules as in effect on July 1, 1992.

(18) IAC 27–40.23(83) State Procedures for Designating Areas Unsuitable for Surface Coal Mining Operations

Iowa proposes to replace the incorporation by reference of 30 CFR part 764 as in effect on July 1, 1987, with the Federal rules as in effect on July 1, 1992.

(19) IAC 27–40.30(83) Requirements for Coal Exploration

Iowa proposes to replace the incorporation by reference of 30 CFR part 772 as in effect on July 1, 1987, with the Federal rules as in effect on July 1, 1992.

(20) IAC 27–40.31(83) Requirements for Permits and Permit Processing

Iowa proposes to replace the incorporation by reference of 30 CFR part 773 as in effect on July 1, 1987, with the Federal rules as in effect on July 1, 1992.

(21) IAC 27–40.31(2) Public Participation in Permit Processing

Iowa proposes to add a requirement to 30 CFR 773.13(a)(1)(ii) that the newspaper advertisement include the following information. The legal description would have to include popular township, county, township, range, section, and the United States Geological Survey map identification by property owners. Section lines would be marked, and the sections would be identified on the map. The measure of the proposed permit area would be given to the nearest acre.

(22) IAC 27–40.31(12) Comments and Objections on Permit Applications

Iowa proposes to revise 30 CFR 773.13(b)(1) by defining the time allowed for submission of comments on permit applications to be within 60 days of notification.

(23) IAC 27–40.31(13) Review of Permit Applications

Iowa proposes to revise 30 CFR 773.15(a)(2) by adding a provision allowing the Division to require the applicant to re-apply for the same area, if a case of willful suppressing or falsifying of any facts or data is identified.

(24) IAC 27–40.31(14) Improvidently Issued Permits: Rescission Procedures

Iowa proposes to delete the Federal rule at 30 CFR 773.21(c) and replace it with a similar provision that includes State specific regulatory citations.

(25) IAC 27–40.32(83) Revision; Renewal; and Transfer, Assignment, or Sale of Permit Rights

Iowa proposes to replace the incorporation by reference of 30 CFR part 774 as in effect on July 1, 1987, with the Federal rules as in effect on July 1, 1992.

(26) IAC 27–40.32(1) Definitions

Iowa proposes to revise the definitions of terms within 30 CFR part 774 with a clarification that the rules utilize the term "revision" to describe a change to a permit that constitutes a significant departure from the original permit; any change to an Iowa permit that does not constitute a significant departure from the original permit would be called an "amendment" to the permit in the context of these rules.

Iowa would further clarify these requirements with a requirement that the notice, public participation, and notice of decision requirements of 30 CFR 773.13, 773.19(b), and 728.21 apply to all revisions or "significant revisions" as they are described in the Federal regulations.

Iowa would further clarify the distinction between revisions and amendments by noting that significant departures would be treated as revisions, and would include any change in permit area, mining method, or reclamation procedure, which would, in the opinion of the regulatory authority, significantly change the effect that mining operations would have on either those persons impacted by the permitted operation or on the environment; changes which would not constitute a significant departure from the original permit would be processed as an amendment to the permit.

(27) IAC 27–40.32(3) Request to Change Permit Boundary

Iowa proposes to add a clarification that an incidental boundary revision would be considered, on demonstration by the operator, for an area in which the coal seam to be mined is contiguous to that proposed in the approved permit.

(28) IAC 27–40.32(6) Permit Revisions—General

Iowa proposes to add a requirement to 30 CFR 774.13(a) that the term "revision" would apply to a significant departure in mining and reclamation operations defined at subrule IAC 27–40.32(1)(b)(2)(a), and would require a public notice. The Division would use the term "amendment" for an insignificant revision, which would not require a public notice.

(29) IAC 27–40.32(8) Permit Renewal—General

Iowa proposes to add at 30 CFR 774.15(a) a requirement that permit renewal would not be required if the Division determines that the phase II bond was released over the entire permit area before the expiration of the permit term.

(30) IAC 27–40.32(9) Permit Renewal—Application Requirements

Iowa proposes to add to the application information required at 30 CFR 774.15(b)(2 a requirement that the renewal application include the current status of the mine plan, other details, and the time table of the remaining phases of the operation and reclamation plans, if different from the previously approved time table.

(31) IAC 27–40.32(83) General Content—Requirements for Permit Applications

Iowa proposes to replace the incorporation by reference of 30 CFR part 777 as in effect on July 1, 1987, with the Federal rules as in effect on July 1, 1992.

(32) IAC 27–40.32(83) Permit Application—Minimum Requirements for Legal, Financial, Compliance, and Related Information

Iowa proposes to replace the incorporation by reference of 30 CFR part 778 as in effect on July 1, 1987, with the Federal rules as in effect on July 1, 1992.

(33) IAC 27–40.32(83) Surface Mining Permit Applications—Minimum Requirements for Information on Environmental Resources

Iowa proposes to replace the incorporation by reference of 30 CFR part 779 as in effect on July 1, 1987, with the Federal rules as in effect on July 1, 1992.

(34) IAC 27–40.35(2) Vegetation Information

Iowa proposes to replace the regulation at 30 CFR 779.19(b) to require that the specified vegetation map (at a scale of 1:2400 or larger), or the aerial photo, must include sufficient adjacent areas to allow evaluation of vegetation as important habitat for fish and wildlife for those species of fish and wildlife identified under 30 CFR 780.16.

(35) IAC 27–40.35(3) Land Use Information

Iowa proposes to require that the land use information required at 30 CFR 779.22(a)(1) include a map at a scale of 1:2400 or larger or an aerial photo, and a supporting narrative of the uses of the land existing at the time of the filing of the application.

(36) IAC 27–40.35 (9), (10), and (11) Climatological Information

Iowa proposes to make the information required at 30 CFR 779.18(a) mandatory for all applications.

Iowa also proposes to add a requirement that the locations of rain gauges nearest to the permit area, preferably in the same watershed as the permit itself, be marked on a map; and these rain gauges would be described in the text as well, along with the period of available record for those gauges.

Additionally, Iowa proposes to add a requirement that a brief description be provided about the impact of the climatological factors on operation and reclamation plans, specifically about what parts of the year would be more conducive to various mining and reclamation operations.

(37) IAC 27–40.35 (12), (13), and (14) Maps: General Requirements

Iowa proposes to define at 30 CFR 779.24(g) the "hydrologic area" as being the area that consists of the permit area and the adjacent area.

Iowa also proposes to add a requirement at 30 CFR 779.24(h) that maps include each public road (and its identification) located in or within 100 feet of the proposed permit area.

Iowa additionally proposes to add a requirement at 30 CFR 779.24(l) that maps include section lines and section identification.

(38) IAC 27–40.36(83) and 40.38(83) Surface and Underground Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan

Iowa proposes to replace the incorporation by reference of 30 CFR part 780 and 784 as in effect on July 1, 1987, with the Federal rules as in effect on July 1, 1992.

(39) IAC 27–40.36(3) and 40.38(8) Probable Hydrologic Consequence

Iowa proposes to require that determinations of Probable Hydrologic Consequence (PHC) address all proposed mining activities associated with the permit area for which authorization is sought, as opposed to addressing only those activities expected to occur during the term of the permit.

(40) IAC 27–40.36 (5) and (6) Hydrologic Information

Iowa proposes at 30 CFR 780.21(a) to add a requirement that the methodology for measurement of the quantity of both surface water and groundwater also be described.

Iowa also proposes to make mandatory for all permit applications the modeling of surface and groundwater information at 30 CFR 780.21(d).

(41) IAC 27–40.39(83) Requirements for Permits for Special Categories of Mining

Iowa proposes to replace the incorporation by reference of 30 CFR part 785 as in effect on July 1, 1987, with the Federal rules as in effect on July 1, 1992.

(42) IAC 27–40.39(1) Permits Incorporating Variances From Approximate Original Contour (AOC) Restoration Requirements for Steep Slope Mining

Iowa proposes to add by incorporation the Federal regulations at 30 CFR 785.16, to allow permit variances from AOC in conjunction with steep slope mining.

(43) IAC 27–40.39(8) Coal Preparation Plants Not Located Within the Permit Area of a Mine

Iowa proposes to add to 30 CFR 785.21(a) a requirement that off-site processing plants operated in connection with a mine but off the mine site would be regulated without regard to its proximity to the mine.

(44) IAC 27–40.41(83) Small Operator Assistance

Iowa proposes to replace the incorporation by reference of 30 CFR part 795 as in effect on July 1, 1987, with the Federal rules as in effect on July 1, 1992.

(45) IAC 27–40.51(83) Bond and Insurance Requirements for Surface Coal Mining and Reclamation Operations Under Regulatory Programs

Iowa proposes to replace the incorporation by reference of 30 CFR part 800 as in effect on July 1, 1987, with the Federal rules as in effect on July 1, 1992.

(46) IAC 27–40.51(5) Requirements to Release Performance Bonds

Iowa proposes to reinstate the requirement at 30 CFR 800.40(c)(2) that phase II reclamation bond not be released until the requirements for prime farmland reclamation at 30 CFR part 823 are fulfilled.

(47) IAC 27–40.51(7) Bond Release Application

Iowa proposes to revise this regulation, incorporating 30 CFR 800.40(a)(2), to require that after the application for bond release is deemed complete by the Division, an advertisement must be placed by the permittee within 30 days of the date of notification of completeness; further, the permittee would have to submit a copy of the advertisement to the Division within 30 days of the last publication.

(48) IAC 27–40.61(83) Permanent Program Performance Standards—General Provisions

Iowa proposes to replace the incorporation by reference of 30 CFR part 810 as in effect on July 1, 1987, with the Federal rules as in effect on July 1, 1992.

(49) IAC 27–40.61(1) Responsibility

Iowa proposes to eliminate the requirement that the Iowa program be at least as stringent as the Federal program at 30 CFR 819.4(b), which states that State regulatory authorities shall ensure that performance standards and design requirements at least as stringent as the standards in 30 CFR parts 810–828 are implemented and enforced under every State program.

Iowa proposes to eliminate the requirement that the Iowa program be at least as stringent as the Federal program at 30 CFR 810.4(c), which states that each person conducting coal exploration or surface coal mining and reclamation operations is responsible for complying with performance standards and design requirements which are at least as stringent as the standards in 30 CFR parts 810–828 and the applicable regulatory program.

(50) IAC 27–40.61(83) Permanent Program Performance Standards—Coal Exploration

Iowa proposes to replace the incorporation by reference of 30 CFR part 815 as in effect on July 1, 1987, with the Federal rules as in effect on July 1, 1992.

(51) IAC 27–40.63(83) and 40.64(83) Permanent Program Performance Standards—Surface and Underground Mining Activities

Iowa proposes to replace the incorporation by reference of 30 CFR part 816 and 817 as in effect on July 1, 1987, with the Federal rules as in effect on July 1, 1992.

(52) IAC 27–40.63(7) Backfilling and Grading: Thin Overburden

Iowa proposes to delete the incorporation of 30 CFR 816.104, but rather require that any permit application shall address overburden (and the applicable performance standards) as "thick overburden" in accordance with the definition established at 30 CFR 816.105.

(53) IAC 27–40.63(9) Impoundments

Iowa proposes to add at the end of 30 CFR 816.49(a)(10)(i) a requirement that yearly inspections of impoundments be done in the second quarter of each calendar year; further, the inspection report would be submitted to the Division with the second quarter water monitoring report.

(54) IAC 27–40.63(12) Disposal of Noncoal Mine Wastes

Iowa proposes to delete the requirements of 30 CFR 816.89 and replace them as follows. Noncoal mine wastes including (but not limited to) grease, garbage, abandoned mining machinery, lumber, and other combustible materials generated during mining activities must be placed and stored in a controlled manner in a landfill permitted by the Iowa Department of Natural Resources pursuant to Iowa Administrative Code Chapters 101, 102, and 103. Lubricants, paints, and flammable liquids would not be allowed to be buried in the State of Iowa; but they, and other toxic wastes, must be disposed of in the legally prescribed manner. Final disposal of noncoal mine wastes would have to be in a designated, State-approved solid waste disposal site

permitted by the Iowa Department of Natural Resources pursuant to Iowa Administrative Code Chapters 101, 102, and 103. But notwithstanding any other provision in this chapter, any noncoal mine waste defined as "hazardous" under section 3001 of the Resource Conservation and Recovery Act (RCRA) (Pub. L. 94–580 as amended) and 40 CFR part 261 would have to be handled in accordance with the requirements of Subtitle C of RCRA and any implementing regulations.

(55) IAC 27–40.65(83) Special Permanent Program Performance Standards—Auger Mining

Iowa proposes to replace the incorporation by reference of 30 CFR part 819 as in effect on July 1, 1987, with the Federal rules as in effect on July 1, 1992.

(56) IAC 27–40.66(83) Special Permanent Program Performance Standards—Operations on Prime Farmland

Iowa proposes to replace the incorporation by reference of 30 CFR part 823 as in effect on July 1, 1987, with the Federal rules as in effect on July 1, 1992.

Iowa also proposes to delete its incorporation of 30 CFR 823.11(a), which establishes a variance to the applicability of these regulations. That incorporated Federal rule exempts from the requirements of 30 CFR part 823 those coal preparation plants, support facilities, and roads of surface and underground mines that are actively used over extended periods of time and where such uses affect a minimal amount of land; the Federal rule requires, rather, that such uses meet the requirements of 30 CFR part 816 or part 817 as applicable.

(57) IAC 27–40.67(83) Permanent Program Performance Standards—Coal Preparation Plants Not Located Within the Permit Area of a Mine

Iowa proposes to replace the incorporation by reference of 30 CFR part 827 as in effect on July 1, 1987, with the Federal rules as in effect on July 1, 1992.

(58) IAC 27–40.67(2) Interim Performance Standards

Iowa proposes to delete its incorporation of 30 CFR 827.13(a) and replace it with a requirement that persons operating or who have operated coal preparation plants after April 10, 1981, must comply with the applicable interim or permanent program performance standards for the Iowa program.

(59) IAC 27–40.68(83) Special Permanent Program Performance Standards—In Situ Processing

Iowa proposes to replace the incorporation by reference of 30 CFR part 828 as in effect on July 1, 1987, with the Federal rules as in effect on July 1, 1992.

(60) IAC 27–40.71(83) State Regulatory Authority—Inspection and Enforcement

Iowa proposes to replace the incorporation by reference of 30 CFR part 840 as in effect on July 1, 1987, with the Federal rules as in effect on July 1, 1992.

(61) IAC 27–40.73(2)g. Cessation Orders

Iowa proposes to add a requirement that, within 60 days after the issuance of a cessation order, the Division must notify in writing any person who has been identified (under 27–40.31(83) (30 CFR 773.17(i)) and 27–40.34(83) (30 CFR 778.13(c) and (d))) as owning or controlling the permit, that the cessation order was issued and that the person has been identified as an owner or controller.

(62) IAC 27–40.74(83) Civil Penalties

Iowa proposes to replace the incorporation by reference of 30 CFR 845 as in effect on July 1, 1987, with the Federal rules as in effect on July 1, 1992.

(63) IAC 27–40.74(5) Procedures for Assessment Conference

Iowa proposes to delete the procedures for assessment conference requirements at 30 CFR 845.18 and replace them with similar requirements that include State specific language and citations.

(64) IAC 27–40.74(6) Request for a Hearing

Iowa proposes to delete the request for a hearing requirements at 30 CFR 845.19 and replace them with similar requirements that include State specific language and citations.

(65) IAC 27–40.74(7) Final Assessment and Payment of Penalty

Iowa proposes to delete the final assessment and payment of penalty requirements at 30 CFR 845.20 and replace them with similar requirements that include State specific language and citations.

(66) IAC 27–40.74(8) Use of Civil Penalties for Reclamation

Iowa proposes to add a provision allowing the Division (in accordance with Iowa Code section 83.10(6)) to expend funds collected from civil penalties to perform reclamation work on sites where the bond has been forfeited and additional funds are needed to complete the reclamation of the site.

(67) IAC 27–40.75(83) Individual Civil Penalties

Iowa proposes to adopt by reference 30 CFR part 846 as in effect on "July 1, 1991 [sic]," concerning individual civil penalties.

(68) IAC 27–40.75(2) Definitions

Iowa proposes to delete the definitions of "violation, failure, or refusal" at 30 CFR 846.5 and replace them with similar requirements that include State specific language and citations.

(69) IAC 27–40.75(3) Final Order and Opportunity for Review

Iowa proposes to delete the requirements of 30 CFR 846.17(b)(1) and replace them with similar requirements that include State specific language and citations.

(70) IAC 27–40.75(4) Service

Iowa proposes to delete the requirements of 30 CFR 846.17(c) and replace them with similar requirements that include State specific language and citations.

(71) IAC 27–40.81(83) Standards for Certification of Blasters

Iowa proposes to replace the incorporation by reference of 30 CFR part 850 as in effect on July 1, 1987, with the Federal rules as in effect on July 1, 1992.

(72) IAC 27–40.82(83) Certification of Blasters

Iowa proposes to replace the incorporation by reference of 30 CFR part 955 as in effect on July 1, 1987, with the rules as in effect on July 1, 1992.

III. Public Comment Procedures

In accordance with the provision of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Iowa program.

Written Comments

Written comments should be specific, pertain only to the issue proposed in this rulemaking, and include explanations in support of the commenter's recommendations.

Comments received after the time indicated under "DATES" or at locations other than the Kansas City Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., c.s.t. January 29, 1993. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment having been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting at the OSM office listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings will be open to the public and, if possible, notices of meetings will be posted at the location listed under **ADDRESSES.** A written summary of each meeting will be made a part of the administrative record.

IV. Procedural Determinations

Compliance With the National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA [30 U.S.C. 1292(d)] provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

Compliance With Executive Order No. 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 (Reduction of Regulatory Burden) for actions related to approval or conditional approval of State regulatory programs, actions, and program amendments. Therefore, preparation of a Regulatory Impact Analysis is not necessary and OMB regulatory review is not required.

Compliance With the Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Compliance With Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the requirements of 30 CFR Parts 730, 731, and 732 have been met.

Compliance With the Paperwork Reduction Act

This rules does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

List of Subjects in 30 CFR Part 915

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 7, 1992.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

[FR Doc. 93–862 Filed 1–13–93; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 916

Kansas Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening and extension of public comment period on proposed amendment.

SUMMARY: OSM is reopening the public comment period and announcing the receipt of revisions to a previously submitted amendment to the Kansas permanent regulatory program (hereinafter, the "Kansas program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The revised amendment proposes further changes to provisions of the Kansas regulations pertaining to meaning of terms, permit applications, administrative hearing procedure, permit renewal, permit transfers, assignments, and sales, coal exploration, bonding procedure, performance standards, underground mining, small operator assistance program, lands unsuitable for surface mining, training and certification of blasters, employee financial interests, and inspection and enforcement. The amendment is intended to revise the State program to be consistent with the corresponding Federal standards, clarify ambiguities, and improve operational efficiency.

This document sets forth the times and locations that the Kansas program and proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received by 4:00 p.m., c.s.t., January 29, 1993.

ADDRESSES: Written comments should be mailed or hand delivered to Jerry R. Ennis at the address listed below.

Copies of the Kansas program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Kansas City Field Office.

Jerry R. Ennis, Director, Kansas City Field Office, Office of Surface Mining Reclamation and Enforcement, 934 Wyandotte, room 500, Kansas City, MO 64105 Telephone: (816) 374–6405

Kansas Department of Health and Environment, Bureau of Environmental Remediation, Surface Mining Section, 1501 S. Joplin, P.O. Box 1418, Pittsburg, KS 66762 Telephone: (316) 231–8615.

FOR FURTHER INFORMATION CONTACT: Jerry R. Ennis, telephone: (816) 374–6405.

SUPPLEMENTARY INFORMATION:

I. Background on the Kansas Program

On January 21, 1981, the Secretary of Interior conditionally approved the Kansas program. General background information on the Kansas program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Kansas program can be found in the January 21, 1981, **Federal Register** (46 FR 5892). Subsequent actions concerning Kansas' program and program amendments can be found at 30 CFR 916.12, 916.15, and 916.16.

II. Discussion of Proposed Amendment

By letter dated July 10, 1992, (Administrative Record No. KS–511) Kansas submitted a proposed amendment to its program pursuant to SMCRA. Kansas submitted the proposed amendment with the intent of satisfying the required program amendments at 30 CFR 916.16(b) and at the State's own initiative to improve its program.

OSM announced receipt of the proposed amendment in the August 18, 1992, **Federal Register** (57 FR 37132) and, in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period ended on September 18, 1992. The public hearing scheduled for September 14, 1992, was not held because no one requested an opportunity to testify.

By letter dated October 22, 1992 (Administrative Record No. KS–540), OSM provided Kansas with its questions and comments about the July 10, 1992, amendment submission. In response to OSM's letter, Kansas submitted a revised amendment by letter dated December 23, 1992 (Administrative Record No. KS–545). This new amendment submission contains further revisions to Articles 2 through 4 and 6 through 15 of the Kansas Administrative Regulations (K.A.R.). The amendment proposes numerous changes to the format and nonsubstantive wording changes to clarify the regulations. The substantive changes proposed by Kansas are discussed briefly below:

(1) Complete and Accurate Application

K.A.R. 47–2–14: Kansas proposes to delete its definition of complete and accurate application.

(2) Meaning of Terms

K.A.R. 47–2–75: Kansas proposes to update its regulations concerning definition of terms by changing its adoption by reference of 30 CFR 700.5, 701.5, 705.5, 773.5, and 846.5 from those that existed on July 1, 1990, to those that existed on July 1, 1992.

(3) Permit Application

a. K.A.R. 47–3–2: Kansas proposes to update its regulations concerning application for mining permit by changing its adoption by reference of 30 CFR 777.11, 777.13, 777.14, and 777.15 from those that existed on July 1, 1990, to those that existed on July 1, 1992.

b. K.A.R. 47–3–42: Kansas proposes to update its regulations concerning application for mining permit by changing its adoption by reference of reference of 30 CFR 778.13, 778.14, 778.15, 778.16, 778.17(a), 778.18, 778.21, 778.22, 779.4, 779.11, 779.12, 779.18, 779.19, 779.21, 779.22, 779.24, 779.25, 780.4, 780.11, 780.12, 780.13, 780.14, 780.15, 780.16, 780.18, 780.21, 780.22, 780.23, 780.25, 780.27, 780.29, 780.31, 780.33, 780.35, 780.37, 780.38, 785.13, 785.17, 785.18, 785.20, 785.21, 785.22, 773.13, 773.15, 773.19, 773.20, 773.21, 701.11(e), and 773.12 from those that existed on July 1, 1990, to those that existed on July 1, 1992.

(4) Rules of Procedure

K.A.R. 47–4–14a(c)(1): Kansas proposes that hearings shall be held in the location designated by the presiding officer * * * except as otherwise provided by the State Act, K.A.R. 47–2–64.

(5) Formal Hearings

K.A.R. 47–4–14a(d)(2)(D): Kansas proposes that in the event the presiding officer fails to grant a petition for disqualification, the petitioning party may file an affidavit of personal bias or disqualification with substantiating facts, and the secretary of the Kansas department of health and environment shall determine the matter of disqualification.

(6) Orders, Initial and Final

K.A.R. 47–4–14a(d)(13)(F): Kansas proposes that the presiding officer shall allow the parties to a proceeding an opportunity to submit proposed findings of fact and conclusions of law together with a supporting brief at a time designated by the presiding officer.

(7) Permit Renewals

K.A.R. 47–6–3: Kansas proposes to update its regulations concerning permit renewals by changing its adoption by reference of 30 CFR 774.15 from those that existed on July 1, 1990, to those that existed on July 1, 1992.

(8) Permit Transfers, Assignments, and Sales

K.A.R. 47–6–4: Kansas proposes to update its regulations concerning permit renewals by changing its adoption by reference of 30 CFR 774.17, from those that existed on July 1, 1990, to those that existed on July 1, 1992.

(9) Permit Conditions

K.A.R. 47–6–6: Kansas proposes to update its regulations concerning permit conditions by changing its adoption by reference of 30 CFR 773.17, from those that existed on July 1, 1990, to those that existed on July 1, 1992.

(10) Termination of Jurisdiction

K.A.R. 47–6–8: Kansas proposes to update its regulations concerning termination of jurisdiction by changing its adoption by reference of 30 CFR 700.11, from those that existed on July 1, 1990, to those that existed on July 1, 1992.

(11) Exemption for Coal Extraction Incident to Government Financed Highway or Other Construction

K.A.R. 47–6–9: Kansas proposes to update its regulations concerning exemption for coal extraction incident to government financed highway or other construction by changing its adoption by reference of 30 CFR 707.4, 707.5, 701.11, and 707.12 from those that existed on July 1, 1990, to those that existed on July 1, 1992.

(12) Exemption of Coal Extraction Incidental to the Extraction of Other Minerals

K.A.R. 47–6–10: Kansas proposes to update its regulations concerning exemption for coal extraction incidental to the extraction of other minerals by changing its adoption by reference of 30 CFR 702.1, 702.5, 702.10, 702.11, 702.12, 702.13, 702.15, 702.16, 702.17, and 702.18 from those that existed on July 1, 1990, to those that existed on July 1, 1992.

(13) Coal Exploration

K.A.R. 47–7–2: Kansas proposes to update its regulations concerning coal exploration by changing its adoption by reference of 30 CFR 772.11, 772.12, 772.13, 772.14, and 772.15 from those that existed on July 1, 1990, to those that existed on July 1, 1992.

(14) Bonding Procedures

K.A.R. 47–8–9: Kansas proposes to update its regulations concerning bonding procedures by changing its adoption by reference of 30 CFR 800.4, 800.5, 800.11, 800.12, 800.13, 800.14, 800.15, 800.16, 800.17, 800.20, 800.21, 800.30, 800.40, 800.50, and 800.60 from those that existed on July 1, 1990, to those that existed on July 1, 1992.

(15) Self Bond

K.A.R. 47–8–9, incorporating by reference 30 CFR 800.12(c): Kansas proposes to delete the provision at 30 CFR 800.12(c) that would allow Kansas to use a self bond for the performance bond.

(16) Performance Standards

K.A.R. 47–9–1: Kansas proposes to update its regulations concerning performance standards by changing its adoption by reference of 30 CFR parts 810, 815, 816, 817, 819, 823, 827, and 828 from those that existed on July 1, 1990 to those that existed on July 1, 1992.

(17) Backfilling and Grading: Time and Distance Requirements

K.A.R. 47–9–1(c), incorporating by reference 30 CFR 816.101 and 816.102: Kansas proposes to delete its requirements at 30 CFR 816.102 that absent an approved schedule, backfilling and grading will be completed within 180 days following coal removal and shall not be more than four spoil ridges behind the pit being worked, the spoil from the active pit being considered the first ridge. Kansas that adds the requirements of 30 CFR 816.101 concerning time and distance requirements for backfilling and grading.

(18) Underground Mining

K.A.R. 47–10–1: Kansas proposes to update its regulations concerning underground mining by changing its adoption by reference of 30 CFR parts 783 and 784 from those that existed on July 1, 1990, to those that existed on July 1, 1992.

(19) Small Operator Assistance Program

K.A.R. 47–11–8: Kansas proposes to update its regulations concerning the small operator assistance program by changing its adoption by reference of 30 CFR 795.3, 795,6, 795.7, 795.8, 795.9, 795.10, 795.11, and 795.12 from those that existed on July 1, 1990, to those that existed on July 1, 1992.

(20) Lands Unsuitable for Surface Mining

K.A.R. 47–12–4: Kansas proposes to update its regulations concerning lands unsuitable for surface mining by changing its adoption by reference of 30 CFR 761.5, 761.11, 761.12, 762.5, 762.11, 762.13, 762.14, 764.13, 764.15, 764.17, 764.19, 764.21, 764.23, and 764.25 from those that existed on July 1, 1990, to those that existed on July 1, 1992.

(21) Training and Certification of Blasters

K.A.R. 47–13–4: Kansas proposes to update its regulations concerning training and certification of blasters by changing its adoption by reference of 30 CFR part 850 from those that existed on July 1, 1990, to those that existed on July 1, 1992.

(22) Employee Financial Interest

K.A.R. 47–14–4: Kansas proposes to update its regulations concerning employee financial interest by changing its adoption by reference of 30 CFR 705.4 (a) and (c), 705.6(b), 705.11 (a), (b), (c) and (d), 705.13, 705.15, 705.17, 705.18, 705.19(a), and 705.21 from those that existed on July 1, 1990, to those that existed on July 1, 1992.

(23) Inspection and Enforcement

K.A.R. 47–15–1a: Kansas proposes to update its regulations concerning inspection and enforcement by changing its adoption by reference of 30 CFR 840.11, 840.14, 843.5, 840.12, 842.14, 842.15, 843.11, 843.12, 843.13, 843.15, 843.16, 843.20, and 840.16 from those that existed on July 1, 1990, to those that existed on July 1, 1992.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Kansas program.

Written Comments

Written comments should be specific, pertain only to the issue proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Kansas City Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., c.s.t. January 29, 1993. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment having been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting at the OSM office listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES.** A written summary of each meeting will be made a part of the administrative record.

IV. Procedural Determinations

Compliance With the National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA [30 U.S.C. 1292(d)] provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

Compliance With Executive Order No. 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs, actions, and program amendments. Therefore, preparation of a Regulatory Impact Analysis is not necessary and OMB regulatory review is not required.

Compliance With the Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Compliance With Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsection (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the requirements of 30 CFR parts 730, 731, and 732 have been met.

Compliance With the Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

List of Subjects in 30 CFR Part 916

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 5, 1993.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

[FR Doc. 93–872 Filed 1–13–93; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 917

Kentucky Permanent Regulatory Program; Hearings

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening and extension of comment period on proposed amendment.

SUMMARY: OSM is announcing the receipt of revisions to a previously prepared amendment to the Kentucky permanent regulatory program (hereinafter referred to as the Kentucky program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). By letter of December 10, 1992 (Administrative Record No. KY–1202), Kentucky resubmitted a proposed program amendment that revises and completes their proposed hearing regulations as amended during the Kentucky regulation promulgation process under Kentucky Revised Statutes (KRS) chapter 350. The proposed amendment includes the final promulgation of regulation changes to Kentucky Administrative Regulations (KAR) at 405 KAR 7:001, 405 KAR 7:091, 405 KAR 7:092, 405 KAR 8:001, and 405 KAR 12:020 that relate to hearings. This proposed amendment supplements two earlier proposed program amendments (Administrative Record No. KY–1170, submitted July 28, 1992 and KY–1180, submitted September 18, 1992).

This document sets forth the times and locations that the Kentucky program and the proposed amendment are available for public inspection, the comment period which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding a public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m. on January 29, 1993. If requested, a public hearing on the proposed amendment will be held at 10 a.m. on January 25, 1993. Requests to present oral testimony at the hearing must be received on or before 4 p.m. on January 19, 1993.

ADDRESSES: Written comments and requests for a hearing should be mailed or hand delivered to: William J. Kovacic, Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 2675 Regency Road, Lexington, Kentucky 40503–2922. Copies of the Kentucky program, the proposed amendment, and all written comments received in response to this document will be available for review at the addresses listed below, Monday through Friday, 9 a.m. to 4 p.m., excluding holidays. Each requestor may receive, free of charge, one copy of the proposed amendment by contacting OSM's Lexington Field Office.

Office of Surface Mining Reclamation and Enforcement, Lexington Field Office, Regency Road, Lexington, Kentucky 40503–2922, Telephone: (606) 233–2896.

Office of Surface Mining Reclamation and Enforcement, Eastern Support Center, Ten Parkway Center, Pittsburgh, Pennsylvania 15220, Telephone: (412) 937–2828.

Department for Surface Mining Reclamation and Enforcement, No. 2 Hudson Hollow Complex, Frankfort, Kentucky 40601, Telephone: (502) 564–6940.

If a public hearing is held, its location will be: The Harley Hotel, 2143 North Broadway, Lexington, Kentucky 40505.

FOR FURTHER INFORMATION CONTACT: William J. Kovacic, Director, Lexington Field Office, Telephone (606) 233–2896.

SUPPLEMENTARY INFORMATION:

I. Background

On May 18, 1982, the Secretary of the Interior conditionally approved the Kentucky program. Information pertinent to the general background, revisions, modifications, and

amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval can be found in the May 18, 1982, **Federal Register** (47 FR 21404–21435). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 917.11, 917.15, 917.16, and 917.17.

II. Discussion of Amendment

By letter of December 10, 1992, (Administrative Record No. KY–1202) Kentucky resubmitted a proposed program amendment that revises and completes their proposed hearing regulations as amended during the Kentucky regulation promulgation process under Kentucky Revised Statutes (KRS) chapter 350. The proposed amendment includes the final promulgation of regulation changes to Kentucky Administrative Regulations (KAR) at 405 KAR 7:001, 405 KAR 7:091, 405 KAR 7:092, 405 KAR 8:001, and 405 KAR 12:020 that relate to hearings. This proposed amendment supplements two earlier proposed program amendments (Administrative Record No. KY–1170, submitted July 28, 1992 and KY–1180, submitted September 18, 1992). This resubmission is the same as the proposed amendment KY–1170 as modified and submitted in the proposed program amendment KY–1180 except for the following final changes made during the State regulation promulgation process. The changes are as follows:

1. 405 KAR 7:001 section 1(63) amended the definition of "person."

2. 405 KAR 7:091 section 5(a) amended the section by clarifying a cross reference to the subsection on service.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendment proposed by Kentucky satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Kentucky program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commentor's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Lexington Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m. on January 25, 1993. If no one requests an opportunity to comment at a public hearing, the hearing will not be held. Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the OSM, Lexington Field Office listed under **ADDRESSES** by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings will be open to the public and, if possible, notices of meetings will be posted in advance at the locations listed under **ADDRESSES.** A written summary of each meeting will be made a part of the Administrative Record.

Executive Order 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted the Office of Surface Mining Reclamation and Enforcement (OSM) an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs, actions and program amendments. Therefore, preparation of a regulatory impact analysis is not necessary and OMB regulatory review is not required.

Executive Order 12278

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of the Surface Mining Control and Reclamation Act (SMCRA) (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731 and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA [30 U.S.C. 1292(d)] provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval of the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 917

Intergovernmental relations, Surface, mining, Underground mining.

Dated: December 29, 1992.

Jeffrey D. Jarrett,

Acting Assistant Director, Eastern Support Center.

[FR Doc. 93–864 Filed 1–13–93; 8:45 am]

BILLING CODE 4310–05–M

30 CFR Part 917

Kentucky Permanent Regulatory Program; Termination and Reassertion of Jurisdiction

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening and extension of comment period on proposed amendment.

SUMMARY: OSM is announcing the receipt of revisions to a previously prepared amendment to the Kentucky permanent regulatory program (hereinafter referred to as the Kentucky program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). By letter of December 9, 1992 (Administrative Record No. KY–1199) Kentucky resubmitted a proposed program amendment which was originally submitted on July 21, 1992 (Administrative Record Number KY–1199) Kentucky resubmitted a proposed program amendment which was originally submitted on July 21, 1992 (Administrative Record Number KY–1165). The resubmission incorporates revisions made during the Kentucky promulgation process under Kentucky Revised Statutes (KRS) Chapter 13A. The amendment consists of proposed modifications to Kentucky Administrative Regulations (KAR) at 405 KAR 7:030, 1:007 and 3:007 that relate to termination and reassertion of jurisdiction.

This document sets forth the times and locations that the Kentucky program and the proposed amendment are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding a public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m. on January 29, 1993. If requested, a public hearing on the proposed amendment will be held at 10 a.m. on January 25, 1993. Requests to present oral testimony at the hearing must be received on or before 4 p.m. on January 19, 1993.

ADDRESSES: Written comments and requests for a hearing should be mailed or hand delivered to: William J. Kovacic, Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 2675 Regency Road, Lexington, Kentucky 4053. Copies of the Kentucky program, the proposed amendment, and all written comments received in response to this notice will be available for review at the address listed below, Monday through Friday, 9 a.m. to 4 p.m., excluding holidays. Each requestor may receive, free of charge, one copy of the proposed amendment by contacting OSM's Lexington Field office.

Office of Surface Mining Reclamation and Enforcement, Lexington Field Office, 2675 Regency Road, Lexington, Kentucky 40503, Telephone: (606) 233–2896

Office of Surface Mining Reclamation and Enforcement, Eastern Support Center, Ten Parkway Center, Pittsburgh, Pennsylvania 15220, Telephone: (412) 937–2828

Department for Surface Mining Reclamation and Enforcement, No. 2 Hudson Hollow Complex, Frankfort, Kentucky 40601, Telephone: (502) 564–6940

If a public hearing is held, its location will be: The Harley Hotel, 2143 North Broadway, Lexington, Kentucky 40505.

FOR FURTHER INFORMATION CONTACT: William J. Kovacic, Director, Lexington Field Office, Telephone (606) 233–2896.

SUPPLEMENTARY INFORMATION:

I. Background

On May 18, 1982, the Secretary of the Interior conditionally approved the Kentucky program. Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval can be found in the May 18, 1982, **Federal Register** (47 FR 21404–21435). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 917.11, 917.15, 917.16, and 917.17.

II. Discussion of Amendment

By letter of December 9, 1992, (Administrative Record No. KY–1199) Kentucky resubmitted a proposed program amendment which was originally submitted on July 21, 1992 (Administrative Record Number KY–1165). The resubmission incorporates revisions made during the Kentucky promulgation process under Kentucky Revised Statutes (KRS) Chapter 13A. The amendment consists of proposed modifications to Kentucky Administrative Regulations (KAR) at 405 KAR 7:030, 1:007 and 3:007 that relate to the termination and reassertion of jurisdiction.

This resubmission is the same as the July 21, 1992, submittal except for the following changes made during the State regulation promulgation process. The changes are as follows:

The regulations at 405 KAR 1:007 and 3:007 were changed to cover the possibility that termination of jurisdiction could occur after November 1, 1992 on sites that were subject to interim program standards but for which no bond was posted, in which case the termination of jurisdiction must be based upon a written determination that applicable requirements have been met, rather than upon a bond release determination.

Also included in the proposed program amendment is the Statement of Consideration that explains the public comments received by Kentucky during the State promulgation process.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendment proposed by Kentucky satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Kentucky program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commentor's recommendations. Comments received after the time indicated under **"DATES"** or at locations other than the Lexington Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m. on January 25, 1993. If no one requests an opportunity to comment at a public hearing, the hearing will not be held. Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who

wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet the OSM representatives to discuss the proposed amendments may request a meeting at the OSM, Lexington Field Office listed under "ADDRESSES" by contacting the person listed under FOR FURTHER INFORMATION CONTACT. All such meetings will be open to the public and, if possible, notices of meetings will be posted in advance at the locations listed under ADDRESSES. A written summary of each meeting will be made a part of the Administrative Record.

Executive Order No. 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs, actions and program amendments. Therefore, preparation of a regulatory impact analysis is not necessary and OMB regulatory review is not required.

Executive Order 12778

The Department of the Interior has conducted the review required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of the Surface Mining Control and Reclamation Act (SMCRA) (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731 and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 917

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 18, 1992.

Jeffrey D. Jarrett,

Acting Assistant Director, Eastern Support Center.

[FR Doc. 93–865 Filed 1–13–93; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 924

Mississippi Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing the receipt of proposed amendments to the Mississippi regulatory program (hereinafter referred to as the Mississippi program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). By letter dated December 15, 1992, Mississippi submitted a proposed amendment which covers a wide variety of topics. This submittal constitutes a complete rewrite of the Mississippi regulations making them consistent with current Federal regulations.

This document sets forth the times and locations that the Mississippi program and proposed amendments to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m. on February 16, 1993. If requested, a public hearing on the proposed amendments will be held at 1 p.m. on February 8, 1993. Requests to present oral testimony at the hearing must be received on or before 4 p.m. on January 29, 1993.

ADDRESSES: Written comments should be mailed or hand delivered to Mr. Jesse Jackson, Jr., Director, Birmingham Field Office, at the address listed below. Copies of the Mississippi program, the proposed amendments, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendments by contacting OSM's Birmingham Field Office.

Office of Surface Mining Reclamation and Enforcement, Birmingham Field Office, 135 Gemini Circle, suite 215, Homewood, Alabama 35209, telephone: (205) 290–7282.

Mississippi Department of Environmental Quality, The Office of Geology, Mining and Reclamation, 2380 Highway 80 West, Jackson, Mississippi 39209, telephone: (601) 961–5500.

FOR FURTHER INFORMATION CONTACT: Mr. Jesse Jackson, Jr., Director, Birmingham Field Office (205) 290–7282.

SUPPLEMENTARY INFORMATION:

I. Background

On September 4, 1980, the Secretary of the Interior unconditionally approved the Mississippi program. Information pertinent to the general background on the Mississippi program, including the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval can be found in the September 4, 1980, **Federal Register** (45 FR 58520). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 924.10 and 924.16.

II. Discussion of Amendments

Since the time of approval of the Mississippi program in 1980, there have been no changes to the program based on the fact that no mining was occurring in the State. However, in October 1988, due to some renewed interest in mining activity, Mississippi commenced to rewrite its regulations to conform with current Federal regulations. Since that time, Mississippi has made several informal submittals of the rewritten regulation package to OSM. The December 15, 1992, formal submittal constitutes a complete rewrite of the Mississippi regulations. While the submittal is in amendment to the Mississippi program, there are changes to literally every section of the regulations. Due to the extensive nature of the rewrite, no attempt will be made to identify changes made to each individual regulation. The sections proposed to be amended are parts 100 through 265 of the Rules and Regulations for the Surface Mining of Coal in Mississippi.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comments on whether the amendments proposed by Mississippi satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Mississippi program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Birmingham Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m. on January 29, 1993. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber.

Submission on written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the OSM office listed under **ADDRESSES** by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted the Office of Surface Mining Reclamation and Enforcement (OSM) an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs, actions and program amendments. Therefore, preparation of a regulatory impact analysis is not necessary and OMB regulatory review is not required.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of the Surface Mining Control and Reclamation Act (SMCRA) (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.13 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(c) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(c).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 924

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 24, 1992.

Jeffrey D. Jarrett,

Acting Assistant Director, Eastern Support Center.

[FR Doc. 93–869 Filed 1–13–93; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 935

Ohio Permanent Regulatory Program; Revision of Administrative Rule

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing the receipt of Revised Program Amendment Number 58 to the Ohio permanent regulatory program (hereinafter referred

to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment was initiated by Ohio and is intended to revise one rule in the Ohio Administrative Code. The proposed rule revisions would phase in, over a two-year period, the requirement for two years of ground cover and productivity evaluation for final bond release on pasture land.

This document sets forth the times and locations that the Ohio program and proposed amendments to that program will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m. on February 16, 1993. If requested, a public hearing on the proposed amendments will be held at 1 p.m. on February 8, 1993. Requests to present oral testimony at the hearing must be received on or before 4 p.m. on January 29, 1993.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand-delivered to Mr. Richard J. Seibel, Director, Columbus Field Office, at the address listed below. Copies of the Ohio program, the proposed amendments, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendments by contacting OSM's Columbus Field Office.

Office of Surface Mining Reclamation and Enforcement, Columbus Field Office, 2242 South Hamilton Road, room 202, Columbus, Ohio 43232, telephone: (614) 866–0578.

Ohio Department of Natural Resources, Division of Reclamation, 1855 Fountain Square Court, Building H–3, Columbus, Ohio 43224, telephone: (614) 265–6675.

FOR FURTHER INFORMATION CONTACT: Mr. Richard J. Seibel, Director, Columbus Field Office, (614) 866–0578.

SUPPLEMENTARY INFORMATION:

I. Background

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Information on the general background of the Ohio program submission, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program, can be found in the August 10, 1982 **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Discussion of the Proposed Amendments

In response to an OSM requirement, Ohio submitted proposed Program Amendment No. 43 by letter dated January 16, 1990 (Administrative Record No. OH–1265). In part, this amendment proposed to revise Ohio Administrative Code (OAC) section 1501:13–9–15(I)(3)(c) to add the requirement that, for phase III bond release, revegetated areas must meet ground cover and production standards for any two years of the five-year period of extended responsibility, except the first year. The Director of OSM approved this proposed rule revision on July 27, 1992 (57 FR 33122).

By letter dated May 12, 1992 (Administrative Record No. OH–1699), Ohio submitted proposed Program Amendment Number 58. This amendment proposed to add new paragraphs (D) (1) and (2) at OAC section 1501:13–1–01 concerning the termination and possible reassertion of regulatory jurisdiction over all or part of a reclaimed coal mine following the release of performance bond. The Director of OSM approved these proposed additions on September 11, 1992 (57 FR 41690).

On October 14, 1992, Ohio held a public hearing on the final filing of the rule revision to OAC section 1501:13–9–15(I)(3)(c) as approved by OSM in Program Amendment Number 43. At that hearing, Ohio received comments recommending a two-year period to phase in the new requirements for final bond release. Ohio decided to adopt this suggestion by revising OAC section 1501:13–1–01 which establishes the effective date and applicability of the Ohio rules over mining and reclamation operations.

As discussed above, OSM recently approved Program Amendment Number 58 which revises OAC section 1501:13–1–01. Because Ohio has not yet promulgated Program Amendment Number 58, Ohio has decided to resubmit proposed Revised Program Amendment Number 58 to further revise OAC section 1501:13–1–01 to incorporate the two-year phase-in period suggested at its public hearing. Ohio resubmitted Revised Program Amendment Number 58 on December 9, 1992 (Administrative Record No. OH–1798). In this revised amendment, Ohio is proposing to add the following sentence to OAC section 1501:13–1–01(B):

Each area for which there has been no phase III bond release and which is planted with a permanent cover of herbaceous species shall not be required to meet the requirements of paragraph (I)(3)(C) of rule 1501:13–9–15 of the Administrative Code for two years of the extended responsibility period until after January 1, 1994.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendments proposed by Ohio satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Ohio program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Columbus Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m. on January 29, 1993. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the Columbus Field Office by contacting the person listed

under **FOR FURTHER INFORMATION CONTACT.** All such meetings shall be open to the public, and, if possible, notices of the meetings will be posted at the locations listed under **ADDRESSES.** A written summary of each public meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

Executive Order No. 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs, actions, and program amendments. Therefore, preparation of a Regulatory Impact Analysis is not necessary and OMB regulatory review is not required.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the requirements of 30 CFR parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507 *et seq.*

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 18, 1992.

Jeffrey D. Jarrett,

Acting Assistant Director, Eastern Support Center.

[FR Doc. 93–867 Filed 1–13–93; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 944

Utah Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: OSM is announcing the receipt of a proposed amendment to the Utah permanent regulatory program (hereinafter, the "Utah program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of changes to one provision of Utah's Coal Mining Rules, which provides for Utah's reassertion of jurisdiction over coal mining and reclamation operations in cases of fraud, collusion, or misrepresentation. The amendment is intended to revise the Utah program to be consistent with the corresponding Federal regulations.

This document sets forth the times and locations that the Utah program and proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received by 4 p.m., m.s.t. February 16, 1993. If requested, a public hearing on the proposed amendment will be held on February 8, 1993. Requests to present oral testimony at the hearing must be received by 4 p.m., m.s.t. on January 29, 1993.

ADDRESSES: Written comments should be mailed or hand delivered to Robert H. Hagen at the address listed below.

Copies of the Utah program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Albuquerque Field Office.

Robert H. Hagen, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 505 Marquette Avenue, NW., suite 1200, Albuquerque, NM 87102, Telephone: (505) 766–1486.

Utah Division of Oil, Gas and Mining, 355 West North Temple, 3 Triad Center, suite 350, Salt Lake City, UT 84180–1203, Telephone: (801) 538–5340.

FOR FURTHER INFORMATION CONTACT: Robert H. Hagen, Telephone: (505) 766–1486.

SUPPLEMENTARY INFORMATION:

I. Background on the Utah Program

On January 21, 1981, the Secretary of the Interior conditionally approved the Utah program. General background information on the Utah program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Utah program can be found in the January 21, 1981, **Federal Register** (46 FR 5899). Subsequent actions concerning Utah's program and program amendments can be found at 30 CFR 944.15, 944.16, and 944.30.

II. Proposed Amendment

By letter dated November 5, 1992, Utah submitted a proposed amendment to its program pursuant to SMCRA (administrative record No. UT–801). Utah submitted the proposed amendment in response to a required amendment, which OSM codified at 30 CFR 944.16(p) in the September 11, 1992, **Federal Register** (57 FR 41692). The provision of the Utah Coal Mining

Rules that Utah proposes to amend is Utah Admin. R. 645–100–452.

Existing Utah Admin. R. 645–100–452 provides that, following a termination under Utah Admin. R. 645–100–451, the Division will reassert jurisdiction under the regulatory program over a site if it is demonstrated that the bond release or written determination referred to under Utah Admin. R. 645–100–451 was based upon fraud, collusion, or misrepresentation of a material fact by the permittee. Utah proposes to delete the phrase "by the permittee" from Utah Admin. R. 645–100–452.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Utah program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Albuquerque Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., m.s.t. on January 29, 1993. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been schedule to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the administrative record.

IV. Procedural Determinations

Executive Order 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs, actions, and program amendments. Therefore, preparation of a regulatory impact analysis is not necessary, and the OMB regulatory review is not required.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 12550) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 944

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 7, 1992.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

[FR Doc. 93–859 Filed 1–13–93; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Chapter 1

[FRL–4552–5]

Open Meeting on Proposed Wood Furniture Rules and/or Control Techniques Guidelines

AGENCY: Environmental Protection Agency.

ACTION: Notice of public exploratory meeting.

SUMMARY: As part of EPA's effort to determine the desirability of regulatory negotiation or some other consensus-based approach to develop proposed rules regulating hazardous air pollutant emissions and/or a Control Techniques Guideline covering volatile organic compound emissions associated with wood furniture manufacturing, this meeting will discuss possible scope and issues.

DATES: The meeting will take place on January 26–27. On January 26, it will start at 9 a.m. and end at 5 p.m. On January 27, it will start at 9 a.m. and end at 3 p.m.

ADDRESSES: The meeting will take place at the Mission Valley Inn, 2110 Avent Ferry Road, Raleigh, NC 27606, (919) 828–3173.

FOR FURTHER INFORMATION CONTACT: For additional information on substantive aspects of the meeting, please contact Ellen Ducey of EPA's Office of Air Quality Planning and Standards, (919) 541–5408. For additional information on procedural or administrative matters please contact Susan Wildau or John Lingelbach, EPA's co-convenors, at (303) 442–7367.

Dated: January 11, 1993.

Chris Kirtz,

Director, Consensus and Dispute Resolution Program.

[FR Doc. 93–935 Filed 1–13–93; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Chapter 1

[FR–4552–7]

Public Meeting on Small Non-Road Engines Regulation

AGENCY: Environmental Protection Agency.

ACTION: Public meeting.

SUMMARY: We are giving notice of a public meeting concerning the status and potential use of a consensus based process to develop data and regulations for the control of emissions from small non-road engines under the Clean Air Act Amendments.

The EPA has decided that this particular regulatory process will focus on gasoline engines from 0–25 horsepower. Small diesel engine (0–50 hp) regulations will be developed on a separate but parallel track and discussion of diesel issues will not be included in the discussion of 0–25 horsepower gasoline issues.

The agenda will include: The scope of the regulation, design of a consensus based process, potential participants in the regulatory process, regulation development schedule and exchange of information on available new data. The meeting is open to the public without advance registration.

DATES: The meeting will be held on January 28, 1993 from 1 p.m. to 5 p.m. and on January 29, 1993 from 8:30 a.m. to 3 p.m.

ADDRESSES: The location of the meeting will be the Sheraton Inn, 3200 Boardwalk, Ann Arbor, Michigan 48108.

FOR FURTHER INFORMATION CONTACT: Persons needing further information on the technical and substantive issues related to the rule should contact Clare Ryan, National Vehicle and Fuel Emissions Laboratory, Environmental Protection Agency, 2656 Flymouth Rd., Ann Arbor, Michigan 48105; phone (313) 668–4577. Persons needing further information on procedural matters should call Deborah Dalton, Consensus and Dispute Resolution Program, Environmental Protection Agency, Washington, DC 20460; phone (202) 260–5495.

Dated: January 11, 1993.

Deborah Dalton,

Deputy Director, Consensus and Dispute Resolution Program, Office of Policy, Planning and Evaluation.

[FR Doc. 93–936 Filed 1–13–93; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 92–301, RM–8136]

Radio Broadcasting Services; Henderson, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Dean Broadcasting, Inc., licensee of Station KGRI-FM, Channel 260A, Henderson, Texas, proposing the substitution of Channel 260C3 for Channel 260A at Henderson and modification of Station KGRI-FM's license to specify operation on the higher powered channel. Channel 260C3 can be allotted to Henderson in compliance with the Commission's minimum distance separation requirements with a site restriction of 16.3 kilometers (10.2 miles) southwest in order to avoid a short-spacing to vacant but applied for Channel 259C2, Shreveport, Louisiana. The coordinates for Channel 260C3 at Henderson are North Latitude 32–01–20 and West Longitude 94–52–58. In accordance with § 1.420(g) of the Commission's Rules, we will not accept competing expressions of interest for use of Channel 260C3 at Henderson or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before March 1, 1993, and reply comments on or before March 16, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Donald E. Martin, Esq., 2000 L Street, NW., suite 200, Washington, DC 20036 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 92–301, adopted December 9, 1992, and released January 8, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1990 M Street, NW., suite 640 Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

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

[FR Doc. 93–887 Filed 1–13–93; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 92–300, RM–8138]

Radio Broadcasting Services; Ketchum, ID

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Idaho Broadcasting Consortium, Inc., requesting the substitution of Channel 284C for Channel 284A at Ketchum,

Idaho, and the modification of Station KYAA(FM)'s construction permit to specify operation on Channel 284C. The proposed coordinates for Channel 284C at Ketchum are North Latitude 43–38–36 and West Longitude 114–23–49.

DATES: Comments must be filed on or before March 1, 1993, and reply comments on or before March 16, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Lee W. Shubert, Dawn M. Sciarrino, Haley, Bader & Potts, 4350 North Fairfax Drive, suite 900, Arlington, VA 22203–1633 (Attorneys for Idaho Broadcasting Consortium, Inc.).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 92–300, adopted December 9, 1992, and released January 8, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452–1422, 1990 M Street, NW., suite 640, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

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

[FR Doc. 93–888 Filed 1–13–93; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 92–299, RM–8049]

Television Broadcasting Services; Appleton, New London and Suring, Wisconsin

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comment on a petition filed by Wisconsin Voice of Christian Youth, Inc., licensee of Station WSCO(TV), Channel 14, Suring, Wisconsin, requesting the reallotment of Channel 14 from Suring to Appleton, Wisconsin, or from Suring to New London, Wisconsin and the modification of its license accordingly, pursuant to Commission Rule 1.420(i). The petitioner is requested to provide additional information regarding public interest benefits in support of its proposal. Proposed coordinates for Channel 14 in Appleton are North Latitude 44–29–00 and West Longitude 88–22–30. Proposed coordinates for Channel 14 in New London are North Latitude 44–22–10 and West Longitude 88–37–40. Canadian concurrence has been requested for the proposed coordinates at Appleton and New London. Either proposal also requires a change in the offset for vacant Channel 14, Joliet, Illinois, from a minus to a plus offset. The reference coordinates for vacant Channel 14, Joliet, would remain North Latitude 41–31–40 and West Longitude 88–04–55.

DATES: Comments must be filed on or before March 1, 1993, and reply comments on or before March 16, 1993.

ADDRESSES: Federal Commuunications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested persons should serve the petitioner, or its counsel or consultant, as follows: James R. Bayes, Esq. and Wayne D. Johnsen, Esq., Wiley, Rein & Fielding, 1776 K Street, NW., Washington, DC 20006 (Counsel to Wisconsin Voice of Christian Youth, Inc.)

FOR FURTHER INFORMATION CONTACT: Arthur D. Scrutchins, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 92–299, adopted December 8, 1992, and released January 8, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor's Downtown Copy Center, (202) 452–1422, 1990 M Street, NW., suite 640, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 2.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

Michael C. Ruger,

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

[FR Doc. 93–889 Filed 1–13–93; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 41

[Docket No. 48599; Notice 93–2]

RIN 2105–AB79

Seismic Safety of Federal and Federally Assisted or Regulated New Building Construction

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Department of Transportation proposes to implement the provisions of Executive Order (E.O.) 12699, "Seismic Safety of Federal and Federally-Assisted or Regulated New Building Construction." Under the Executive Order each affected Federal agency is given the responsibility for developing and implementing its own mission-appropriate and cost-effective regulations governing seismic safety. For DOT, this includes the design and construction of any of its new buildings for use of ownership, as well as the need for seismic safety recognition in all grant and safety programs affecting federally leased, assisted or regulated buildings. The purpose is to reduce the risk of death or injury to building occupants, improve the capabilities of essential buildings to function during or

after an earthquake, and to reduce earthquake losses of public buildings and investments. The rules proposed in this document may be further implemented by rulemaking actions of the DOT Operating Administrations.

DATES: Comments must be received on or before March 1, 1993.

ADDRESSES: Comments should be sent to Docket Clerk, Docket No. 48599, Department of Transportation, 400 7th Street, SW., room 4107, Washington, DC 20590. Commenters are requested to provide an original and four copies of their comments. Commenters wishing to have their comments acknowledged should enclose a stamped, self-addressed postcard with their comment. The docket clerk will time and date stamp the card and return it to the commenter.

FOR FURTHER INFORMATION CONTACT: Paul B. Larsen, Office of the Assistant General Counsel for Environmental, Civil Rights and General Law, (202) 366–9161, or Donald R. Trilling, Director, Office of Transportation Regulatory Affairs, (202) 366–4220, U.S. Department of Transportation, 400 7th St., SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Introduction

Seismic hazards pose a serious threat throughout much of the United States. It is therefore important in most parts of the nation to design structures according to appropriate seismic standards in order to mitigate losses from earthquakes. The Federal Government, through the Earthquake Hazards Reduction Act of 1977, has developed the National Earthquake Hazards Reduction Program (NEHRP), to reduce the risks to life and property from future earthquakes. Through work of the NEHRP, the President has issued Executive Order 12699, "Seismic Safety of Federal and Federally Assisted or Regulated New Building Construction," which calls for Federal agencies to use appropriate seismic design and construction standards in design and construction of Federally owned, leased, assisted, and regulated new buildings. To support the implementation of this order, the Interagency Committee on Seismic Safety in Construction (ICSSC) recommends the use of seismic codes and standards that are substantially equivalent to the NEHRP Recommended Provisions for the Development of Seismic Regulations for New Buildings (Provisions and Commentary). This document offers guidelines (including maps defining the seismic groundshaking hazard nationwide) which represent the state-of-the-art in seismic design, have been widely reviewed, and are currently being incorporated into national standards and codes for adoption by state and local building codes.

Seismic Hazard

An earthquake is the oscillatory, sometimes violent movement of the Earth's surface that follows a release of energy in the Earth's crust. This energy can be generated by a sudden dislocation of segments of the crust, by volcanic eruption, and even by manmade explosions. Seismic hazards that may be induced by earthquakes include ground shaking, surface faulting, liquefaction, landslides, lateral spreading, seiches, and tsunami. Seismic risk is a measure of potential losses due to the expected seismic hazards in a given area. Therefore, an unpopulated area has a lower seismic risk than an urban area exposed to the same seismic hazards. Similarly, poorly constructed buildings are exposed to greater seismic risk than well constructed ones in the same location.

Although in the United States most earthquakes occur in areas bordering the Pacific Ocean, history shows that other areas across the U.S. are susceptible to seismic hazard. On August 31, 1886 an earthquake estimated at 7.5 on the Richter scale shook Charleston, South Carolina, causing extensive damage and killing an estimated 60 to 100 people. On the basis of geologic and geophysical studies, it appears that quakes of this magnitude are possible at geologically similar locations along the eastern seaboard. In the winter of 1811–1812, the New Madrid seismic zone, located in the Central U.S., produced three of the largest earthquakes known to have occurred in North America. This area is regarded by seismologists as the most hazardous zone east of the Rocky Mountains and it remains seismically active. The Loma Prieta earthquake that hit the San Francisco/Oakland area on October 17, 1989 measured 7.1 on the Richter scale and killed 64 people. The shock caused an estimated $7.1 billion in damage, and caused failure in key transportation links including the San Francisco-Oakland Bay Bridge and a 1½ mile long section of Interstate 880 in Oakland.

On the West Coast of the U.S. most people have experienced earthquakes, and recognize that major earthquakes will occur. The absence of large-magnitude earthquakes in the Central and Eastern U.S. since the Charleston earthquake in 1886 has resulted in a lack of awareness on the part of the general public of the existence of an earthquake threat in these areas. Nevertheless, the examples above illustrate why seismic hazard is more than a West Coast issue. Forty-six states as well as many U.S. territories and possessions are at risk from earthquakes.

Ground shaking is the seismic hazard that affects all buildings in an area impacted by an earthquake. (Liquefaction, landslides, and other seismic hazards are generally localized disturbances.) Because of the universal effect of ground shaking, it is the hazard that is addressed in greatest detail by building codes.

The ground shaking hazard is generally represented on maps. The United States Geological Survey (USGS) has developed national maps of ground shaking hazard that present equal levels of expected horizontal acceleration due to ground shaking. These maps are published in the Commentary to the 1991 NEHRP Recommended Provisions. On these maps, the plotted acceleration at any location represents a 90 percent probability that it will not be exceeded in 50 years. These maps have become the basis for the hazard maps included in up-to-date seismic design guidelines and codes. Similar maps are being developed for select areas at a larger scale that portray other seismic hazards. These illustrate the significant variation that can be expected due to multiple seismic hazards within a local region.

The derivation of the ground shaking maps considered, for each location, a number of factors. These included historical seismicity, proximity to known faults, and results of geological investigations. Because of the complexity of these factors, the development of the maps required a great deal of professional judgement and expertise.

The ground shaking maps described above quantify the significant variation in the expected hazard nationwide. The maps are the basis which allow a single building code to be applicable nationwide: the design, detailing, and construction requirements are varied according to the expected hazard as presented in the maps. Thus, a single design provision results in stringent requirements in a high hazard area and less stringent requirements in a low hazard area.

Seismic Design

Unlike hurricanes, large earthquakes cannot be predicted; they strike without warning with great destructive force. Most casualties occur from the ground shaking that can cause buildings and other structures to collapse and objects to fall. Related ground failure hazards also can cause serious losses in local areas. For these reasons, buildings and

other structures need to be designed to resist earthquake forces.

The importance of using sound engineering and construction practices in design and construction is evident when the effects of two very similar earthquakes are compared: the 1971 San Fernando, California earthquake and the 1972 Managua, Nicaragua earthquake, with magnitudes of 6.6 and 6.2 respectively. Both earthquakes occurred at times of day when most people were at home, and both affected a population of approximately 1 million. The San Fernando earthquake affected an area with much new construction that had been designed under a building code that included earthquake requirements. This quake caused 58 deaths and $550 million in economic losses. The Managua quake affected a city where few buildings had been designed using modern requirements. This event caused over 5,000 deaths and an economic loss comparable to the annual gross national product of the entire country. Studies of structural performance in earthquakes indicate that severe damages and collapses of buildings almost always are the consequence of inadequate design or construction. The successful performance of buildings designed and constructed in accord with modern seismic standards show that effects of severe earthquakes can be resisted economically.

In California, where the perception of earthquake hazards has been high, up-to-date seismic preparedness and mitigating practices are regularly adopted and enforced, particularly in the form of seismic design and construction provisions in building codes. However, in the Central and Eastern United States recognition of earthquake hazards is more recent. In the past, the model building codes used in the Central and Eastern United States have tended to lag behind the West Coast in adoption of modern seismic design and construction provisions. However, in 1991 these model code organizations incorporated the NEHRP Recommended Provisions into their 1992 editions, bringing the seismic requirements of their model codes up to date with the most current information available. State and local regulatory authorities may adopt, modify, and enforce these model code provisions to achieve seismic safety in new building construction in their jurisdictions.

The impact of an earthquake includes not only immediate destruction of life and property, but also potential dangers to critical facilities and services, including hospitals, fire stations, police stations and emergency operating centers. Functions of these critical facilities may be crippled leading to further losses from lack of these services in a time of great need. Modern seismic standards require a higher level of seismic design and safety for these facilities in order to support their functionality following an earthquake.

Federal Action

The Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7701 *et seq.*) was enacted by Congress to reduce risks to life and property from future earthquakes in the U.S. through establishment and maintenance of an effective earthquake hazards reduction program. The Act states that "Earthquakes have caused, and can cause in the future, enormous loss of life, injury, destruction of property, and economic and social disruption. With respect to future earthquakes, such loss, destruction, and disruption can be substantially reduced through the development and implementation of earthquake hazards reduction measures including improved design and construction methods and practices * * *. The Act also directs the President "to establish and maintain an effective earthquake hazards reduction program." To implement such a program, the President was to develop a plan, which specified "the roles for Federal agencies and recommended appropriate roles for State and local units of government, individuals, and private organizations." The National Earthquake Hazards Reduction Program (NEHRP) was established in response to this legislation on June 22, 1978, when it was transmitted by the President to Congress.

The objectives of the NEHRP include the development of technologically and economically feasible design and construction methods to make structures, both new and existing, earthquake resistant; the development and promotion of model codes; the development of improved understanding and capability with respect to defining and reducing seismic risk; the education of the public regarding earthquake phenomena; and research in other earthquake related areas.

The NEHRP joint memorandum to the heads of agencies transmitting the National Earthquake Hazards Reduction Program, June 22, 1978, page C–2, states that "The Federal government should set a strong example in the construction and safety of its facilities and develop guidelines and standards for Federally-assisted or licensed critical facilities. The evolutionary improvement of local building codes, which are the bases for all private construction, including Federally-assisted, non-critical construction, must be accomplished by encouragement and persuasion, particularly through working with State and local officials and professional organizations." In order to assist the Federal departments and agencies involved in construction to develop and incorporate earthquake hazards reduction measures in their ongoing programs, the Interagency Committee for Seismic Safety in Construction (ICSSC) was established. The ICSSC is composed of members representing 30 Federal departments and independent agencies involved with construction or responsible for governmental assistance for construction. Executive Order 12699, "Seismic Safety of Federal and Federally Assisted or Regulated New Building Construction" was prepared by the ICSSC to implement certain provisions of the Earthquake Hazards Reduction Act. It was signed by the President on January 5, 1990.

Executive Order 12699

The Executive Order requires all Federal agencies to ensure that new Federal buildings are designed and constructed in accord with appropriate seismic design and construction standards. The Order pertains to any new building which is federally owned, leased, assisted, or regulated. A building is defined as any structure, fully or partially enclosed, used or intended for sheltering persons or property.

Seismic safety requirements for new Federal buildings are intended to "reduce the risks to the lives of occupants of buildings owned by the Federal government and to persons who would be affected by the failure of Federal buildings in earthquakes, to improve the capability of essential Federal buildings to function during or after an earthquake, and to reduce earthquake losses of public buildings." Any new Federal building that entered the detailed design stage after January 5, 1990 must be designed and constructed in accordance with appropriate seismic standards.

Similar requirements are stated for Federally leased, assisted, or regulated buildings in order to reduce risks to the lives of persons who would be affected by earthquake failures of these buildings and to protect public investments.

For space constructed and leased for Federal occupancy, the Executive Order applies to agreements executed after January 5, 1990. For assistance, grants, and regulatory programs, the Executive Order (the Earthquake Hazard Reduction Act, 42 U.S.C. 7701 *et seq.*) requires agencies to plan and initiate

within three years (i.e., by February 1, 1993) measures to assure appropriate consideration of seismic safety. This NPRM responds to that requirement.

The Executive Order requires the use of nationally recognized private sector standards and practices, unless none is adequate. This is in accordance with OMB Circular A–119. Local building codes which are determined by the cognizant agency or by the ICSSC to provide adequately for seismic safety may be used as well. Special seismic standards and practices required by unique agency mission needs also may be used.

Each agency is responsible for issuing or amending its regulations or procedures, planning for implementation through its own budget process, and regularly reviewing its regulations and procedures. The Federal Emergency Management Agency (FEMA) is responsible for requesting an annual status report from each agency and reporting annually to the President and Congress on the execution of the Executive Order.

Section 4(a) of the Executive Order charges the ICSSC with recommending appropriate and cost-effective seismic design and construction standards and practices. In its official recommendation to FEMA, "Recommendation of Design and Construction Practices in Implementation of Executive Order 12699," the ICSSC recommends, as the minimum standard for all Federal agencies, the use of standards and practices which are substantially equivalent to or exceed the most recent or the immediately preceding edition of the NEHRP Recommended Provisions for the Development of Seismic Regulations for New Buildings.

An assessment prepared by the Council of American Building Officials and reviewed by the ICSSC compared the seismic provisions of major model building codes with the provisions of the 1988 NEHRP recommended provisions. Each of the following model codes was found to provide a level of seismic safety substantially equivalent to that provided by the 1988 NEHRP recommended provisions: 1991 ICBO Uniform Building Code, 1992 Supplement to the BOCA National Building Code, and the 1992 Amendments to the SBCC Standard Building Code. The ICSSC recommendation supports the use of these editions of the model codes as appropriate for use in implementing the Executive Order. In addition, the recommendation states that "state, county, local or other jurisdictional building ordinances adopting and enforcing these model codes in their entirety, without significant revisions or changes in the direction of less seismic safety, are also deemed adequate for implementing the Order."

The recommendation goes on to state that any other ordinances must be determined by the responsible cognizant agency to be substantially equivalent to the NEHRP recommended provisions before they can be considered to be appropriate for implementing the Order. A copy of the recommendation can be found in ICSSC RP 2.1–A, "Guidelines and Procedures for Implementation of the Executive Order on Seismic Safety of New Building Construction," which includes additional ICSSC consensus guidance for implementation. ICSSC RP 2.1–A is available from the U.S. Department of Commerce, National Institute of Standards and Technology, Building and Fire Research Laboratory, Gaithersburg, MD 20899.

The NEHRP recommended provisions are not a standard or model code, but constitute a resource document that may be used to develop effective seismic standards and building codes. The primary function of the NEHRP recommended provisions is to provide the minimum criteria considered prudent and economically justified for life safety and the protection of property as it impacts life safety in buildings subject to earthquakes at any location in the United States. The provisions were developed as a NEHRP project funded by FEMA. They are reviewed, updated, and published by the Building Seismic Safety Council (BSSC), a private sector organization representing nearly 60 organizations concerned with seismic safety. The Provisions have been extensively reviewed and balloted by the building community to provide a key source for the development of seismic provisions for national standards, model building codes, and building regulations for state and local governments in seismic areas. An updated version of the NEHRP recommended provisions is prepared every three years by the BSSC. The most recent edition available is 1991. A non-technical explanation of the background, objective, and methods related to the NEHRP recommended provisions is available from FEMA.

In late 1989, the Building Officials and Code Administrators International (BOCA) appointed an ad hoc committee to review the 1988 Edition of the NEHRP recommended provisions with the purpose of developing a comprehensive and consistent position on code requirements for earthquake loads that will reflect technology, design practices and national codes and standards. The Southern Building Code Congress (SBCC) participated in a similar cooperative effort. As a result of these efforts, the 1992 versions of the BOCA National Building Code and the SBCC Standard Building Code have incorporated the NEHRP recommended provisions into their seismic requirements. The NEHRP Recommended Provisions are also being considered by the American Society of Civil Engineers (ASCE) for adoption into the National Standard ASCE 7–88, "Minimum Design Loads for Buildings and Other Structures."

Section 3(a) of the Order requires implementation actions to "consider the seismic hazards in various areas of the country to be as shown in the most recent edition of the American National Standards Institute Standard A58, Minimum Design Loads for Buildings and Other Structures, or subsequent maps adopted for Federal use in accord with this order." The cited standard map is now available as ASCE 7. This map is based on the nationwide maps of horizontal ground acceleration developed by the USGS that also serve as the base for the design maps included with the NEHRP Recommended Provisions.

The ICSSC has recommended the use of standards and codes equivalent to the NEHRP Recommended Provisions. Therefore, the NEHRP maps are considered appropriate for Federal use in implementing the Executive Order.

Versions of the NEHRP maps have been adopted along with the NEHRP Recommended Provisions into the BOCA National and SBCC Standard building codes. The seismic zone map in the 1991 International Conference of Building Officials (ICBO) Uniform Building Code is also based on one of the USGS maps of horizontal ground acceleration. The ICBO map should be used with the ICBO code. It is not appropriate to use the NEHRP maps with the ICBO Uniform Building Code, because the design requirements of building codes are keyed to the numerical values of the map they reference.

The proposed rules apply only to new construction. All buildings owned, leased, constructed, assisted through such methods as loans, grants or guarantees of loans, or regulated by DOT must conform to the requirements of the new rules. Under the Earthquake Hazard Reduction Act, 49 U.S.C. 7701 *et seq.*, the Department of Transportation is independently responsible for ensuring that appropriate seismic design and construction standards are applied to new construction under its purview. In the Department of Transportation the DOT Operating Administrations will

further implement this rule, where necessary.

Section 41.110 states the general purpose of the rule. The rule applies to buildings. A building means any structure, fully or partially enclosed, used or intended for sheltering persons and property. "New building" is not defined. However, it is commonly accepted construction practice in this country, as expressed in the model codes, to treat additions as new buildings. Therefore, this rule should be interpreted to apply to additions to existing buildings as well as to new buildings.

Section 41.115 states that the rule applies to buildings leased for DOT occupancy. The 1988 NEHRP Recommended Provisions required that the entire building meet the most stringent requirements of any use that occupies 15 percent or more of the total building area. It is therefore reasonable to require that seismic safety provisions apply to buildings in which 15 percent or more of the total space will be leased for DOT use.

Section 41.117 provides that any buildings constructed with DOT financial assistance must be designed and constructed in accordance with approved seismic standards.

Section 41.119 provides that buildings regulated by DOT are subject to the rule.

Section 41.120 identifies the acceptable model codes. Emergency work or assistance in compliance with the Stafford Act, 42 U.S.C. 5170a, 5170b, 5174, 5178, 5192 and 5193 is not required to meet the requirements of a seismic safety program.

Finally, § 41.125 provides that nothing in this rule is intended to create any right or benefit against DOT, its Operating Administrations, its officers or any person.

Preliminary Regulatory Evaluation (PRE)

Executive Order 12291, dated February 17, 1981, directs Federal agencies to promulgate new regulations or modify existing regulations only if potential benefits to society for each regulatory change outweigh potential costs. E.O. 12291 also requires the preparation of a Regulatory Impact Analysis of all "major" rules except those responding to emergency situations or other narrowly defined exigencies. A major rule is one that is likely to result in an annual effect on the economy of $100 million or more, a major increase in consumer costs, or a significant adverse effect on competition. The Department of Transportation has determined that this rule is not "major" as defined in Executive Order 12291.

The Department has prepared a Preliminary Regulatory Evaluation (PRE), which assesses the overall costs and benefits of the rule, and demonstrates that it has reasonable justification.

The NEHRP recommended provisions represent a set of carefully evaluated construction practices. This approach recognizes that the provision of seismic design is in large measure an economic issue: The extent of seismic measures mandated by a code must be gauged by their probable benefit in saving lives as well as their cost to owners and ultimate occupants.

Cost—Determining the effect of requiring the use of modern seismic provisions on the initial cost of a building is enormously complex. It is possible to arrive at many different answers depending upon the role in society of the person answering the cost question, whether or not the building is required to remain functional after a major earthquake, whether a special effort is made to reduce property losses, and whether or not some seismic design requirements are already in effect.

The major factors influencing the cost of complying with seismic design requirements are:

1. The complexity of the shape and structural framing system for the building. (It is much easier to provide seismic resistance in a building with a simple shape and framing plan.)

2. The cost of the structural system (plus other items subject to special seismic design requirements) in relation to the total cost of the building. (In many buildings, the cost of providing the structural system may be only 25 percent of the total cost of the project.)

3. The stage in design at which the provision of seismic resistance is first considered. (The cost can be inflated greatly if no attention is given to seismic resistance until after the configuration of the building, the structural framing plan, and the materials of construction have already been chosen.)

The approximate construction cost impacts resulting from implementation of an earlier version of the NEHRP recommended provisions were determined by Stephen F. Weber during a BSSC study of the societal implications of using improved seismic provisions. These case studies were developed on the basis of a 1983–84 BSSC trial design program conducted to evaluate the usability, technical validity, and cost impact of the application of an amended version of Applied Technology Council (ATC) "Tentative Provisions for the Development of Seismic Regulations for Buildings", which was the precursor of the NEHRP Recommended Provisions.

Weber's study was based on the results of 52 case studies that compared the costs of constructing the structural components of a wide variety of buildings designed according to two distinct criteria: The prevailing local building code and the proposed set of improved seismic safety provisions. For each of the 52 designs included, a set of building requirements or general specifications was developed and provided to the responsible design engineering firm, but the designers were given latitude to ensure that building design parameters were compatible with local construction practice. Each building was designed once according to the amended Tentative Provisions and again according to the prevailing local code for the particular location of the design. Some of the case studies also compared the structural engineering design time required for the two design criteria. The case studies included multifamily residential, office, industrial, and commercial building designs in nine cities that cover the range of seismic hazard levels found in the United States (Los Angeles, Seattle, Memphis, Phoenix, New York, Chicago, Ft. Worth, Charleston, and St. Louis).

In summary, Weber's study of the results of the BSSC trial design program provides some idea of the approximate cost impacts expected from application of the NEHRP recommended provisions. For the 29 trial designs conducted in the 5 cities (Chicago, Ft. Worth, Memphis, New York, and St. Louis) whose local building codes had no seismic design provisions at the time of the study, the average projected increase in total building construction costs was 2.1 percent. For the 23 trial designs conducted in the 4 cities (Charleston, Los Angeles, Phoenix, and Seattle) whose local building codes did have seismic design provisions at that time, the average projected increase in total building construction costs was 0.9 percent. The average increase in cost for all 9 cities combined was 1.6 percent. Although no analyses of the cost effect of the 1985, 1988, and 1991 Editions of the NEHRP Recommended Provisions have been conducted, it is anticipated that the modifications made to the earlier version studied would have little effect on costs in cities subject to high seismic risk and would reduce the cost increase in cities subject to less risk.

Benefits—There are three forms of benefits that fall under the analysis: The benefit expected in any year from avoiding the loss of the value of the building itself, because it has been built

to new higher standards; the benefit of the lives saved in the building because the building has withstood the ground shaking; and the benefit of the function preserved, because the building is able to protect the mission it houses.

In the PRE, these benefits have been evaluated, using a statistical analysis which will not be repeated here. The benefits in this case are limited to the savings (in life, property and maintenance of function) that come about because a future building will be built to a new tougher standard under this rule, rather than the standard that would have been in effect earlier if no new rule were in place.

To enlarge on this, under the proposed rule, a building would be built to survive the high level of shock and/or accelerations portrayed on the NEHRP contour maps, which have a 90 percent probability of non-exceedance in 50 years. In the absence of the rule, the building would be built to a lesser standard, which would have allowed for the survivability of the building only under lesser shocks or accelerations.

The benefits counted are only those for instances where the shocks or accelerations were so high they would have destroyed a building built to the earlier lower standard, but buildings built to the new standard would survive. Similarly, the costs counted are those that are added because the building is being built to the new, higher standard, rather than the earlier lower standard.

It should be kept in mind that there is a ten percent probability that shocks or accelerations stronger than those portrayed on the NEHRP maps will be experienced, and even the buildings constructed to the new standard cannot be expected to survive shocks of that magnitude. These instance are not counted in either costs or benefits.

When the benefits are aggregated for the lives saved, the preservation of the building, and the continued functioning of the transportation mission housed in that building, the rule is cost beneficial.

For locations where there have been no provisions for earthquake protection, as exemplified by the 29 building group in the Weber study, the cost benefit ratio is 2.2, using a 10 percent discount rate. For locations where there have been some provisions for earthquake protection, as exemplified by the 23 building group in the Weber study, the cost benefit ratio is 5.1, using a 10 percent discount rate.

Incorporation by Reference

The following material would be incorporated by reference in newly established 49 CFR part 41. Each of the following model codes has been found to provide a level of seismic safety substantially equivalent to that provided by use of the 1988 NEHRP Recommended Provisions: The 1991 International Conference of Building Officials (ICBO) Uniform Building Code; the 1992 Supplement to the Building Officials and Code Administrators International (BOCA) National Building Code; and the 1992 Amendment to the Southern Building Code Congress (SBCC) Standard Building Code. Revisions of these model codes that are substantially equivalent to or exceed the then current or immediately preceding edition of the NEHRP Recommended Provisions, as it is updated, can be approved by a DOT Operating Administration to meet the requirements of this part.

Regulatory Evaluation

The proposed rule is not considered to be major under Executive Order 12291, but is significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040), February 26, 1979. Therefore, DOT has determined that a Regulatory Impact Analysis under Executive Order 12291 is not required. Furthermore, DOT expects the regulatory impact of this proposal to be minimal. Reference is made to the discussion of cost of seismic protection below. Study indicates that the average projected increase in building construction costs for nine major U.S. cities would be 1.6%, which should not have a significant impact on initial building construction costs.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the Department must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Because, as discussed above, the Department expects the impact of this proposed rule to be minimal, the Department certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

The Department has analyzed this proposed rule in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposed rule has minimal federalism implications which are insufficient to warrant the preparation of a Federalism Assessment.

Environment

The Department considered the environmental impact of this proposed rule and concluded that this rule is categorically excluded from further environmental documentation. This action solely relates to the seismic safety of buildings and clearly has no environmental impact.

List of Subjects in 49 CFR Part 41

Buildings, Seismic safety construction standards.

For reasons set out in the preamble, the Department of Transportation proposes to establish a new 49 CFR part 41 as follows:

PART 41—SEISMIC SAFETY

Sec.

Authority: 42 U.S.C. 7701 *et seq.*; 49 U.S.C. 322; Executive Order 12699, 55 FR 835, 3 CFR 1990 Comp., p. 269.

§ 41.100 Purpose and applicability.

(a) This part implements the provisions of 49 U.S.C. 7701 *et seq.* and Executive Order 12699, "Seismic Safety of Federal and Federally-Assisted or Regulated New Building Construction." Under the Executive Order the DOT is given the responsibility for developing and implementing its own mission-appropriate and cost-effective regulations governing seismic safety.

(b) This rule applies to new DOT owned buildings and to new DOT leased, assisted and regulated buildings. The purpose of the rule is to reduce risk to lives of the building occupants, improve the capabilities of essential buildings to function during or after an earthquake, and to reduce earthquake losses of public buildings and investments.

(c) This rule may be further implemented by the DOT Operating Administrations.

§ 41.105 Definitions.

As used in this chapter—

DOT means the U.S. Department of Transportation.

Operating Administration includes the Office of the Secretary.

§ 41.110 New DOT owned buildings and additions to buildings.

(a) DOT Operating Administrations responsible for the design and construction of new DOT Federally owned buildings will ensure that each building is designed and constructed in accord with the seismic design and construction standards set out in § 41.120.

(b) This requirement pertains to all building projects for which development of detailed plans and specifications is initiated after January 5, 1990. It applies to additions to existing buildings as well as to new buildings. It applies worldwide.

(c) For DOT Federally owned buildings, a certification of compliance with the seismic design and construction requirements of this part is required prior to the acceptance of the building. Such statements of compliance may include the engineer's and architect's authenticated verification of seismic design codes, standards, and practices used in the design and construction of the building, construction observation reports, local or state building department plan review documents, or other documents deemed appropriate by the DOT Operating Administration.

§ 41.115 New buildings to be leased for DOT occupancy.

(a) DOT Operating Administrations responsible for the design and construction of new buildings to be leased for DOT occupancy use will ensure that each building is designed and constructed in accord with the seismic design and construction standards set out in § 41.120.

(b) This requirement pertains to all new building projects for which the agreement covering development of detailed plans and specifications is executed after January 5, 1990.

(c) For new Federally leased buildings, a certification of compliance with the seismic design and construction requirements of this part is required prior to the acceptance of the building. Such statements of compliance may include the engineer's and architect's authenticated verification of seismic design codes, standards, and practices used in the design and construction of the building, construction observation reports, local or state building department plan review documents, or other documents deemed appropriate by the DOT Operating Administration.

§ 41.117 Buildings built with Federal assistance.

(a) Each DOT Operating Administration assisting in the financing, through Federal grants or loans, or guaranteeing the financing, through loan or mortgage insurance programs, of newly constructed buildings will ensure that any building constructed with such assistance is constructed in accord with seismic standards set out in § 41.120.

(b) This section applies to new buildings and additions to existing buildings financed in whole or in part through Federal grants or loans administered by DOT Operating Administrations, or through guaranteed financing through loan or mortgage insurance programs administered by DOT Operating Administrations.

(c) Any building constructed with Federal financial assistance, after [Insert effective date of final rule] must be designed and constructed in accord with seismic standards approved by the DOT operating Administration under § 41.120 in order to be eligible for Federal financial assistance.

(d) For buildings built with Federal assistance, a certification of compliance with the seismic design and construction requirements of this part is required prior to the furnishing of such assistance. Such statements of compliance may include the engineer's and architect's authenticated verification of seismic design codes, standards, and practices used in the design and construction of the building, construction observation reports, local or state building department plan review documents, or other documents deemed appropriate by the DOT Operating Administration.

§ 41.119 DOT regulated buildings.

(a) Each DOT Operating Administration with responsibility for regulating the structural safety of buildings and additions to existing buildings will ensure that each DOT regulated building is designed and constructed in accord with seismic design and construction standards as provided by this rule.

(b) This requirement pertains to all new building projects for which development of detailed plans and specifications begins after [Insert effective date of final rule].

(c) Any building for which a DOT Operating Administration is responsible for regulating the structural safety must comply with the seismic design and construction standards in this part.

(d) For DOT regulated buildings a certification of compliance with the seismic design and construction requirements of this part is required prior to the acceptance of the building. Such statements of compliance may include the engineer's and architect's authenticated verification of seismic design codes, standards, and practices used in the design and construction of the building, construction observation reports, local or state building department plan review documents, or other documents deemed appropriate by the DOT Operating Administration.

§ 41.120 Acceptable model codes.

(a) This section describes the standards that must be used to meet the seismic design and construction requirements of this part.

(b)(1) The following are model codes;

(i) The 1991 International Conference of Building Officials (ICBO) Uniform Building Code, published by the International Conference of Building Officials, 5360 South Workman Mill Rd., Whittier, Cal. 90601;

(ii) the 1992 Supplement to the Building Officials and Code Administrators International (BOCA) National Building Code, published by the Building Officials and Code Administrators, 4051 West Flossmoor Rd., Country Club Hills, I11. 60478–5795; and (iii) the 1992 Amendments to the Southern Building code congress (SBCC) Standard Building Code, published by the Southern Building Code Congress International, 900 Montclair Rd., Birmingham, Ala. 35213–1206.[1]

(2) Versions of the NEHRP seismic maps have been adopted along with the NEHRP Recommended Provisions into the BOCA National and SBCC Standard building codes. The seismic zone map in the ICBO Uniform Building Code is also based on one of the USGS maps of horizontal ground acceleration. However, the ICBO map should be used only with the ICBO code. Also, it is not appropriate to use the NEHRP maps with the ICBO Uniform Building Code, because the design requirements of building codes are keyed to the numerical values of the map they reference.

(c) Revisions to the model codes listed in paragraph (b) of this section that are substantially equivalent to or exceed the then current or immediately preceding

[1] These codes have been found to provide a level of seismic safety substantially equivalent to that provided by use of the 1988 National Earthquake Hazards Reduction Program (NEHRP) Recommended Provisions.

edition of the NEHRP recommended provisions, as it is updated, may be approved by a DOT Operating Administration to meet the requirements in this part.

(d) State, county, local, or other jurisdictional building ordinances adopting and enforcing the model codes, listed in paragraph (b) of this section, in their entirety, without significant revisions or changes in the direction of less seismic safety, meet the requirements in this part. For ordinances that do not adopt the model codes listed in paragraph (b) of this section, substantial equivalency of the ordinances to the seismic safety level contained in the NEHRP recommended provisions must be determined by the DOT Operating Administration before the ordinances may be used to meet the requirements of this part.

(e) DOT Operating Administrations that, as of January 5, 1990, required seismic safety levels higher than those imposed by this rule in new building construction programs will continue to maintain such levels in force.

(f) Emergencies. Nothing in this rule applies to assistance provided for emergency work or for assistance essential to save lives and protect property and public health and safety performed pursuant to section 402, 403, 502, and 503 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5170a, 5170b, 5192, and 5193, or for temporary housing assistance programs and individual and family grants performed pursuant to Sections 408 and 411 of the Stafford Act, 42 U.S.C. 7174 and 5178. However, this rule applies to other provisions of the Stafford Act after a Presidentially declared major disaster or emergency when assistance actions involve new construction or total replacement of a building.

§ 41.125 Judicial review.

Nothing in this rule is intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the DOT, its Operating Administrations, its officers, or any person.

Issued this 8th day of January, 1993 at Washington DC.

Andrew H. Card, Jr.,

Secretary of Transportation.

[FR Doc. 93–895 Filed 1–13–93; 8:45 am]

BILLING CODE 4910–62–M

Federal Railroad Administration

49 CFR Part 234

[FRA Docket No. RSGC–5; Notice No. 5]

RIN 2130—AA70

Timely Response to Grade Crossing Signal System Malfunctions Notice of Extension of Comment Period

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Notice of Proposed Rulemaking; extension of comment period.

SUMMARY: FRA is issuing notice that the period for public comment in this proceeding is being extended to February 15, 1993.

DATES: Written comments must be received no later than February 15, 1993. Comments received after that date will be considered to the extent possible without incurring additional expense or delay.

ADDRESSES: Written comments should be submitted to the Docket Clerk, Office of Chief Counsel, FRA, 400 Seventh Street SW., Washington, DC 20590. Persons desiring to be notified that their written comments have been received by FRA should submit a stamped, self-addressed postcard with their comments. The Docket Clerk will indicate on the postcard the date on which the comments were received and will return the card to the addressee. Written comments will be available for examination during regular business hours in room 8201 of the Nassif Building at the above address.

FOR FURTHER INFORMATION CONTACT: William E. Goodman, Chief, Signal and Train Control Division, Office of Safety Enforcement, FRA, 400 Seventh Street, SW., Washington, DC 20590 (telephone 202–366–0495), or Mark Tessler, Trial Attorney, Office of Chief Counsel, FRA, 400 Seventh Street, SW., Washington, DC 20590 (telephone 202–366–0628).

SUPPLEMENTARY INFORMATION: On June 29, 1992, FRA published a Notice of Proposed Rulemaking regarding timely response to grade crossing signal system malfunctions. 57 FR 28819. A public hearing was held on September 15, 1992. An open meeting was subsequently held on December 11, 1992 which included discussions of standards for safe maintenance, inspection and testing of active warning devices and as well as timely response to malfunction of such devices. At the December 11 meeting, a request was made to extend the comment closing date from January 15 to February 15, 1993. This extension would provide interested parties sufficient time to respond to information developed in the open meeting. FRA is therefore extending the comment period in this proceeding to February 15, 1993.

Issued in Washington, DC on January 8, 1993.

Gilbert E. Carmichael,

Administrator.

[FR Doc. 93–898 Filed 1–13–93; 8:45 am]

BILLING CODE 4910–06–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB83

Endangered and Threatened Wildlife and Plants; Correction to Proposal to List the Relict Darter and Bluemask (=Jewel) Darter as Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Correction to proposed rule.

SUMMARY: The Fish and Wildlife Service corrects the proposed rule published Friday, December 11, 1992 (57 FR 58774) that proposed to list the relict and bluemask (=jewel) darters as endangered species. An inaccurate scientific name was given for the relict darter in the table entry at 57 FR 58778. A correction is provided.

EFFECTIVE DATE: January 14, 1993.

FOR FURTHER INFORMATION CONTACT: Dr. Larry Shannon, Chief, Division of Endangered Species, U.S. Fish and Wildlife Service (452 ARLSQ), Washington, DC 20240 (703/358–2171).

SUPPLEMENTARY INFORMATION:

Background

As published, the proposed regulation provides the scientific classification of *Etheostoma* (*Doration*) sp. as a table entry for the relict darter at § 17.11(h). Since the species had been formally described as *Etheostoma chienense* at the time of publication of the proposed rule, and since this was the specific epithet used to refer to the relict darter in the preamble, the discrepancy in the table entry could cause confusion; a correction is provided below. Accordingly, the publication of December 11, 1992, of the proposed rule to amend 50 CFR 17.11(h), which was the subject of FR Doc. 92–30176, is corrected as follows:

§ 17.11 [Corrected]

At 57 FR 58778, in § 17.11(h) the table entry for the relict darter under the

"Scientific name" is corrected by changing "*Etheostoma* (*Catonotus*) sp." to read *Etheostoma chienense*".

Dated: January 7, 1993.

Richard N. Smith,

Director, Fish and Wildlife Service.

[FR Doc. 93–855 Filed 1–13–93; 8:45 am]

BILLING CODE 4310–55–M

50 CFR Part 17

RIN 1018–AB83

Endangered and Threatened Wildlife and Plants: Proposal to Delist Echinocereus triglochidiatus var. inermis (spineless hedgehog cactus)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to remove *Echinocereus triglochidiatus* var. *inermis* (spineless hedgehog cactus) from the list of Endangered and Threatened Plants. This action is based on a review of all available data, which indicate that this plant is not a discrete and valid taxonomic entity and does not meet the definition of a species (which includes subspecies and varieties of plants) as defined by the Endangered Species Act of 1973, as amended, and therefore was listed in error. *E. t.* var. *melanacanthus* is really a sporadically occurring spineless form of *E. t.* var. *melanacanthus* is a common variety with a widespread distribution from northern Utah and Colorado south to the states of Durango and San Luis Potosi in central Mexico. If made final, this proposed rule would eliminate Federal protection of the Endangered Species Act, as amended. Comments from the public regarding this proposed rule are sought.

DATES: Comments from all interested parties must be received by March 15, 1993. Public hearing requests must be received by March 1, 1993.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Colorado State Supervisor, U.S. Fish and Wildlife Service, Fish and Wildlife Enhancement, 730 Simms Street, room 290, Golden, Colorado 80401; or to the U.S. Fish and Wildlife Service, Fish and Wildlife Enhancement, Western Colorado Suboffice, 529–25½ Road, suite B–113, Grand Junction, Colorado 81505–6199. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above addresses.

FOR FURTHER INFORMATION CONTACT: Ms. Lucy Jordan, botanist, at the above Grand Junction address (Phone: 303/243–2778).

SUPPLEMENTARY INFORMATION:

Background

The spineless hedgehog cactus has been known for nearly 100 years. It was first collected in the La Sal Mountains of Utah by the German botanist Carl Albert Purpus and published by Karl Schuman in 1986 as *Echinocereus phoeniceus* Engelm var. *inermis* K. Schuman (Taylor 1985). The Purpus type collection is not available for study since it was destroyed during World War II.

Throughout its history, the spineless hedgehog cactus has generally not been recognized as taxonomically valid. For instance, in the first and only complete flora of Colorado, Harrington (1954) considered it only as a form. The current attention to the spineless hedgehog cactus began in the early 1970's when Gerald Arp conducted graduate work at the University of Colorado on the cacti of Colorado. Arp (1973) made the combination *Echinocereus triglochidiatus* Engelm. var. *inermis* (Schum.) G.K. Arp to bring the spineless hedgehog into alignment with the current taxonomic treatment of the genus. Although he recognized that the spineless hedgehog had not been considered taxonomically valid, Arp (1973) based his taxonomic recognition of it on its existence "* * * as a distinct and identifiable population." His taxonomic recognition of the spineless hedgehog cactus coincided with the passage of the Endangered Species Act (Act) of 1973 and its new provisions for the protection of endangered and threatened plants. Despite vigorous debate among Arp, Lyman Benson (a national authority on the Cactaceae), and Colorado botanists concerning the taxonomic validity of the spineless hedgehog cactus, the Fish and Wildlife Service (Service) took a conservative approach and listed it as endangered on November 7, 1979 (44 FR 64744), to provide interim protection from the primary threat of collecting. The debate was based on the taxonomic significance of the single difference of spinelessness and the existence of distinct populations in nature.

The subsequent recovery plan (U.S. Fish and Wildlife Service 1986) called for further studies to resolve this taxonomic question. In the recovery plan, a possible microsite difference in habitat between spineless plants on flat mesa tops or ridge tops and spined plants on adjacent sideslopes within a local area was noted, suggesting the possibility of populational integrity. However, these different microsties are only separated by short distances (as little as 15 m (50 ft), and the plants are essentially intermingled anyway. Subsequent inventories in the 13 years since the listing have found that, in fact, even this slight difference in microhabitat does not usually exist in nature, and both spined and spineless plants are found on either flats or slopes (James Ferguson, Bureau of Land Management, pers. comm., 1985). Also, spineless plants have been found in much more widely scattered areas.

At the time of listing, only four populations were known. Now, spineless hedgehog cacti have been found at over 20 sites, 160 km (100 mi) to the west (Heil and Porter 1989) and 40 km (25 mi) to the east and south (James Ferguson, pers. comm., 1986) of the original area. Thus, the spineless hedgehog cactus has been found to be only a form widely interspersed within the range of the spined var. *melanacanthus* in southeast Utah and southwest Colorado, over an area approximately 320 km (200 mi) by 160 km (100 mi) wide. Even in the light of the Service's listing of the spineless hedgehog cactus, subsequent taxonomic treatments have recognized it as a form only. These treatments include Benson (1982), Taylor (1985), Weber (1987), and Welsh et al. (1987). The consensus of scientific opinion thus supports its recognition as a form only, and not a taxonomic entity eligible for recognition under the Act.

In addition, attempts by cactus nurserymen to breed spineless plants from mature, 15-year-old stock have yielded a mixture of spined and spineless progeny. Thus, the spineless hedgehog plants apparently do not breed true, providing another line of evidence that they are simply forms (Steven Brack, cactus horticulturist, Belen, New Mexico, pers. comm., 1991).

The final rule stated that another reason for taxonomic recognition was that it was recognized as a distinct entity by cactus collectors. Cactus taxonomy is well-known for the notorious splitting of narrowly defined morphological variants of horticultural interest to collectors, but with no populational integrity in nature. The spineless hedgehog is one more case in point. Horticultural recognition is not necessarily the same as scientific recognition of a valid taxonomic entity in nature, and, hence, a reason for listing.

Summary of Factors Affecting the Species

50 CFR 424.11 requires that certain factors be considered before a species can be listed, reclassified, or delisted. These factors and their application to *Echinocereus triglochidiatus* Engel. var. *inermis* (K. Schum.) G.K. Arp. (spineless hedgehog cactus) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Echinocereus triglochidiatus var. *inermis* has been determined to be more than a spineless form of *E. t.* var. *melanacanthus* intermingled throughout the range of this variety in southeastern Utah and southwestern Colorado. *E. t.* var. *melanacanthus* is a common variety itself, extending from Utah and Colorado south into the states of Durango and San Luis Potosi in central Mexico (Benson 1982). The common *E. t.* var. *melanacanthus*, which includes *E. t.* var. *inermis*, is not significantly threatened. The final rule that designated *E. t.* var *inermis* as an endangered species identified habitat modification from pinyon-juniper chaining and mining activities. Because *E. t.* var. *inermis* is not a valid taxon and does not meet the definition of "species" as defined in the Act, and because the taxon of which it is a part is common and wide ranging, this threat has no applicability to these cacti.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The final rule cited overcollecting by commercial and private cactus collectors as the primary threat. Here again, as stated above in Section A, this threat is not applicable to the common and wide-ranging *E. t.* var. *melanacanthus* which includes *E. t.* var. *inermis*.

C. Disease or Predation

Disease or predation is not a threat to *E. t.* var. *melanacanthus* which includes *E. t.* var *inermis*.

D. The Inadequacy of Existing Regulatory Mechanisms

Echinocereus triglochidiatus var. *melanacanthus*, as a common and wide ranging taxon, is not threatened by the inadequacy of regulatory mechanisms. All native cacti are in Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (Convention). The Convention regulates and in some cases prohibits the export and international trade in species listed in the appendices. *E. t.* var. *melanacanthus* will continue to be subject to the requirements of the Convention.

E. Other Natural and Manmade Factors Affecting Its Continued Existence

None are known.

The regulations of 50 CFR 424.11(d) state that a species may be delisted if: (1) It becomes extinct, (2) it recovers, or (3) the original classification data were in error. The Service believes current scientific information exists that demonstrates that *E. t.* var. *inermis* does not represent a valid taxonomic entity, and, therefore, does not meet the definition of "species" as defined in section 3(16) of the Act Therefore, *E. t.* var. *inermis* was listed in error.

Effects of Rule

The proposed action would result in the removal of this cactus from the List of Endangered and Threatened Plants. Federal agencies would no longer be required to consult with the Secretary of the Interior to insure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of *E. t.* var. *inermis*. There is no designated critical habitat for this cactus. Federal restrictions on taking of this species would no longer apply. There are no specific preservation or management programs for this plant that would be terminated.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments on suggestion regarding any aspect of this proposal are hereby solicited from the public, other concerned governmental agencies, the scientific community, industry, or other interested parties. The Service particularly requests any evidence of populations of *E. triglochidiatus* whose individuals are plants referable only, or largely, to the variety *inermis*.

The Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Service's State Supervisor in Golden, Colorado, or to the Western Colorado Suboffice in Grand Junction, Colorado (see **ADDRESSES** above).

National Environmental Policy Act

The Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in **Federal Register** on October 25, 1983 (49 FR 49244).

References Cited

Arp, G. 1973. Studies in the Colorado cacti-V—the spineless hedgehog. Cactus and Succulent Journal 45:132–133.

Benson, L. 1982. The cacti of the United States and Canada. Stanford University Press. Stanford, California. 1,044 pp.

Heil, K., and M.L. Porter. 1989. Endangered, threatened, rate and other plants of concern at Capitol Reef National Park. Part II Taxa of Concern. Status Report prepared for National Park Service, Capitol Reef National Park.

Harrington, H.D. 1954. Manual of the plants of Colorado. Sage Books, Denver. 666 pp.

Taylor, N.P. 1985. The genus *Echinocereus*. Timber Press, Portland, Oregon. 160 pp.

U.S. Fish and Wildlife Service. 1986. Spineless hedgehog cactus recovery plan. U.S. Fish and Wildlife Service, Denver, Colorado. 19 pp.

Weber, W.A. 1987. Colorado flora: western slope. Colorado Associated University Press, Boulder. 530 pp.

Welsh, S.L., N.D. Atwood, S. Goodrich, and L.C. Higgins. 1987. A Utah flora. Great Basin Naturalist Memoirs, No. 9, Bringham Young University Press, Provo, Utah. 894 pp.

Author

The original author of this proposed rule was John L. Anderson, botanist, U.S. Fish and Wildlife Service. The new author is Lucy Jordan, botanist (see **ADDRESSES** section above).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulation Promulgation

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Public Law 99–625, 100 Stat. 3500, unless otherwise noted.

§ 17.12 [Amended]

2. It is proposed to amend § 17.12(h) by removing the entry "*Echinocereus triglochidiatus* var. *inermis* (spineless hedgehog cactus)" under "Cactaceae" from the List of Endangered and Threatened Plants.

Dated: September 28, 1992.

Richard N. Smith.

Director, Fish and Wildlife Service.

[FR Doc. 93–857 Filed 1–13–93; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 58, No. 9
Thursday, January 14, 1993

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

Forms Under Review by Office of Management and Budget

January 8, 1993.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection;

(2) Title of the information collection;

(3) Form number(s), if applicable;

(4) How often the information is requested; (5) Who will be required or asked to report;

(6) An estimate of the number of responses;

(7) An estimate of the total number of hours needed to provide the information;

(8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, room 404–W Admin. Bldg., Washington, DC 20250, (202) 690–2118.

Revision

- Animal and Plant Health Inspection Service

Application for Veterinary Accreditation
Recordkeeping; Annually
State or local governments; businesses or other for-profit; Small Businesses or organizations; 49,024 responses; 49,252 hours
Julia A. Heamon (301) 436–6954

- Agricultural Stabilization and Conservation Service

7 CFR 1435—Subpart Marketing Assessments
CCC–80
Monthly
Business or other for-profit; 756 responses; 1,134 hours
John Doster (202) 703–1305

Extension

- Forest Service

Youth Conservation Corps (YCC) Application and Medical History
FS–1800–3 and FS–1800–18
On occasion
Individuals or households; 27,500 responses; 2,500 hours
Ransom Hughes (703) 235–8861

New Collection

- Forest Service

National Survey on Outdoor Recreation
On occasion
Individuals or households; 30,000 responses; 9,900 hours
Barbara McDonald (706) 546–2451

Larry K. Roberson,
Deputy Department Clearance Officer.

[FR Doc. 93–921 Filed 1–13–93; 8:45 am]
BILLING CODE 3410–01–M

Animal and Plant Health Inspection Service

[Docket No. 92–190–1]

Animal Damage Control Program; Supplement to Draft Environmental Impact Statement; Notice of Intent

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service intends to make available a supplement to the draft environmental impact statement (EIS) for the Animal Damage Control program. The draft EIS, prepared in June 1990, evaluated environmental impacts associated with wildlife damage control activities.

FOR FURTHER INFORMATION CONTACT: Mr. Richard L. Wadleigh, Staff Officer, Operational Support Staff, ADC, APHIS, USDA, room 819, Federal Building, 6505 Belcrest Road, Hyattsville, Maryland 20782, (301) 436–8281.

SUPPLEMENTARY INFORMATION:

Background

Wild animals can damage and destroy agricultural crops, grazing lands, livestock and poultry, aircraft and other transportation resources, buildings, irrigation works, or other structures, and can transmit disease. Occurrences of this nature are commonly termed "wildlife damage." The management of the problems caused by wildlife is commonly termed "wildlife damage control" and is a recognized discipline within the art and science of wildlife management.

The Federal Government's involvement in wildlife damage control began in the late 1800's. The Animal Damage Control Act of March 2, 1931 (7 U.S.C. 426–426(b)) authorized and directed government actions in wildlife damage management. In 1985, Congress transferred the Animal Damage Control (ADC) program from the U.S. Department of Interior (DOI) to the U.S. Department of Agriculture (USDA). The Animal and Plant Health Inspection Service (APHIS) of the USDA assumed the management of the ADC program, which includes the authority for identifying, demonstrating, and applying the best methods of controlling wildlife damage to protect agriculture, horticulture, natural resources, wild game animals, fur-bearing animals, and birds. The APHIS also has the authority for protecting stock and other domestic animals through the suppression of rabies and tularemia in predatory or other wild animals; and, except for urban rodent control, the authority to control nuisance mammals and birds and those mammals and bird species that are reservoirs for zoonotic diseases.

On February 21, 1986 (51 FR 6290, Docket No. 86–402), we gave notice of our intent to adopt the final environmental impact statement (EIS) that had been prepared by FWS in 1979 for the ADC program.

On November 16, 1987 (52 FR 43778–43779, Docket No. 87–151), we gave notice of our intent to prepare a new EIS evaluating the impacts on the environment of the ADC program's activities to control damage caused by wild animals. We also requested comments and gave notice of scoping meetings to allow public involvement in the first step of the EIS process.

On June 18, 1990 (55 FR 24597–24598, Docket No. 90–099), we gave

notice of the availability of the draft EIS. We also requested comments and gave notice of public meetings to further promote public involvement in the development of the EIS.

On August 31, 1990 (55 FR 35700, Docket No. 90–165), we extended the comment period for Docket No. 90–099, which advised the public that we had prepared a draft EIS. This extension was in response to requests from a sheep industry organization and an environmental organization.

On September 20, 1991 (56 FR 47734, Docket No. 91–131), we amended the notice of intent to prepare an EIS for the ADC program to include the Bureau of Land Management (BLM) of the DOI, and the Forest Service (FS) of the USDA, as cooperating agencies with APHIS.

The APHIS, in cooperation with BLM and FS, is preparing a final EIS for the ADC program. Because of the length of time that has passed since the publication of the draft EIS and the need for more detailed analysis to respond to comments received on the draft EIS, we intend to make available a supplement to the draft EIS for public review and comment. The supplement to the draft EIS will include amplified analyses, which will expand upon the following areas:

(1) The quantitative risk assessment of all chemical and nonchemical methods employed by the program;

(2) The economic analysis; and

(3) The explanation of alternatives, including an in-depth discussion of the ADC decision model.

We expect to complete the supplement to the draft EIS in January 1993. Availability of the supplement to the draft EIS and an invitation to comment on the supplement to the draft EIS will be published in a subsequent Federal Register notice.

Done in Washington, DC, this 8th day of January 1993.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 93–927 Filed 1–13–93; 8:45 am]

BILLING CODE 3410–34–M

[Docket No. 92–193–1]

Availability of Environmental Assessments and Findings of No Significant Impact Relative to Issuance of Permits to Field Test Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that three environmental assessments and findings of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of permits to allow the field testing of genetically engineered organisms. The environmental assessments provide a basis for our conclusion that the field testing of these genetically engineered organisms will not present a risk of introducing or disseminating a plant pest and will not have a significant impact on the quality of the human environment. Based on its findings of no significant impact, the Animal and Plant Health Inspection Service has determined that environmental impact statements need not be prepared.

ADDRESSES: Copies of the environmental assessments and findings of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7612. For copies of the environmental assessments and findings of no significant impact, write to Mr. Clayton Givens at the same address. Please refer to the permit number listed below when ordering documents.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 (referred to below as the regulations) regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article may be introduced into the United States. The regulations set forth the procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

In the course of reviewing each permit application, APHIS assessed the impact on the environment that releasing the organisms under the conditions described in the permit application would have. APHIS has issued permits for the field testing of the organisms listed below after concluding that the organisms will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment. The environmental assessments and findings of no significant impact, which are based on data submitted by the applicants and on a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field tests.

Environmental assessments and findings of no significant impact have been prepared by APHIS relative to the issuance of permits to allow the field testing of the following genetically engineered organisms:

Permit No.	Permittee	Date issued	Organisms	Field test location
92–259–01, renewal of permit 92–015–02, issued on 04–30–92.	Northrup King Company .	12–04–92	Soybean plants genetically engineered to express the enzyme 5-enol-pyruvyl shikimate-3-phosphate synthase (EPSPS) and a metabolizing enzyme for tolerance to the herbicide glyphosate.	Hawaii.

Permit No.	Permittee	Date issued	Organisms	Field test location
92-265-02 renewal of permit 92-017-03, issued on 05-14-92.	Monsanto Agricultural Company.	12-04-92	Corn plants genetically engineered to express a gene from *Bacillus thuringiensis* subsp. *kurstaki* (Btk) for resistance to lepidopteran insects, and/or genes for tolerance to the herbicide glyphosate, and/or a beta-glucuron-idase (GUS) gene as a marker.	Hawaii.
92-308-01, renewal of permit 92-274-05, issued on 11-15-90.	Upjohn Company	12-07-92	Soybean plants genetically engineered to express the enzymes phosphinothricin acetyltransferase (PAT) for tolerance to the herbicide bialaphos.	Puerto Rico.

The environmental assessments and findings of no significant impact have been prepared in accordance with:

(1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*),

(2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500-1508),

(3) USDA Regulations Implementing NEPA (7 CFR part 1b), and

(4) APHIS Guidelines Implementing NEPA (44 FR 50381-50384, August 28, 1979, and 44 FR 51272-51274, August 31, 1979).

Done in Washington, DC, this 8th day of January 1993.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 93-928 Filed 1-13-93; 8:45 am]

BILLING CODE 3410-34-M

[Docket No. 92-194-1]

Receipt of Permit Applications for Release Into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that six applications for permits to release genetically engineered organisms into the environment are being reviewed by the Animal and Plant Health Inspection Service. The applications have been submitted in accordance with 7 CFR part 340, which regulates the introduction of certain genetically engineered organisms and products.

ADDRESSES: Copies of the applications referenced in this notice, with any confidential business information deleted, are available for public inspection in room 1141, South Building, U.S. Department of Agriculture, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. You may obtain copies of the documents by writing to the person listed under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which are Plant Pests or Which There is Reason to Believe Are Plant Pests," require a person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment) into the United States certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is reviewing the following applications for permits to release genetically engineered organisms into the environment:

Application No.	Applicant	Date received	Organisms	Field test location
92-337-01	Upjohn Company	12-02-92	Tomato plants and lettuce plants genetically engineered to express the nucleocapsid protein of tomato spotted wilt virus (TSWV) for resistance to TSWV.	Michigan.
92-343-01, renewal of permit 92-022-04, issued on 05-21-92.	Calgene, Incorporated	12-08-92	Tomato plants genetically engineered to express an antisense polygalacturonase (PG) gene, a cytokinin production gene, and ethylene regulation genes, all of which are involved in ripening.	California.
92-349-01, renewal of permit 91-294-02, issued on 12-04-91.	Frito-Lay Incorporated	12-14-92	Potato plants genetically engineered to over-express a metabolic enzyme to reduce cold-sensitive sweetening in potato tubers.	Wisconsin.
92-349-02, renewal of permit 91-301-01, issued on 02-03-92.	Frito-Lay, Incorporated ...	12-14-92	Potato plants genetically engineered to express metabolic enzymes in order to increase levels of dry matter in potato tubers.	Wisconsin.
92-349-03, renewal of permit 91-302-01, issued on 02-14-92.	Frito-Lay, Incorporated ...	12-14-92	Potato plants genetically engineered to express metabolic enzymes in order to inhibit accumulation of simple sugars in potato tubers.	Wisconsin.
92-349-04, renewal of permit 91-303-01, issued on 03-03-92.	Frito-Lay, Incorporated ...	12-14-92	Potato plants genetically engineered to express stress alleviating enzymes, in order to obtain higher levels of stress tolerance in potato tubers.	Wisconsin.

Done in Washington, DC, this 8th day of January 1993.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 93–929 Filed 1–13–93; 8:45 am]

BILLING CODE 3410–34–M

Forest Service

Exemption of Ally North/Fallen Haul Salvage Project From Appeal

AGENCY: USDA, Forest Service, Northern Region.

ACTION: Notification that a timber salvage project designed to recover windstorm damage timber is exempted from appeals under provisions of 36 CFR part 217.

SUMMARY: In October 1991, 160 acres of timber in the North Creek area were blown down during a severe windstorm. In 1992, the Bonners Ferry District Ranger proposed a salvage timber sale project to recover damaged sawtimber in the affected area. The District Ranger has determined, through an environmental analysis documented in the Ally North/Fallen Haul Timber Salvage Environmental Assessment (EA), that there is good cause to expedite these actions in order to rehabilitate National Forest System lands and recover damaged resources. Salvage of commercial sawtimber within the affected area must be accomplished quickly to avoid further deterioration of sawtimber and to reduce the risk of catastrophic wildfire and spruce bark beetle infestation that could damage adjacent healthy timber stands.

EFFECTIVE DATE: Effectove on January 14, 1993.

FOR FURTHER INFORMATION CONTACT: Debbie Henderson-Norton, District Ranger, Bonners Ferry Ranger District, Idaho Panhandle National Forests, Route 4, Box 4860, Bonners Ferry, ID 83805.

SUPPLEMENTARY INFORMATION: Severe windstorms in the fall of 1991 damaged approximately 160 acres of timber in the North Creek area. The windthrown timber is located within lands designated as suitable for timber management and assigned to Management Area 2 (Idaho Panhandle Forest Plan, August 1987). In September 1992, the Bonners Ferry District Ranger, Idaho Panhandle National Forest, proposed the salvage harvest of the trees damaged by the windstorms. This proposal was designed to meet the following needs, (a) reduce potential for spruce bark beetle infestations in adjacent healthy timber stands by implementing integrated pest management prescriptions, (b) reduce wildfire hazard by reducing fuel loading, (c) rehabilitate timber stands that are understocked through site preparation for natural regeneration, and (d) salvage merchantable timber products and contribute to a continuous supply of timber by recovering sawtimber before it deteriorates in value.

An interdisciplinary team was convened, and scoping began in 1992. Four environmental issues were identified and were the basis for the environmental analysis disclosed in the EA. The interdisciplinary team utilized information and analysis disclosed in the Timber Creek and Camp Creek EA and Decision Notice (March 1981) and the East Fork Boulder Creek EA and Decision Notice (November 1979) as the basis for conducting their review. This information is incorporated by reference. Two alternatives were analyzed; no treatment (no action) and a salvage and rehabilitation proposal (proposed action). The selected alternative would salvage 160 MBF of dead and damaged timber from approximately 160 acres. All salvage areas are accessible from existing roads. No road construction or reconstruction will occur in conjunction with this action.

The salvage timber sale project is designed to accomplish the objectives as quickly as possible to minimize the risk of a spruce bark beetle epidemic, reduce the potential for catastrophic wild fire and to recover merchantable sawtimber before it deteriorates and removal becomes infeasible. To expedite implementation of this decision, procedures outlined in 36 CFR 217(a)(11) are being followed. Under this Regulation the following may be exempt from appeal:

"Decisions related to rehabilitation of National Forest System lands and recovery of Forest Resources from natural disasters or other natural phenomena, such as * * * severe wind * * * when the Regional Forester * * * determines and gives notice in the **Federal Register** that good causes exists to exempt such decisions from review under this part."

Based on the environmental analysis documented in the Ally North/Fallen Haul Timber Salvage Sale EA and the District Ranger's Decision Notice for this project, I have determined that good cause exists to exempt this decision from administrative review. Therefore, upon publication of this notice, this project will not be subject to review under 36 CFR part 217.

Dated: January 7, 1993.

John M. Hughes,

Deputy Regional Forester, Northern Region.

[FR Doc. 93–639 Filed 1–13–93; 8:45 am]

BILLING CODE 3410–11–M

Exemption of Wally Salvage Timber Sale From Appeal, Okanogan National Forest, WA

AGENCY: Forest Service, USDA.

ACTION: Notice to exempt decisions from administrative appeal.

SUMMARY: This is a notification that the decision to implement the Wally Salvage Timber Sale in the area of the Middle Fork Beaver Creek on the Okanogan National Forest is exempted from appeal. This is in conformance with provisions of 36 CFR 217.4(a)(11) as published in the **Federal Register** on January 23, 1989 (54 FR 3342).

EFFECTIVE DATE: January 14, 1993.

FOR FURTHER INFORMATION CONTACT: Allen N. Garr, District Ranger, Twisp Ranger District, P.O. Box 188, Twisp, Washington 98856, Phone (509) 997–2131.

SUPPLEMENTARY INFORMATION: During the month of June in 1992 a windstorm caused timber to be blown down in the area of Middle Fork Beaver Creek in the Okanogan National Forest. This blown-down timber is located in approximately 40 acres of land suitable for timber production. The area is located in Management Area 25 which includes intensive timber management as a goal.

In June 1992, the Twisp District Ranger proposed the salvage harvest of the blown-down timber. In July an interdisciplinary team (IDT) surveyed the affected area to assess the damage to the resources that had occurred. The IDT identified the need to salvage the timber which had blown down in as short a time as possible so the logs would remain merchantable. Merchantable timber in the area averages 12 inches in diameter at breast height with relatively little defect. The environmental analysis of this action was begun in mid-July. The IDT began with an initial scoping session on July 16, 1992. After press releases and contacts with individuals and State and other federal agencies, the following two issues were identified: (1) Whether harvest can be completed prior to the trees losing commercial value; and (2) whether harvest would create detrimental soil conditions, especially soil compaction.

Three alternatives were analyzed, including the No-Action Alternative.

This salvage sale will harvest about 150,000 board feet of mainly blown-down timber, but also includes some green-standing trees heavily infected with dwarf mistletoe. Removal of dwarf mistletoe trees is necessary to ensure establishment of a healthy, thrifty plantation, and movement toward the desired future condition. No new road construction would be necessary to implement the project. All skidding would be done by tractor; designated skid trails will limit soil compaction to forest plan standards. Harvest prescription would be seed tree followed by planting. Planting will ensure movement toward the desired future condition.

This salvage fits within category 4 of section 31.2 of Forest Service Handbook 1909.15. Therefore, this action may be categorically excluded from documentation in an environmental impact statement or an environmental assessment.

The Wally Salvage Timber Sale is designed to accomplish the objectives as quickly as possible and minimize the amount of salvage volume lost. To expedite this salvage sale and the accompanying work, this salvage sale is exempt from appeal (36 CFR part 217). Under this Regulation, the following is exempt from appeal:

Decisions related to rehabilitation of National Forest System lands and recovery of forest resources resulting from natural disasters or other natural phenomena, such as wildfires * * * when the Regional Forester * * * determines and gives notice in the **Federal Register** that good cause exists to exempt such decisions from review under this part.

After publication of this notice in the **Federal Register**, this Decision Memo for the Wally Salvage Timber Sale may be signed by the Twisp District Ranger. Therefore, this project will not be subject to review under 36 CFR part 217.

Dated: January 5, 1993.

Richard A. Ferraro,

Deputy Regional Forester.

[FR Doc. 93–844 Filed 1–13–93; 8:45 am]

BILLING CODE 3410–11–M

Exemption of Douglas Salvage Timber Sale From Appeal, Okanogan National Forest, WA

AGENCY: Forest Service, USDA.

ACTION: Notice to exempt decisions from administrative appeal.

SUMMARY: This is a notification that the decision to implement the Douglas Salvage Timber Sale in the area of the McFarland Creek on the Okanogan National Forest is exempted from appeal. This is in conformance with provisions of 36 CFR 217.4(a)(11) as published in the **Federal Register** on January 23, 1989 (54 FR 3342).

EFFECTIVE DATE: January 14, 1993.

FOR FURTHER INFORMATION CONTACT: Allen N. Garr, District Ranger, Twisp Ranger District, P.O. Box 188, Twisp, Washington 98856, Phone (509) 997–2131.

SUPPLEMENTARY INFORMATION: During the month of November in 1991 a windstorm caused timber to be blown down in the area of McFarland Creek on the Okanogan National Forest. This blown-down timber is located in approximately 48 acres of land suitable for timber production. The area is located in Management Area 25 which includes intensive timber management as a goal.

In June 1992, the Twisp District Ranger proposed the salvage harvest of the blown-down timber. In July an interdisciplinary team (IDT) surveyed the affected area to assess the damage to the resources that had occurred. The IDT identified the need to salvage the timber which had blown down in as short a time as possible so the logs would remain merchantable. Merchantable timber in the area averages 11 inches in diameter at breast height with relatively little defect. The environmental analysis of this action was begun in mid-July. The IDT began with an initial scoping session on July 16, 1992. After press releases and contracts with individuals and State and other federal agencies, the following three major issues here identified:

1. Whether harvest can be completed prior to the trees losing commercial value.

2. Whether harvest would change the roadless character of the inventoried Hungry Ridge roadless area, which is directly adjacent to the project area.

3. Whether harvest would result in detrimental soil conditions, especially compaction.

Three alternatives were analyzed, including the No-Action Alternative. This salvage sale will harvest about 330,000 board feet of timber. Road construction necessary to implement salvage includes .81 miles of new construction. All skidding would be done by tractor; designated skid trails will limit soil compaction to forest plan standards. Harvest prescription would be seed tree followed by planting. Planting will ensure movement of the area toward the desired future condition for Management Area 25. All units and roads are located outside of inventoried roadless areas identified in appendix C of the Final Environmental Impact Statement for the Okanogan Land and Resource management Plan.

This salvage fits within category 4 of section 31.2 of Forest Service handbook 1909.15. Therefore, this action may be categorically excluded from documentation in an environmental impact statement or an environmental assessment.

The Douglas Salvage Timber sale is designed to accomplish the objectives as quickly as possible and minimize the amount of salvage volume lost. To expedite this salvage sale and the accompanying work this salvage sale is exempt from appeal (36 CFR part 217). Under this Regulation, the following is exempt from appeal:

Decisions related to rehabilitation of National Forest System lands and recovery of forest resources resulting from natural disasters or other natural phenomena, such as wildfires * * * when the Regional Forester * * * determines and gives notice in the **Federal Register** that good cause exists to exempt such decisions from review under this part.

After publication of this notice in the **Federal Register**, this Decision Memo for the Douglas Salvage Timber Sale may be signed by the Twisp District Ranger. Therefore, this project will not be subject to review under 36 CFR part 217.

Dated: January 5, 1993.

Richard A. Ferraro,

Deputy Regional Forester.

[FR Doc. 93–845 Filed 1–13–93; 8:45 am]

BILLING CODE 3410–11–M

Exemption of Nicholson Salvage One and Nicholson Salvage Two Timber Sales From Appeal, Okanogan National Forest, WA

AGENCY: Forest Service, USDA.

ACTION: Notice to exempt decisions from administrative appeal.

SUMMARY: This is a notification that the decision to implement the Nicholson Salvage One and Nicholson Salvage Two Timber Sales in the headwaters of Nicholson Creek on the Okanogan National Forest is exempted from appeal. This is in conformance with provisions of 36 CFR 217.4(a)(11) as published in the **Federal Register** on January 23, 1989 (54 FR 3342).

EFFECTIVE DATE: January 14, 1993.

FOR FURTHER INFORMATION CONTACT: Elaine J. Zieroth, District Ranger, Tonasket Ranger District, P.O. Box 466, Tonasket, Washington 98855, Phone (509) 486–2186.

SUPPLEMENTARY INFORMATION: The proposed harvest units in each of these

two salvage timber sales have severe forest health problems caused by insect infestations and disease.

These units were originally part of the Nicholson Timber Sale. In recognition of the severity of the forest health problems in the area, eight units were separated from the original Nicholson Timer Sale, and split into Nicholson Salvage One and Nicholson Salvage Two Timber Sales. Splitting the salvage into two sales will facilitate treatment of all of these high priority units within a year, while the timber is still of value, and before insect and disease can spread, and will provide timber sales for small business timber sale operators in the area.

Public scoping and the environmental analysis of this project was done as part of the Nicholson Timber Sale. Subsequently, the interdisciplinary team (IDT) met and identified the eight salvage units which had high priority for treatment. The following five issues were identified:

1. Dead and dying trees would lose their merchantability within another year.

2. Dwarf mistletoe-infected overstory stands in several proposed salvage units would infect a currently manageable understory stand.

3. Trees dying from western spruce budworm activity and laminated root rot infection are increasing the fuel loading, and hence, the fire hazard on several sites.

4. Prompt salvage of timber in the Douglas-fir root rot pockets would begin the regeneration of wildlife cover. So much of the timber has already died in the diseased area that it has little or no cover value for deer or other wildlife species.

5. Livestock utilization is declining because cattle are not adequately able to utilize forage in areas with dead and down timber.

The Nicholson Salvage One Sale will produce about 891,000 board feet of dead or dying timber from three units totaling 124 acres, and requires no road construction. The Nicholson Salvage Two Sale will produce about 713,000 board feet of dead or dying timber from five units totaling 154 acres, and requires about 0.5 miles of road construction. Harvest of units in both sales will facilitate quicker movement of the area toward the desired future condition.

These salvage timber sales fit within category 4 of section 31.2 of Forest Service Handbook 1909.15. Therefore, these actions may be categorically excluded from documentation in an environmental impact statement or an environmental assessment.

The Nicholson Salvage One and Nicholson Salvage Two Timber Sales are designed to accomplish the objectives as quickly as possible and minimize the amount of salvage volume lost: To expedite these salvage sales and the accompanying work, these salvage sales are exempt from appeal (36 CFR part 217). Under this Regulation, the following is exempt from appeal:

> Decisions related to rehabilitation of National Forest System lands and recovery of forest resources resulting from natural disasters or other natural phenomena, such as wildfires * * * when the Regional Forester * * * determines and gives notice in the **Federal Register** that good cause exists to exempt such decisions from review under this part.

After publication of these notices in the **Federal Register**, these Decision Memos for the Nicholson Salvage One and Nicholson Salvage Two Timber Sales may be signed by the Tonasket District Ranger. Therefore, this project will not be subject to review under 36 CFR part 217.

Dated: January 5, 1993.

Richard A. Ferraro,

Deputy Regional Forester.

[FR Doc. 93–846 Filed 1–13–93; 8:45 am]

BILLING CODE 3410–11–M

Exemption of Boulder Salvage Units 7 and 9 From Appeal, Willamette National Forest, OR

AGENCY: Forest Service, USDA.

ACTION: Notice to exempt decisions from administrative appeal.

SUMMARY: This is a notification that the decision to implement Boulder Salvage Units 7 and 9 in the area of Boulder Creek on the Willamette National Forest is exempted from appeal. This is in conformance with provisions of 36 CFR Part 217(a)(11) as published in the **Federal Register** on January 23, 1989 (54 FR 3342).

EFFECTIVE DATE: January 14, 1993.

FOR FURTHER INFORMATION CONTACT: Darrel L. Kenops, Forest Supervisor, Willamette National Forest, P.O. Box 10607, Eugene, Oregon 97440, Phone (503) 456–6517.

SUPPLEMENTARY INFORMATION: In 1990 an intense, localized, windstorm caused extensive blow down in the Boulder Creek area. This blown-down material was included in the Boulderdash Timber Sale analysis which also included green (live), standard volume. The green non-thinning portion of Boulderdash analysis area is in Northern spotted owl habitat and therefore under injunction. A decision was made to proceed with a Decision Notice on the non-spotted owl habitat portion of the Boulderdash Timber Sale so it could be offered for sale immediately. The Decision Notice will contain two separate sales: (1) Estep Thin, which is the commercial thinning portion and (2) Boulder Salvage, which is the salvage portion (Units 7 and 9). Boulder Salvage also contains one overstory removal unit (Unit 4). Exemption from appeal of Boulder Salvage Units 7 and 9 is needed to facilitate the rapid removal of the material to reduce commercial loss of the wood products; reduce the potential for catastrophic loss from wildfire; and to help reduce the spread of insect infestation and disease.

The interdisciplinary Team (IDT) began the analysis of the impacts of this project during a meeting held December 5, 1990. After the completion of the scoping process, which included mailings of the public and contacts with individuals, State, and other Federal Agencies four significant issues were identified:

(1) Habitat diversity;
(2) Big game habitat quality;
(3) Timber supply and yield; and
(4) Hydrologic recovery.

The IDT developed four alternatives which were considered in detail, including the No-Action Alternative. The effects of these alternatives are disclosed in an environmental assessment, which was prepared for the original proposal. The Boulder Salvage Units 7 and 9 portion of the analysis (Alternative C) includes 19 acres of salvage producing 420,000 board feet of timber. Approximately .3 mile of new road will be constructed and .8 mile of existing road will be closed following harvest activities. No Pacific yew exists in the harvest units. Only Unit 9 will require replanting.

The Boulder Salvage Units 7 and 9 portion of alternative C is designed to accomplish the objectives as quickly as possible, to minimize the loss of wood value, and enhance resource protection. To expedite this salvage sale and accompanying work, this salvage sale is exempted from appeal (36 CFR part 217). Under this Regulation, the following is exempt from appeal:

> Decision related to the rehabilitation of National Forest System lands and recovery of forest resources resulting from natural disasters or other natural phenomena, such as wildfires * * * when the Regional Forester * * * determines and gives notice in the **Federal Register** that good cause exists to exempt such decisions from review under this part.

After publication of this notice in the **Federal Register** this Decision Notice

for the Boulder Salvage Units 7 and 9 may be signed by the forest Supervisor. Therefore, this project will not be subject to review under 36 CFR part 217

Dated: January 5, 1993.

Richard A. Ferraro,

Acting Regional Forester.

[FR Doc. 93–843 Filed 1–13–93; 8:45 am]

BILLING CODE 3410–11–M

Oregon Dunes National Recreation Area Management Plan, Siuslaw National Forest, Coos, Douglas, and Lane Counties, OR

AGENCY: Forest Service, USDA.

ACTION: Revision of a notice of intent to prepare environmental impact statement.

SUMMARY: The Forest Service published on June 17, 1991 a Notice of Intent (56 FR 27728) to prepare a Supplement to the 1990 Final Environmental Impact Statement (EIS) for the Siuslaw National Forest Land and Resource Management Plan, Oregon, which would consider a range of alternatives for managing the Oregon Dunes National Recreation Area (NRA). Any change in management direction for the Oregon Dunes NRA will result in amending the Forest Plan. A draft EIS was to have been available in July 1992, and the Responsible Official was to have been the Regional Forester, Pacific Northwest Region.

Following preliminary scoping and environmental analysis, it was determined that the draft proposed action is not expected to significantly alter the goals and objectives for long-term land and resource management of the Siuslaw National Forest. The proposed action is also not expected to have an important effect on the land and resources throughout a large portion of the Forest planning area or significantly alter the long-term relationship between levels of goods and services originally projected. Therefore, the amendment to the Forest Plan will be non-significant and the Responsible Official will be the Forest Supervisor of the Siuslaw National Forest.

At this time the draft EIS is scheduled to be available for public review in March 1993. The final EIS is expected to be published in September 1993.

FOR FURTHER INFORMATION CONTACT:

Questions and comments about this draft EIS should be directed to Edwin Becker, Area Ranger, Oregon Dunes National Recreation Area, 855 Highway Avenue, Reedsport, OR 97467, phone (503) 271–3611.

Dated: January 6, 1993.

Tony Vander Heide,

Strategic Planning & Analysis Staff Officer.

[FR Doc. 93–842 Filed 1–13–93; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Minnesota Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Minnesota Advisory Committee to the Commission will be held from 9 a.m. until 5 p.m. on Monday, February 8, 1993 at the Crown Sterling Suites, 425 S. 7th Street, Minneapolis, Minnesota. The purpose of this meeting is to review the draft report, "Stereotyping of Minorities by the Media", and to discuss other civil rights issues of interest to the Advisory Committee.

Persons desiring additional information should contact Mary E. Ryland, Committee Chairperson at (218) 727–3673 or Constance M. Davis, Regional Director of the Midwestern Regional Office, U.S. Commission on Civil Rights, at (312) 353–8311. Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, January 8, 1993.

Carol Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 93–905 Filed 1–13–93; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

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

Agency: Bureau of Export Administration.

Title: Project License Procedure.

Agency Form Number: None but requirements are found at Section 773.2(c) of the Export Administration Regulations.

OMB Approval Number: 0694–0006.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 323 reporting/recordkeeping hours.

Number of Respondents: 107.

Avg Hours Per Response: 3 hours.

Needs and Uses: The Project License Procedure was developed to provide a single license for the export of commodities and/or technical data needed for large–scale overseas operations. It eliminates the necessity for the filing and processing of numerous individual export license applications.

Affected Public: Businesses or other for–profit institutions, small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Gary Waxman, (202) 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent to Gary Waxman, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Dated: January 8, 1993

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 93–956 Filed 1–13–93; 8:45 am]

BILLING CODE 3510–CW–F

International Trade Administration

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Initiation of Process of Revoke Export Trade Certificate of Review No. 85–00005.

SUMMARY: The Secretary of Commerce issued an export trade certificate of review to Comet Rice, Inc. Because this certificate holder has failed to file an annual report as required by law, the Department is initiating proceedings to revoke the certificate. This notice summarizes the notification letter sent to Comet Rice, Inc.

FOR FURTHER INFORMATION CONTACT:

George Muller, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (15 U.S.C. 4011–21) authorized the Secretary of Commerce to issue export trade certificates of review. The regulations implementing title III ("the Regulations") are found at 15 CFR part 325. Pursuant to this authority, a certificate of review was issued on May 24, 1985 to Comet Rice, Inc.

A certificate holder is required by law (Section 308 of the Act, 15 U.S.C. 4018) to submit to the Department of Commerce annual reports that update financial and other information relating to business activities covered by its certificate. The annual report is due within 45 days after the anniversary date of the issuance of the certificate of review (§§ 325.14(a) and (b) of the Regulations). Failure to submit a complete annual report may be the basis for revocation. (§§ 325.10(a) and 325.14(c) of the Regulations).

The Department of Commerce sent to Comet Rice, Inc. on May 14, 1992, a letter containing annual report questions with a reminder that its annual report was due on July 8, 1992. Additional reminders were sent on August 11, 1992, and on September 23, 1992. The Department has received no written response to any of these letters.

On January 11, 1993, and in accordance with § 325.10(c)(2) of the Regulations, a letter was sent by certified mail to notify Comet Rice, Inc. that the Department was formally initiating the process to revoke its certificate. The letter stated that this action is being taken for the certificate holder's failure to file an annual report.

In accordance with § 325.10(c)(2) of the Regulations, each certificate holder has thirty days from the day after its receipt of the notification letter in which to respond. The certificate holder is deemed to have received this letter as of the date on which this notice is published in the **Federal Register**. For good cause shown, the Department of Commerce can, at its discretion, grant a thirty-day extension for a response.

If the certificate holder decides to respond, it must specifically address the Department's statement in the notification letter that it has failed to file an annual report. It should state in detail why the facts, conduct, or circumstances described in the notification letter are not true, or if they are, why they do not warrant revoking the certificate. If the certificate holder does not respond within the specified period, it will be considered an admission of the statements contained in the notification letter (§ 325.10(c)(2) of the Regulations).

If the answer demonstrates that the material facts are in dispute, the Department of Commerce and the Department of Justice shall, upon request, meet informally with the certificate holder. Either Department may require the certificate holder to provide the documents or information that are necessary to support its contentions (Sec. 325.10(c)(3) of the Regulations).

The Department shall publish a notice in the **Federal Register** of the revocation or modification or a decision not to revoke or modify (§ 325.10(c)(4) of the Regulations). If there is a determination to revoke a certificate, any person aggrieved by such final decision may appeal to an appropriate U.S. district court within 30 days from the date on which the Department's final determination is published in the **Federal Register** (§§ 325.10(c)(4) and 325.11 of the Regulations).

Dated: January 11, 1993.

George Muller,

Director, Office of Export Trading Company Affairs.

[FR Doc. 93–958 Filed 1–13–93; 8:45 am]

BILLING CODE 3510–DR–M

Minority Business Development Agency

Business Development Center Applications: (Service Area) U.S. Virgin Islands

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) is revising the closing date cited in the Announcement to solicit Competitive Applications under its Minority Business Development Center Program to operate a U.S. Virgin Islands MBDC for a three (3) year period, starting May 1, 1993 to April 30, 1994 in the U.S. Virgin Islands SMSA. The revised new closing date is January 22, 1993. Refer to the **Federal Register** dated December 18, 1992, 57 FR 60172.

Dated: January 6, 1993.

John F. Iglehart,

Regional Director, New York Regional Office.

[FR Doc. 93–911 Filed 1–13–93; 8:45 am]

BILLING CODE 3510–21–M

National Oceanic and Atmospheric Administration

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's Coastal Pelagic Species Plan Development Team will hold a public meeting on January 27, 1993, beginning at 10 a.m. The meeting will be held in the small conference room at the National Marine Fisheries Service, Southwest Fisheries Science Center, 8604 La Jolla Shores Drive, La Jolla, California.

The purpose of this meeting is to discuss the status of the coastal pelagic species fishery management plan.

For more information contact Patricia Wolf from the California Department of Fish and Game at (213) 590–5117 or Larry Jacobson from the National Marine Fisheries Service at (619) 546–7117.

Dated: January 8, 1993.

David S. Crestin,

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

[FR Doc. 93–832 Filed 1–13–93; 8:45 am]

BILLING CODE 3510–22–M

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's Comprehensive Data Gathering Committee (Committee) will hold a public meeting on January 25, 1993, from 10 a.m. to 5 p.m., in the conference room of the Pacific States Marine Fisheries Commission, 2501 SW., First Avenue, suite 200, Portland, Oregon.

The Committee will review a draft report on the need for a program to gather fishery data from vessels at sea, as well as data that can be obtained when vessels return to port. The Committee will also discuss alternative approaches to potential funding sources and cost effectiveness of the approaches.

For more information contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, suite 420, 2000 SW., First Avenue, Portland, Oregon 97201; telephone: (503) 326–6352.

Dated: January 8, 1993.

David S. Crestin,

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

[FR Doc. 93–833 Filed 1–13–93; 8:45 am]

BILLING CODE 3510–22–M

South Atlantic Fishery Management Council; Public Meetings/Public Hearings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The South Atlantic Fishery Management Council (Council) and its Committees will hold public meetings on January 25–29, 1993, at the Holiday Inn-Melbourne Oceanfront, Indialantic, FL; telephone: (407) 777–4100.

Council

The Council session will begin on January 28 at 1:30 p.m., and on January 29 at 8:30 a.m. The Council will discuss reports and recommendations from the Committees. On January 28 at 1:45 p.m. the Council will hold a public hearing to solicit comments on Florida's request to change the Federal Special Non-Trap Recreational Spiny Lobster season to: (1) Coincide with the State season that falls on the last consecutive Wednesday and Thursday in July of each year; (2) limit harvest methods to diving and the use of bully nets; and (3) relax rules outside of Monroe County during the two-day period to divert fishing effort away from the Florida Keys area. A public hearing will be held at 2:30 p.m. to solicit comments on the 1993–94 Wreckfish total allowable catch (TAC). After reviewing reports and recommendations and public hearing comments, the Council is scheduled to approve the 1993–94 wreckfish TAC.

Committees

The Council's Scientific and Statistical Committee will meet on January 25 at 8:30 a.m. to review:

(1) Biological benefits of a possible closed season for rock shrimp;

(2) A stock assessment of the closed red drum fishery;

(3) A request from Florida to change the Federal two-day spiny lobster recreational season;

(4) A report for the 1993–94 wreckfish TAC; and

(5) An assessment report for the snapper-grouper fishery.

A public scoping meeting will be held on January 25 at 6 p.m. to solicit input on spearfishing and the use of powerheads, mechanically-propelled sleds and rebreathers to harvest species in the snapper-grouper management plan (including amberjacks).

The Snapper-Grouper Committee will meet jointly with its Advisory Panel (AP) on January 26 at 8:30 a.m. to discuss draft Amendment #6 to the Snapper-Grouper Fishery Management Plan (FMP). The Amendment could include possible quotas for amberjack, golden tilefish, blueline (grapy) tilefish, and snowy and yellowedge grouper, a definition of allowable gear, a requirement for Federal dealer permits, and a moratorium on commercial permits. The Committee and AP also will discuss marine fishery reserves as a management option for snapper and grouper.

The Committee will also meet with the Wreckfish AP at 1:30 p.m. to discuss setting the 1993–94 wreckfish TAC and the status of the fishery. At 3:30 p.m. and continuing at 8:30 a.m. on January 27, the Snapper-Grouper Committee will review reports and recommendations from the Snapper-Grouper Assessment Group, Advisory Panel and Scientific and Statistical Committee to develop a recommendation for the 1993–94 wreckfish TAC. The Committee also will further discuss Amendment #6 to the Snapper-Grouper FMP and will determine the next step in addressing marine fishery reserves.

The *Controlled Access Committee* will meet at 1:30 p.m. on January 27 to further review options for controlled access systems and effort controls for the deep-water snapper-grouper complex.

The *Shrimp Committee* is scheduled to meet at 8:30 a.m. on January 28 to make a decision on approval and submission of the Shrimp FMP to the Secretary of Commerce. The FMP would allow all individual states to request concurrent shrimping closures in adjacent Federal waters following severe winter mortality of white shrimp. The Committee also will discuss whether to proceed with an amendment to the FMP to address problems in the rock shrimp fishery. It will review an analysis of possible revenue increases associated with a closed season to allow small rock shrimp to reach a larger, more valuable size. Based on the outcome of this analysis, the Committee will recommend to the Council whether or not to proceed with an amendment.

A detailed agenda with specific meeting times is available to the public. For more information contact Carrie Knight, Public Information Officer, South Atlantic Fishery Management Council, One Southpark Circle, suite 306; Charleston, SC 29407–4699, telephone: (803) 571–4366.

Dated: January 7, 1993.

David S. Crestin,

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

[FR Doc. 93–834 Filed 1–13–93; 8:45 am]

BILLING CODE 3510–22–M

COMMODITY FUTURES TRADING COMMISSION

Chicago Mercantile Exchange and Intermarket Clearing Corp.; Proposals Implementing Additional Cross-Margining Programs

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed contract market and clearing organization rule changes.

SUMMARY: The Chicago Mercantile Exchange ("CME") and The Intermarket Clearing Corporation ("ICC") have submitted proposals which would allow the CME and ICC to expand their cross-margining systems. Under these proposals, the ICC and CME plan on entering into an agreement with The Options Clearing Corporation ("OCC") to accommodate both "bilateral" cross-margining between CME and ICC and "trilateral" cross-margining among CME, ICC and OCC. The proposed cross-margining programs would operate in the same basic way as the existing CME–OCC program.

Acting pursuant to the authority delegated by Commission Regulation 140.96, the Director of the Division of Trading and Markets, with the concurrence of the General Counsel, has determined, on behalf of the Commission, that publication of these proposals is in the public interest and will assist the Commission in considering the views of interested persons. Accordingly, the Division, on behalf of the Commission, is publishing the proposals for public comment.

DATES: Comments must be received on or before February 16, 1993.

FOR FURTHER INFORMATION CONTACT: Elizabeth Patterson, Special Counsel, or Christopher Bowen, Attorney-Advisor, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone: (202) 254–8955.

SUPPLEMENTARY INFORMATION:

I. Introduction

By a letter dated September 21, 1992, ICC submitted, pursuant to section 5a(12) of the Act and Commission

Regulation 1.41(b), a proposal to enter into a cross-margining agreement with the OCC and CME to accommodate the same bilateral and trilateral cross-margining. Similarly, by letter dated December 3, 1992, the CME, pursuant to section 5a(12) of the Commodity Exchange Act ("Act") and Commission Regulation 1.41(b), submitted to the Commission a proposal to establish a bilateral cross-margining agreement with ICC and a trilateral cross-margining agreement with ICC and OCC.

In sum, the bilateral program between CME and ICC would involve the margining of ICC-cleared stock index futures and commodity options on stock-index futures and CME-cleared stock-index futures and commodity options on stock-index futures carried in proprietary and non-proprietary cross-margining accounts. The trilateral program would involve the margining of such ICC-cleared and CME-cleared contracts along with OCC-cleared stock-index options carried in proprietary and non-proprietary cross-margining accounts.

According to CME and ICC, the purpose of the proposal is to expand the universe of available hedge positions and thereby to encourage wider participation in cross-margining.

II. Request for Comments

Acting pursuant to the authority delegated by Commission Regulation 140.96, the Director of the Division of Trading and Markets, with the concurrence of the General Counsel, has determined, on behalf of the Commission, that publication of the proposals is in the public interest and will assist the Commission in considering the views of interested persons. Accordingly, the Division, on behalf of the Commission, is publishing the proposals for public comment. The Commission requests comments on any aspects of the proposals that members of the public believe may raise issues under the Act or Commission regulations.

Copies of the CME and ICC submissions are available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies may also be obtained through the Office of the Secretariat at the above address or by telephoning (202) 254–6314.

Any person interested in submitting written data, views or comments on the proposals should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581 by the specified date.

Issued in Washington, DC on January 11, 1993.

Alan Seifert,

Deputy Director, Division of Trading and Markets.

[FR Doc. 93–883 Filed 1–13–93; 8:45 am]

BILLING CODE 6351–01–M

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Resolution of Potential Conflict of Interest

The Defense Nuclear Facilities Safety Board (Board) has identified and resolved a potential conflict of interest situation in connection with the employment of Dr. Sol Pearlstein (Dr. Pearlstein) as Physicist in a full-time, two-year appointment. During his employment by the Board, Dr. Pearlstein will remain on a unpaid leave of absence from Brookhaven National Laboratories (BNL), where he is employed in a permanent position by Associated Universities, Inc. (AUI), the operator of BNL. Because BNL is owned by the Department of Energy (DOE), Dr. Pearlstein's continued association with BNL while he is employed by the Board might create an appearance of a conflict of interest or potential conflict of interest with respect to his indirect association with DOE. (Dr. Pearlstein has recused himself from particular matters before the Board involving AUI or BNL.)

Under the Board's Organizational and Consultant Conflict of Interest Regulations, 10 CFR part 1706 (OCI Regulations), the Board may engage National Laboratories personnel who have the expertise needed by the Board in the performance of its oversight responsibilities, where there is no conflict of interest or where the Board determines that such engagement is in the best interest of the Government and waives the conflict. The OCI Regulations require that in all cases involving National Laboratory personnel, notice of the circumstances of the contract, stating the rationale for use of the personnel, must be published in the **Federal Register**. Under the OCI Regulations, an organizational or consultant conflict of interest means, in relevant part, that because of other past, present or future planned activities or relationships, a contractor or consultant is unable, or potentially unable, to render impartial assistance or advice to the Board, or the objectivity of such contractor or consultant in performing contract work for the Board is or might be otherwise impaired. Because Dr. Pearlstein will remain an employee of BNL while employed by the Board, the Board has determined to comply with the OCI Regulations, even through Dr. Pearlstein is a Board employee and not a Board contractor or consultant.

Based on a comprehensive review of Dr. Pearlstein's situation, including the terms of his leave of absence from AUI/BNL, the work he performed at BNL, and the type of work he is likely to perform for the Board, the Board has determined that a conflict of interest between Dr. Pearlstein's employment at a DOE-owned national laboratory and his work for the Board is not likely to arise for the following reasons.

First, the work that Dr. Pearlstein was performing at BNL or is likely to do after his work for the Board is not directly related to the Board's work on defense nuclear facilities under the Board's jurisdiction, with one exception described below. The Board understands that most of the funding at BNL is provided by non-defense sources, including the Nuclear Regulatory Commission and non-defense programs in DOE, and that the DOE Office of Energy Research, which is not engaged in defense-related work, is primarily responsible for oversight at BNL. Because BNL does little or no work for the defense nuclear facilities, it is unlikely that the Board will be examining any of the programs at BNL. Dr. Pearlstein himself has not worked on projects administered by DOE-Defense Programs, nor has he worked on matters involving the defense nuclear facilities. In general, the kind of work that Dr. Pearlstein conducted at BNL consisted of preparing reference data to be used throughout the nuclear community, rather than work specifically oriented to benefit DOE only. Dr. Pearlstein's position at BNL prior to joining the Board was as Director of the National Nuclear Data Center, where he was responsible for the indexing, compilation, evaluation, distribution and international exchange of nuclear data, data benchmark calculations, management of the main-frame computer systems, and coordination of inter-laboratory data evaluation working groups. The only program Dr. Pearlstein was involved at BNL that might have fallen under the Board's jurisdiction was the Accelerator Production of Tritium project, funded by the Office of Alternative Technologies in the DOE Office of New Production Reactors, which Dr. Pearlstein worked on during the six months prior to his joining the Board's technical staff. He work on that project involved performing comparisons between theory and experiment to validate nuclear data and developing

the Annual Operating Plan. To date, the Board has not examined DOE's new production reactors programs, many of which have been terminated as a result of the Secretary of Energy's decision not to proceed with a new production reactor. If the Board does undertake oversight activities with respect to the Accelerator Production of Tritium project in the future, the Board and the Technical Director will not permit Dr. Pearlstein to participate in that work as a Board employee and will screen Dr. Pearlstein's work for the Board to ensure that he is not reviewing his own previous work at BNL or the work that BNL is doing on the project. In short, Dr. Pearlstein will not be called upon to review his own previous work while he is at the Board, and the Board does not think that a conflict of interest with Dr. Pearlstein's work for the Board will otherwise arise out of the type of work he performed at BNL.

The Board has also considered the issue of whether Dr. Pearlstein's ability to take an impartial, objective view of the activities of DOE and its contractors at the defense nuclear facilities under the Board's jurisdiction would be impaired as a result of his continuing association with AUI/BNL and thus indirectly with DOE. In evaluating this issue, the Board has considered the terms of Dr. Pearlstein's leave of absence, as well as the role DOE plays in funding Dr. Pearlstein's work at AUI/BNL. (The following evaluation of the potential for retaliatory action by AUI/BNL, DOE or others in determining whether Dr. Pearlstein's ability to give impartial advice to the Board might be impaired by his continuing relationship with AUI/BNL is part of the Board's effort to consider all possible sources of conflict of interest, but is not intended to suggest that AUI/BNL, DOE, the Secretary of Energy or any particular DOE or AUI/BNL employee would in fact act inappropriately with respect to any Board employee.) According to information received from officials at BNL, Dr. Pearlstein is effectively, if not formally, guaranteed a job at BNL, though not necessarily the same position he held previously, on return from his leave of absence, unless there is such a serious funding problem at BNL that there is no appropriate position for him in any area of BNL. Even if funding for the programs Dr. Pearlstein had worked in were cut or eliminated, the Board has been informed by BNL personnel that BNL would try to find another appropriate position for Dr. Pearlstein, such as in the area that does work for the Nuclear Regulatory Commission. The Board was further informed that it is very unusual for BNL to terminate an employee with a continuing appointment, such as Dr. Pearlstein holds, for reasons of financial exigency. Thus, in the Board's view, Dr. Pearlstein should not fear that his actions as a Board employee with respect to defense nuclear facilities would cause BNL to refuse to allow him to return. Moreover, Dr. Pearlstein apparently is already eligible for retirement from BNL and is fully vested in the defined contribution pension plan, so that his entitlement to those benefits would not be jeopardized even if he were not to return to BNL.

The Board also thinks it very unlikely that DOE might try to retaliate against Dr. Pearlstein for any criticism of DOE by not renewing the funding for the civilian programs at BNL that Dr. Pearlstein has worked on or is likely to work on, or by refusing to approve his salary at BNL after his leave of absence at the level existing prior to his Board service. The program areas of DOE that have funded most of Dr. Pearlstein work at BNL (other than the Accelerator Production of Tritium project, which he could not be involved in at the Board) should not be interested in positions he takes at the Board with respect to defense nuclear facilities. Moreover, to retaliate against Dr. Pearlstein by reducing funding for programs he might be involved in after returning to BNL, DOE would have to justify cutting funding for information collection programs it generated and has supported for years, at a facility it owns. Lastly, the credibility of Dr. Pearlstein's work at the National Nuclear Data Center at BNL, where he directed a group of scientists in evaluating and validating data obtained from other laboratories and other research and maintaining an information center with valid data, depends to a great extent on his reputation for having both knowledge of science and professional integrity. For DOE to take actions that might impugn Dr. Pearlstein's professional integrity would undermine the credibility of work at BNL that DOE itself sponsors.

At the Board, Dr. Pearlstein will also be evaluating scientific data contained in complex safety evaluations prepared by DOE and its contractors. He probably will not become heavily involved in evaluating and critiquing operations at the defense nuclear facilities, because he does not have expertise in those areas. His interactions with DOE will concern scientific and mathematical matters. Although the Board expects Dr. Pearlstein's work to be useful in advancing the Board's mission, the Board does not believe that it is the type of work that should pit Dr. Pearlstein against DOE or cause personal or institutional animosity.

Consequently, the Board does not think it warranted to question the ability of a senior scientist of Dr. Pearlstein's stature and expertise, whose ability to return to BNL is assured in all but the most dire financial circumstances, to give objective advice to the Board or to keep his professional judgment from being colored by fears of retaliation that is highly unlikely. Moreover, Dr. Pearlstein will be working directly for a Board member or under the supervision of the Technical Director and will not be taking any final actions himself, so that any question of impartiality arising in Dr. Pearlstein's case would be mitigated. It is ultimately the Board members, rather than the members of the Board's technical staff, who make significant decisions and take Federal action on behalf of the Board.

Even in a case where there is an actual or potential conflict of interest, under the Board's OCI Regulations, the Chairman has the authority to waive that conflict. The Chairman has determined in the case of Dr. Pearlstein that even if a conflict of interest or question of lack of impartiality could be said to exist, it is in the best interests of the Government to waive that conflict and permit Dr. Pearlstein's employment by the Board. There is no one else on the Board's technical staff who has a broad and extensive background in evaluating nuclear physics data, particularly in the area of nuclear applications. Dr. Pearlstein has extensive experience in looking at physics data and evaluating its integrity. Although the Board has engaged in extensive recruiting efforts, no one else with Dr. Pearlstein's kind of experience has joined the technical staff. The Board and the Technical Director for the Board are of the opinion that Dr. Pearlstein's expertise and experience are important in facilitating the accomplishment of the Board's mission, particularly in the area of reactor facilities. In the opinion of one of the Board members who has worked with Dr. Pearlstein before, Dr. Pearlstein, because of the breadth of this experience in evaluating data developed in research by other scientists, has an ability to synthesize scientific data from many sources to find solutions to complex and novel problems. The Board believes that it needs some senior technical staff members with that depth of experience and ability.

Consequently, even if there is a remote theoretical possibility that Dr. Pearlstein's continued association with BNL might create a conflict of interest, a waiver of the conflict is justified as

being in the best interests of the Government, and has been approved by the Chairman of the Board.

Dated: January 7, 1993.

Julie Kitzes Herr,

Associate General Counsel.

[FR Doc. 93–802 Filed 1–13–93; 8:45 am]

BILLING CODE 6820–KD–M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

AGENCY: Department of Defense.

ACTION: Notice.

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

Title, Applicable Form, and Applicable OMB Control Number: Tender of Service and Letter of Intent for Personal Property Household Goods and Unaccompanied Baggage Shipments; OMB Control Number 0702–0022.

Type of Request: Reinstatement.

Average Burden Hours/Minutes Per Response: 1 hr., 22 minutes.

Responses Per Respondent: 18.

Number of Respondents: 18,072.

Annual Burden Hours: 22,048.

Annual Responses: 18,072.

Needs and Uses: Since household goods move at government expense, data is needed to choose the best service at least cost. The information provided amounts to a bid for contract to transport household goods and unaccompanied baggage. The service for least cost carrier receives the contract.

Affected Public: Business of other for-profit.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce.

Written requests for copies of the information collecuon proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, Virginia 22202–4302.

Dated: January 11, 1993.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–854 Filed 1–13–93; 8:45 am]

BILLING CODE 3810–01–M

Office of the Secretary

Strategic Environmental Research and Development Program, Scientific Advisory Board

ACTION: Notice.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee meeting:

DATE OF MEETING: Wednesday, January 27, 1993, and Thursday, January 28, 1993, 8 a.m. to approximately 5 p.m.

PLACE: Main Auditorium, National Guard Building, One Massachusetts Avenue, NW., Washington, DC.

MATTERS TO BE CONSIDERED: The Scientific Advisory Board will hold management sessions, will receive an overview of the six SERDP Technology thrust areas, and will review Phase III proposals that are equal to or in excess of $1M. Representatives from DoD, DOE, and EPA will provide briefings on the overviews and individual projects.

This meeting is open to the public. Any interested person may attend, appear before, or file statements with the Scientific Advisory Board at the time and in the manner permitted by the Board.

FOR FURTHER INFORMATION CONTACT: Dr. John Ingram, CERD–M, room 6213, 20 Massachusetts Avenue, NW., Washington, DC 20314–1000, 202–272–1843.

Dated: January 11, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–853 Filed 1–13–93; 8:45 am]

BILLING CODE 3810–01–M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

The Boost Phase Panel of the USAF Scientific Advisory Board's Committee on Options for Theater Air Defense will meet on 11–12 February 1993, at Kirtland AFB, Albuquerque, NM from 8 a.m. to 5 p.m.

The purpose of these meetings will be to receive briefings and gather information on issues related to theater air defense.

The meeting will be closed to the public in accordance with section 552b(c) of title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–4811.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 93–819 Filed 1–13–93; 8:45 am]

BILLING CODE 3910–01–M

USAF Scientific Advisory Board Meeting

The Cruise Missile Panel of the USAF Scientific Advisory Board's Committee on Options for Theater Air Defense will meet on 19 February 1993, at the ANSER Corporation, 1215 Jefferson Davis Highway, Arlington, VA from 8 a.m. to 5 p.m.

The purpose of this meeting will be to receive briefings and gather information on issues related to theater air defense.

The meeting will be closed to the public in accordance with section 552b(c) of title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–4811.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 93–820 Filed 1–13–93; 8:45 am]

BILLING CODE 3910–01–M

USAF Scientific Advisory Board; Meeting

The Pre-Launch Panel of the USAF Scientific Advisory Board's Committee on Options for Theater Air Defense will meet on 11 February 1993, at The ANSER Corporation, 1215 Jefferson Davis Highway, Arlington, VA from 8 a.m. to 5 p.m.

The purpose of this meeting will be to gather information on issues related to theater air defense capabilities, and requirements for theater air defense through the year 2020.

The meeting will be closed to the public in accordance with section 552b(c) of title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–4811.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 93–821 Filed 1–13–93; 8:45 am]

BILLING CODE 3910–01–M

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board's Committee on IR Countermeasures and Self Defense Against IR Missiles will meet on 16 February 1993, at The ANSER Corporation, Crystal Gateway 3, 1215 Jefferson Davis Highway, Arlington, VA from 8 a.m. to 5 p.m.

The purpose of this meeting is to receive briefings, gather information for the study.

The meeting will be closed to the public in accordance with section 552b(c) of title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–4811.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 93–822 Filed 1–13–93; 8:45 am]

BILLING CODE 3910–01–M

Department of the Army

Environmental Impact Statement (EIS) for the Reuse and Disposal of Hamilton Army Airfield, CA

AGENCY: Department of Defense, United States Army.

ACTION: Notice of intent.

SUMMARY: This Environmental Impact Statement (EIS) will evaluate alternative methods of implementing the Commission's decision to close Hamilton Army Airfield (HAAF), including alternative reuses of the disposed property. Development of the potential alternative reuses of the disposed property will be made in conjunction with the local communities and Department of Defense, Office of Economic Adjustment. As required by the National Environmental Policy Act of 1969, the Army will also analyze the "no action" alternative as a baseline for gauging the impacts of the disposal and reuse. Public Law 100–526 (BRAC I), the Defense Base Closure and Realignment Act of 1988, mandates the closure of Hamilton Army Airfield, California. The Army is required by law to analyze the environmental and socioeconomic impacts of the disposal and reuse of real property at HAAF. An EIS will be prepared to analyze and document the impacts of disposal and reuse.

Scoping: The public will be invited to participate in the scoping process, review of the draft EIS, and a public hearing. The location and time of the scoping meeting, to be scheduled during January 1993, will be announced in the local news media. Release of the draft EIS for public comment and the public meeting will also be announced in the local news media as these dates are established.

ADDRESSES: Written comments may be forwarded to: Mr. Bob Koenigs, U.S. Army Corps of Engineers, Sacramento District, CESPK–PD–R, 1325 J Street, Sacramento, California 95814–2922.

FOR FURTHER INFORMATION CONTACT: Questions regarding this action may be directed to Mr. Bob Koenigs, (916) 557–6712.

Lewis D. Walker,

Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health) OASA (I,L&E).

[FR Doc. 93–806 Filed 1–13–93; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Environment, Safety and Health Advisory Committee Reestablishment

Pursuant to section 9(a)(2) of the Federal Advisory Committee Act and in accordance with title 41 of the Code of Federal Regulations, section 101–6.1015, and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the Environment, Safety and Health Advisory Committee (ESHAC) has been reestablished for a 2-year period. The Committee would provide advice to the Assistant Secretary for Environment, Safety and Health.

The Committee will continue to operate in accordance with the provisions of the Federal Advisory Committee Act, the Department of Energy Organization Act (Pub. L. 95–91), and rules and regulations issued in implementation of those Acts.

Further information regarding this Committee may be obtained from Rachel Murphy at (202) 586–3279.

Issued in Washington, DC on January 8, 1993.

Howard H. Raiken,

Advisory Committee, Management Officer.

[FR Doc. 93–938 Filed 1–13–93; 8:45 am]

BILLING CODE 6450–01–M

Bonneville Power Administration

Proposed Transmission Rate Adjustment, Public Hearing, and Opportunities for Public Review and Comment

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice and Opportunities for Review and Comment. *BPA File No:* TR–93.

BPA requests that all comments and documents intended to become part of the Official Record in this process contain the file number designation TR–93.

SUMMARY: The Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act) provides that BPA must establish and periodically review and revise BPA's rates so that they are adequate to recover, in accordance with sound business principles, the costs associated with the acquisition, conservation, and transmission of electric power, and to recover the Federal investment in the Federal Columbia River Power System (FCRPS) and other costs incurred by BPA. BPA is proposing to revise its transmission rate schedules to be effective October 1, 1993, through September 30, 1995, to produce sufficient revenues for BPA to meet its statutory requirements for Fiscal Year (FY) 1994 and FY 1995.

Through its Programs in Perspective (PIP) public review process conducted during the summer of 1992, BPA and interested parties completed a thorough review of BPA's programs and program cost levels included in the budgets for FY 1994 and FY 1995. With the exception of program levels delineated in this Notice, the Administrator will not reexamine program level decisions in the rate case. The PIP process also focused on BPA's proposed 10-Year Financial Plan and its attendant financial policies. Consistent with BPA's pledge at the end of the 1991 rate case, implementation of the 10-Year Financial Plan will be addressed in this rate case.

Beginning in August 1992, BPA conducted a series of workshops on subjects relevant to BPA's ratemaking. The purpose of the workshops was to identify, simplify, and reduce the number of issues that might become part of the 1993 rate case and to reduce the amount of discovery normally required during the formal rate proceedings. Opportunity was provided to address 10-Year Financial Plan implementation issues and to understand risk analysis, revenue requirement, revenue forecast,

and ratesetting policy choices, data inputs, assumptions, and modeling. All parties to the 1991 rate case, and participants in prior workshops, were invited to attend the workshops. The workshops were well attended and provided opportunities for informal public comment on issues prior to the formal hearing process.

BPA is proposing a new transmission rate schedule, the Southern Intertie Annual Cost (AC–93) rate. The AC–93 rate will be available to parties the execute Pacific Northwest AC Intertie Capacity Ownership Agreements.

BPA is assessing the potential environmental effects of its initial rate proposal as required by the National Environmental Policy Act (NEPA). BPA intends to circulate its NEPA analysis for review and comment. Comments will be received outside the formal hearing process, but will be included in the record and considered by the Administrator in making his final decision establishing BPA's 1993 rates.

Opportunities will be available for interested persons to review BPA's proposal to adjust its 1993 rates, to participate in the rate hearing, and to submit written comments. During the development of the final rate proposal, BPA will evaluate all written and oral comments received in the rate proceeding. Consideration of comments and more current data may result in the final rate proposal differing from the rates proposed in this Notice.

Responsible Official: Mr. Sydney D. Berwager, Director, Division of Contracts and Rates, is the official responsible for the development of BPA's rates.

DATES: Persons wishing to become a formal "party" to the proceedings must notify BPA in writing of their intention to do so in accordance with requirements states in this Notice. Petitions to intervene must be received by January 25, 1993, and should be addressed as follows: Hearing Officer, c/o Kathryn Silva—APR, Hearing Clerk, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212. In addition, a copy of the petition must be served concurrently on BPA's Office of General Counsel—APR, c/o Kurt R. Casad, P.O. Box 3621, Portland, Oregon 97208. Persons who have been denied party status in any past BPA rate proceeding shall continue to be denied party status unless they establish a significant change of circumstances.

A prehearing conference will be held before the Hearing Officer at 9 a.m. on January 28, 1993, in the BPA Rates Hearing Room located at 2032 Lloyd Center, Portland, Oregon. Registration for the prehearing conference will begin at 8:30 a.m. BPA will prefile studies and testimony at the prehearing conference. The Hearing Officer will act on all intervention petitions and oppositions to intervention petitions, rule on any motions, establish additional procedures, establish a service list, establish a procedural schedule, and consolidate parties with similar interests for purposes of filing jointly sponsored testimony and briefs and for expediting any necessary cross-examination. A notice of the dates and times of any hearings will be mailed to all parties of record. Objections to orders made by the Hearing officer at the prehearing conference must be made in person or through a representative at the prehearing conference.

BPA will be conducting public field hearings. The following are tentative dates and locations:

February 10, 1993
Federal Bldg. Auditorium, 825 Jadwin Ave., Richland, WA 99352

February 11, 1993
Shilo Inn, 780 Lindsey Blvd., Idaho Falls, ID 83402

February 16, 1993
Best Western Landmark Inn, 4300 200th St. SW., Lynnwood, WA 98036

February 17, 1993
Red Lion, 205 Coburg Rd., Eugene, OR 97401

February 18, 1993
Ridpath Hotel, West 515 Sprague Ave., Terrace Room A&B, Spokane, WA 99204

When BPA holds public field hearings, written transcripts are made and included in the official record. Dates of these hearings also will be announced through mailings and public advertising.

The following proposed schedule is provided for informational purposes. A final schedule will be established by the Hearing Officer at the prehearing conference.

January 25, 1993
Deadline for interventions to be filed with Hearing Clerk at above address.

January 28, 1993
Initial studies and testimony available at BPA's Rates Hearing Room, 2032 Lloyd Center, Portland, Oregon and BPA's Public Information Center, 905 NE. 11th, 1st Floor, Portland, Oregon.

January 28, 1993
Prehearing conference to set schedule and act on petitions to intervene.

March 2, 1993
Parties file direct cases.

March 15, 1993
Close of comments by participants.

April 5, 1993
Rebuttal testimony filed.

April 12–16, 1993
Settlement discussions.

April 26–May 12, 1993
Cross-examination.

June 25, 1993
Draft Record of Decision published.

August 2, 1991
Final Record of Decision published.

ADDRESSES: Written comments by participants must be received by March 15, 1993, to be considered in the Draft Record of Decision (ROD). Written comments should be submitted to the Public Involvement Manager—ALP, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212.

FOR FURTHER INFORMATION CONTACT: Ms. Shirley Price, Public Involvement Office, at the address listed above, 503–230–3478 or call toll-free 1–800–622–4519. Information may also be obtained from:

Mr. George Bell, Lower Columbia Area Manager, suite 243, 1500 Plaza Building, 1500 NE. Irving Street, Portland, Oregon 97232, 503–230–4552.

Mr. Robert N. Laffel, Eugene District Manager, room 206, 211 East Seventh Avenue, Eugene, Oregon 97401, 503–465–6952.

Mr. Wayne R. Lee, Upper Columbia Area Manager, room 561, 920 West Riverside Avenue, Spokane, Washington 99201, 509–353–2518.

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406–329–3060.

Ms. Carol Fleischman, Spokane District Manager, room 112, U.S. Courthouse, 920 West Riverside, Spokane, Washington 99201, 509–353–3279.

Mr. Ronald K. Rodewald, Wenatchee, District Manager, room 307, 301 Yakima Street, Wenatchee, Washington 98807–0741, 509–662–4377, extension 379.

Mr. Terence G. Esvelt, Puget Sound Area Manager, P.O. Box C19030, suite 400, 201 Queen Anne Avenue North, Seattle, Washington 98109, 206–553–4130.

Mr. Thomas V. Wagenhoffer, Snake River Area Manager, 101 West Poplar, Walla Walla, Washington 99362, 509–522–6226.

Ms. C. Clark Leone, Idaho Falls District Manager, 1527 Hollipark Drive, Idaho Falls, Idaho 83401, 208–523–2706.

Mr. James Normandeau, Boise District Manager, room 450, 304 N. 8th Street, Boise, Idaho 83702, 208–334–9137.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

On December 18, 1992, in order to satisfy contractual provisions between BPA and its customers, BPA published in the **Federal Register** a notice of "Intent to Revise Transmission Rates to Become Effective October 1, 1993," 57 FR 60179. Since then, BPA has continued to study the adequacy of its current rates and has concluded that current rates must be adjusted for the FY 1994 and FY 1995 rate period.

In order to assess its current rates, BPA first determined the amount of revenues required to meet its financial obligations in FY 1994 and FY 1995. BPA has determined that the revenues BPA would expect to collect from projected sales under its current rates will not adequately recover these revenue requirements. Therefore, BPA proposes to establish revised 1993 transmission rates. BPA files its rates with the Federal Energy Regulatory Commission (FERC) for confirmation and approval.

The proposed transmission rates were prepared in accordance with BPA's statutory authority to develop rates, including the Bonneville Project Act of 1937, as amended, 16 U.S.C. 832 (1982); the Flood Control Act of 1944, 16 U.S.C. 825s (1982); the Federal Columbia River Transmission System Act (Transmission System Act), 16 U.S.C. 838 (1982); the Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. 839 (1982); and the Energy Policy Act of 1992, Public Law No. 102–486, 106 Stat. 2776 (1992).

The rate schedules contained in this publication were established in accordance with the Northwest Power Act, which was signed into law on December 5, 1980. The proposed rate schedules reflect many requirements contained principally in the Northwest Power Act's rate directives (section 7) and the conditions related to classes of customers and services contained in the Northwest Power Act's power sales directives (section 5).

BPA proposes that its transmission rate schedules and the General Transmission Rate Schedule Provisions (GTRSPs) associated with those schedules become effective upon interim approval or upon final confirmation and approval by FERC. BPA will request FERC approval effective October 1, 1993. Section I.A. of the GTRSPs specifies the proposed-effective period for each rate.

The 1993 transmission rate schedules,and the GTRSPs associated with those rate schedules, supersede BPA's 1991 rate schedules (which became effective October 1, 1991) to the extent stated in the Availability section of each 1993 rate schedule. BPA will request extension of the TGT–1, UFT–83, and FPT–91.3 rates through September 30, 1995. BPA also proposes to extend its MT–91 rate schedule. The levels in this schedule were approved by FERC in a separate process.

Many transmission agreements were negotiated prior to the Transmission System Act and reflect conditions and policies prevalent at the time of negotiation. Provisions that differ between agreements include the types of facilities available, type of service, frequency of rate adjustments, determination of losses, and calculation of billing determinants. Some agreements, for example, specify that transmission rates may be changed annually, while other agreements limit rate adjustments to once every 3 years.

Applicable legislation requires transmission system costs to be equitably allocated between Federal and non-Federal power utilizing the system. In cases where BPA is required by contractual provisions to use a specific rate design method, such methods are used in this rate proposal.

In developing the proposed transmission rates, BPA considered many factors, including revenue requirements, ease of administration, revenue stability, rate continuity, ease of comprehension, and BPA's statutory obligations. The studies that have been prepared to support the proposed transmission rates will be available for examination on January 28, 1993, at BPA's Public Information Center, BPA Headquarters Building, 1st Floor, 905 NE. 11th, Portland, Oregon. The studies will be mailed to all parties to BPA's 1991 rate case and will be available at the prehearing conference. The studies are:

1. Loads and Resources Study and Documentation
2. Revenue Requirement Study and Documentation
3. Segmentation Study
4. Wholesale Power Rate Development Study and Documentation
5. Section 7(b)(2) Rate Test Study and Documentation
6. Transmission Rate Design Study

To request any of the studies by telephone, call BPA's document request line: (503) 230–3478 or call toll-free 1–800–622–4520. Please request the study by its above-listed title. Also state whether you require the accompanying documentation (this can be quite lengthy); otherwise the study alone will be provided. (For example, ask for the "Revenue Requirement Study and Documentation.")

II. Procedures Governing Rate Adjustments and Public Participation

Section 7(i) of the Northwest Power Act, 16 U.S.C. 839e(i), requires that BPA's rates be established according to certain procedures. These procedures include, among other things, issuance of a **Federal Register** notice announcing the proposed rates; one or more hearings; the opportunity to submit written views, supporting information, questions, and arguments; and a decision by the Administrator based on the record. This proceeding will be governed by BPA's rule for general rate proceedings, § 1010.9 of BPA's "Procedures Governing Bonneville Power Administration Rate Hearings," 51 FR 7611 (March 5, 1986). These procedures implement the statutory section 7(i) requirements. Section 1010.7 of the procedures prohibits ex parte communications. The proceeding for BPA's proposal to adjust transmission rates will be combined with the proceedings for BPA's proposal to adjust wholesale power rates.

BPA distinguishes between "participants in" and "parties to" the hearings. Apart from the formal hearing process, BPA will receive comments, views, opinions, and information from "participants," who are defined in the procedures as any person who may express views, but who does not successfully petition to intervene as a party. Participants' written comments will be made part of the official record of the case and considered by the Administrator. The participant category gives the public the opportunity to participate and have its views considered without assuming the obligations incumbent upon "parties." Participants are not entitled to participate in the prehearing conference, cross-examine parties' witnesses, seek discovery, or serve or be served with documents, and are not subject to the same procedural requirements as parties.

Written comments by participants will be included in the record if they are received by March 15, 1993. This date

follows the submission of BPA's and all other parties' direct cases. Written views, supporting information, questions, and arguments should be submitted to BPA's Public Involvement Office.

The second category of interest is that of a "party" as defined in §§ 1010.2 and 1010.4 of the "Procedures Governing Bonneville Power Administration Rate Hearings," 51 FR 7611 (March 5, 1986). Parties may participate in any aspect of the hearing process.

Persons wishing to become a formal "party" to BPA's rate proceeding must notify BPA in writing of their request. Petitions to intervene shall state the name and address of the person and the person's interests in the outcome of the hearing. Petitioners may designate no more than two representatives upon whom service of documents will be made. BPA customers and customer groups whose rates are subject to revision in the hearing will be granted intervention based on a petition filed in conformance with this section. Other petitioners must explain their interests in sufficient detail to permit the Hearings Officer to determine whether they have a relevant interest in the hearing. Intervention petitions will be available for inspection in BPA's Public Information Center, 1st Floor, 905 NE. 11th, Portland, Oregon. Any opposition to a petition to intervene must be raised at the January 28, 1993, prehearing conference. All timely applications will be ruled on by the Hearing Officer. Late interventions are strongly disfavored. Opposition to an untimely petition to intervene shall be filed and served within 2 days after service of the petition. Interventions are subject to § 1010.4 of BPA's "Procedures Governing Bonneville Power Administration Rate Hearings," 51 FR 7611 (March 5, 1986).

The record will include, among other things, the transcripts of any hearings, any written material submitted by the parties and participants, documents developed by BPA staff, BPA's environmental analysis and comments accepted on it, and other material accepted into the record by the Hearing Officer. The Hearing Officer then will review the record, will supplement it if necessary, and will certify the record to the Administrator for decision.

The Administrator will develop final proposed rates based on the entire record, including the record certified by the Hearing Officer, comments received from participants, other material and information submitted to or developed by the Administrator, and any other comments received during the rate development process. The basis for the final proposed rates will be first expressed in the Administrator's Draft ROD. Parties will have an opportunity to comment on the Draft ROD as provided in BPA's hearing procedures. The Administrator will serve copies of the Final ROD on all parties and will file the final proposed wholesale power and transmission rates together with the record with FERC for confirmation and approval.

III. Major Studies and 10-Year Financial Plan

A. Major Studies

1. Loads and Resources Study

The Loads and Resources Study presents the load and resource data necessary for developing BPA's wholesale power rates. This study incorporates results from load forecasts, resource analyses, power contracts, and BPA's Resource Program.

The load/resource balance determines BPA's obligation to serve firm loads during the test years and each corresponding 42-month critical period. It also determines the supply of surplus firm power in the region and on the Federal system in each critical period. The hydro-regulation (hydro) study incorporates system constraints such as the water budget for fish migration, the operation of thermal plants, exports and imports of power, and projected resource acquisitions. For this rate proposal, a 42-month (critical period) hydro study and a 50-year hydro study were completed. The 50-year study determines nonfirm energy availability for the region.

2. Revenue Requirement Study

The Bonneville Project Act, the Flood Control Act of 1944, the Transmission System Act, and the Northwest Power Act require BPA to design rates that are projected to collect revenues sufficient to recover the cost of acquiring, conserving, and transmitting the electric power that BPA markets, including amortization of the Federal investment in the FCRPS over a reasonable period, and to recover BPA's other costs and expenses. The Revenue Requirement Study determines whether current rates will produce enough revenues to recover all BPA costs and expenses, including BPA's repayment obligations to the U.S. Treasury. Revenue requirements are the major factor in determining the overall level of BPA's proposed power and transmission rates.

The Transmission System Act and the Northwest Power Act require that transmission rates be based on an equitable allocation of the costs of the Federal transmission system between Federal and non-Federal power using the system. In compliance with a FERC order dated January 27, 1984, 26 FERC ¶ 61,096, the Revenue Requirement Study incorporates the results of separate repayment studies for the generation and transmission components of the FCRPS. The repayment studies for generation and transmission demonstrate the adequacy of the projected revenues to recover all of the Federal investment in the FCRPS over the allowable repayment period. The adequacy of projected revenues to recover test period revenue requirements and to meet repayment period recovery of the Federal investment is tested and demonstrated separately for the generation and transmission functions.

The Revenue Requirement Study for the 1993 initial rate proposal is based on revenues and cost estimates for FY 1994 and FY 1995. BPA's Revenue Requirement Study reflects actual amortization and interest payments paid through September 30, 1992. In addition, it reflects all FCRPS obligations incurred pursuant to the Northwest Power Act, including residential exchange costs.

3. Segmentation Study

BPA operates and maintains the Federal Columbia River Transmission System (FCRTS) to provide transmission services throughout the region. Because most services do not require the use of the entire system, the FCRTS is divided into nine segments, each providing a distinct type of service. The nine segments are: integrated network; Pacific Northwest-Pacific Southwest (Southern) Intertie; Northern Intertie, Eastern Intertie, generation integration, fringe area; and delivery segments for public agency, direct service industrial (DSI), and investor-owned utility customers.

The Segmentation Study categorizes the facilities of the FCRTS according to the types of services they provide. This provides the basis for segmenting the projected transmission revenue requirements used in BPA's rate proposals. The results of the study include the historic investment and the average of the last 3 years' operations and maintenance expenses. In addition, the facilities of the integrated network are similarly divided among distinct services. This division of the FCRTS into segments provides for the equitable allocation of transmission costs between Federal and non-Federal power using the system based on the usage of the segments.

4. Wholesale Power Rate Development Study (WPRDS)

The WPRDS consists of two sections. The first section is a cost of service analysis (COSA) and the second section shows the steps in the rate design process. The COSA apportions BPA's test period revenue requirement to customer classes based on the use of specific types of service by each customer class and in accord with the rate directives of the Northwest Power Act. BPA's revenue requirement is functionalized to transmission and generation in the Revenue Requirement Study. Transmission costs are identified with segments of the transmission system in BPA's Segmentation Study. The results of these studies are used in the COSA to determine the costs of providing generation and transmission services to BPA's customers.

The COSA further identifies costs of specific types of service by classifying generation and transmission costs to the energy and capacity components of electric power, and seasonally differentiating energy costs to winter and summer periods. The final major step in the COSA is to allocate the functionalized, segmented, classified, and seasonally differentiated costs to customer classes.

The rate design steps use the allocated costs developed in the COSA and modifies them: (1) To reflect BPA's rate design objectives; (2) to conform with contractual requirements; (3) to reflect the results of other BPA studies and commitments made in other public involvement processes under section 7(i) of the Northwest Power Act; and (4) to conform with requirements of applicable legislation. BPA's rate design objectives include recovery of the revenue requirement, rate and revenue stability, practicality, fairness, and efficiency.

Rate design adjustments to the allocated costs include an excess revenue adjustment. In the initial cost allocation, BPA allocates its entire test period revenue requirement to firm power loads on the basis of resources available under critical water conditions. However, rates are set assuming that average water conditions occur and BPA will make nonfirm energy (NF) sales. Forecasted NF revenues are credited against generation and transmission costs allocated to firm loads. Similarly, revenues from nonfirm wheeling under the Energy Transmission (ET) rate schedule are credited to firm transmission loads.

Various other rate design adjustments are performed. All of the adjustments are functionalized, classified, segmented, and seasonalized where appropriate. After all adjustments are made, the final power rates are calculated.

5. Section 7(b)(2) Rate Test Study

Section 7(b)(2) of the Northwest Power Act directs BPA to assure that the wholesale power rates effective after July 1, 1985, to be charged its public body, cooperative, and Federal agency customers (the 7(b)(2) customers) for their general requirements for the rate test period plus the ensuing 4 years are no higher than the costs of power to those customers for the same time period if specified assumptions are made. The effect of the rate test is to protect the 7(b)(2) customers' wholesale firm power rates from certain costs resulting from provisions of the Northwest Power Act. The rate test can result in a reallocation of costs from the 7(b)(2) customers to other rate classes. The Section 7(b)(2) Rate Test Study describes the application and results of the section 7(b)(2) rate test implementation methodology.

6. Transmission Rate Design Study

a. *Transmission System Revenue Requirement Adjustment*—Prior to the design of transmission rates, the WPRDS-derived network wheeling revenue requirements must be adjusted to account for revenue in excess of allocated costs. The Energy Transmission (ET–93) rate is calculated first. Revenues received from the ET–93 rate and a portion of the revenue from the Nonfirm Energy (NF–93) rate are credited against the allocated transmission costs of firm power and wheeling services derived in the WPRDS. The adjustment network wheeling revenue requirement is the basis for setting the Formula Power Transmission (FPT–93) and Integration of Resources (IR–93) rates. The FPT and IR rates are based on the same costs, but the FPT rate is structured based on demand and distance factors while the IR rate is structured as a postage-stamp rate with a demand and energy charge.

b. *Proposed Transmission Rate Schedules*—(1) Formula Power Transmission (FPT)—The FPT–93 rate schedule is available for the firm wheeling of power. The form of this rate includes a distance or mileage component for transmission lines and various transformation and terminal charges. The FPT rate form is designed to reflect a wheeling formula that is prescribed by contract provisions.

In designing the FPT–93 rate, the first step is to quantify costs for the specific types of transmission facilities treated in the rate components. Estimates of the use of these facilities are determined from a simulation of the power flow of the projected peak load during the test period. The power flow study assumes certain resource and load conditions that BPA believes are reasonable for normal hydro conditions. Unit cost for the FPT rate components are derived by dividing facility cost by power flow facility use.

(2) Integration of Resources (IR)—The IR–93 rate is a flexible transmission service designed to reflect BPA's postage-stamp (independent of distance) pricing policy. The IR service does not recognize specific contract paths, but rather provides access to all FCRTS facilities contained in the definitions of Main Grid and Secondary System.

The IR–93 rate is calculated by diving the adjusted revenue requirement for the class into two equal parts to reflect a 50–50 classification of costs to capacity and energy. The quotient of these costs and the appropriate billing determinant (contract demand for capacity-related costs, total energy usage for energy) yields the rates.

As in the IR–91 rate, a short-distance discount formula is retained in the proposed IR–93 rate. Utilities have a choice of either remaining on the FPT rate schedule or accepting the IR–93 rate schedule as the only rate to apply to all of their firm wheeling needs over Main Grid and Secondary System facilities of the FCRTS, except as otherwise agreed by BPA. Utilities currently purchasing FPT may choose the rate schedule that yields the lower total charge for transmission service.

(3) Energy Transmission (ET), Intertie Transmission (IN, IE, IS), and Market Transmission (MT)—For this rate filing, rate schedules are again offered on the Northern and Southern Interties that apply to all wheeled power on these segments, whatever the characteristics of the power. The IE rate schedule applies only to nonfirm energy wheeled on the Eastern Intertie. The ET rate is limited to intra-regional FCRTS facilities excluding the Interties.

The schedule for the Energy Transmission (ET–93) class of service is not allocated costs in the WPRDS. Accordingly, it is necessary to determine the level of the rate by other means. The ET–93 rate is designed to approximate the average cost of firm wheeling on the network. It is calculated by dividing the costs allocated to FPT/IR (minus appropriate NF revenues) by all wheeling under firm wheeling contracts.

The proposed IS–93 rate consists of two parts: a nonfirm service energy-only rate, and a firm rate with separate demand and energy components.

The Northern Intertie (IN–93) rate schedule is calculated by dividing segment costs by projected wheeling energy.

The Eastern Intertie (IE–93) rate approximates the average cost of Townsend-Garrison Transmission (TGT–1). It is calculated as the ratio of TGT–1 payments from participants owning Colstrip to the projected overall wheeling of Colstrip.

BPA is continuing its Market Transmission (MT–91) rate. This rate schedule was developed for use among Western Systems Power Pool (WSPP) participants and allows for hourly, daily, weekly, and monthly charges.

(4) Southern Intertie Annual Cost (AC)—BPA is proposing the Southern Intertie Annual Cost (AC–93) rate to be applied to potential new owners of AC Intertie capacity after commercial operation of the Third AC Intertie. This new rate schedule provides for the payment by potential new owners of 21 percent of operations, maintenance, general plant, and replacements cost associated with the AC portion of the Southern Intertie. The AC–93 rate is proposed as a "bridge" rate. BPA expects to negotiate participation contracts and annual cost rate provisions in FY 1993 for AC Intertie capacity ownership. Any rate negotiated in this process is subject to provisions of section 7(i) of the Northwest Power Act. Costs recovered under the AC–93 rate schedule may be subject to adjustment based on the outcome of the negotiations and subsequent rate case.

B. 10-Year Financial Plan

At the end of the 1991 rate case, BPA committed to develop a 10-year Financial Plan jointly with customers and other interested parties before adopting long-term financial policies on a final basis that could affect the level of BPA's rates. During the latter part of 1991 and throughout 1992, BPA, its customers, and other interested parties in the region participated in development of the 10-Year Financial Plan. In April, BPA released a Staff Comment Draft of the 10-Year Financial Plan for public review and comment. BPA then developed the proposed 10-Year Financial Plan, taking into consideration the comments received on the earlier draft. In June, the Proposed 10-Year Financial Plan was released for review and comment in BPA's Programs in Perspective (PIP) process. A final version of the 10-Year Financial Plan will be released in January 1993. The financial policies included in the 10-year Financial Plan are reflected in the revenue requirement and rate levels for review and implementation in the 1993 rate case.

A primary component contained in the 10-Year Financial Plan is the agency's long-term policy choice to continue a 95 percent probability standard of meeting Treasury payments in full and on time in each rate period. The 10-Year Financial Plan identifies the target level of financial reserves necessary to achieve this standard, and outlines the individual risk mitigation components the BPA will rely on as part of its risk mitigation planning to achieve the target level of reserves. The 10-Year Financial Plan also identifies the planned sources of funding for FCRPS capital investments, and calls for use of debt to finance FCRPS capital investments, except that revenues may be used on a limited basis for certain nuclear project capital expenditures.

In implementing the long-term 95 percent probability standard of meeting Treasury payments in full and on time in each rate period, BPA is incorporating a phase-in approach for the FY 1994–1995 rate period will be established to achieve a 90 percent probability of meeting Treasury payments over the two-year period. Adoption of this phase-in approach helps to reduce the immediate rate pressures BPA faces while still achieving a significantly high probability that Treasury payments will be made in full and on time in each year of the FY 1994–1995 rate period.

To achieve this financial objective, BPA's Initial Proposal includes three primary tools for mitigating risk. These risk mitigation tools include: (1) an increment of annual Planned Net Revenues for risk that is explicitly included in revenue requirements; (2) adoption of an Interim Rate Adjustment (IRA); and (3) a cost deferral mechanism. The IRA and cost deferral mechanisms are designed to be used only under certain predetermined conditions wherein BPA's ending financial reserve level at the end of FY 1994 would reach a specified "trigger point."

To analyze the normal operating risk that BPA faces in a given rate period, BPA conducted risk analyses using the Short-Term Risk Evaluation and Analysis Model (STREAM). The STREAM provides for a systematic analytical framework for evaluating BPA's normal operating risks, including streamflows, aluminum and fuel prices, nuclear plant performance, economic conditions, and weather conditions. Alternative risk mitigation tools and the specific tool parameters were then tested using the Tool Kit model. The Tool Kit model enables an evaluation of the sufficiency of alternative combinations of tools to provide risk protection sufficient to meet the specified probability of meeting Treasury payments in full and on time in each year of a given rate period. The data, assumptions, and logic incorporated in the STREAM and Tool Kit model can significantly affect the target level of financial reserves and the level of Planned Net Revenues for risk needed to meet the Treasury payment standard.

In the 1993 rate case, BPA will propose methods for implementing various aspects of the financial policies reflected in the 10-Year Financial Plan. Consistent with the agreement reached in the settlement of the 1991 rate case, the financial policies reflected in the 10-Year Financial Plan will be subject to further review and implementation in the 1993 rate case. Such implementation issues may include: STREAM and Tool Kit assumptions, design, and logic; target level of reserves; specific IRA design issues; public process requirements for implementing the IRA; level of Planned Net Revenues for Risk; and the method of functionalizing Planned Net Revenues for risk and the Interest Credit between the generation and transmission functions.

C. Purpose and Scope of Hearing

BPA's proposal to revise its rates is needed in order to continue to recover all costs and expenses allocated to the power system, including amortization of the Federal investment in the FCRPS over a reasonable period of time, and to recover funds sufficient to achieve the goals of BPA's 10-Year Financial Plan. Inasmuch as cost recovery requirements alone necessitate substantial increases to BPA's rates, BPA seeks to avoid further disruption of its customers' needs for rate predictability and stability. Thus, alternative approaches to rate design to incorporate or modify price signals to achieve energy and resource efficiency are beyond BPA's need. Moreover, lack of reliable information on such alternatives, the substantial changes that are occurring and will occur in operating characteristics to BPA's system, and the ongoing development of the Endangered Species Act and Systems Operation Review all militate in favor of deferring alternative rate design considerations to the 1995 rate case.

At the conclusion of the 1991 rate case, BPA committed to develop a 10-Year Financial Plan through a process of public consultation. In addition, BPA pledged that to the extent the proposed goals of the 10-Year Financial Plan directly affected rate levels, it would

include the incremental rate impacts and associated rationale as part of a special or general 7(i) process.

Beginning in March 1991, BPA solicited input into the scope and content of its 10-Year Financial Plan from customers in interviews throughout the region. From October 1991 to April 1992, numerous technical and policy oriented workgroups held meetings to identify key financial issues and to develop, analyze, and evaluate risk mitigation and capital funding options that addressed the issues. BPA then released its Proposed 10-Year Financial Plan in April for review and comment in its Programs In Perspective (PIP) public involvement process.

The PIP process commenced in April in order to develop the 10-Year Financial Plan and determine program levels for FYs 1994 and 1995. Interested persons had the opportunity to solicit information from BPA, meet with Program managers to discuss program issues, and to submit oral and written comments to BPA in July and August 1992. In addition, the opportunity was extended to interested parties to meet and discuss the proposed 10-Year Financial Plan and program levels with BPA management, including the Administrator, in a series of meetings that occurred throughout the region in July. Numerous other public processes to determine BPA's program needs fed into PIP. BPA released its decision on the 10-Year Financial Plan and program levels on September 11,1992. The Final PIP version of the 10-Year Financial Plan that elaborates BPA's consideration of the regional discussions will be released in January 1993 for review and implementation in BPA's 1993 rate case.

On April 3, 1992, when the Administrator formally announced the scope and schedule for PIP to all customers and interested parties, he stated as follows concerning the intended effect of PIP:

"In the end, the material discussed in PIP requires the kind of management judgment calls that we cannot fairly assign to our technical or legal staffs. That is why I place such importance on the personal participation during PIP itself by utility managers and policy makers on energy and the environment.

After PIP and by September, it is our intent to make final determinations on all of our program budget levels for use in the rate case. These final program level decisions will be incorporated into the rate case revenue requirement study. If for some reason budget issues arise that cannot be resolved in PIP, we would provide other forums (aside from PIP and the rate case) in order to reach those decisions.

After PIP, attention will then shift from these planning concerns to the more technical issues of the rate case and to the host of other contract and policy forums yet ahead of us. The rate case itself will focus on issues of cost allocation and recovery, and, if necessary, long-term financial goals. The proceedings will begin first with informal workshops through December and then move into the formal rate case itself at the beginning of 1993." (April 3, 1992, Administrator's letter to all customers and interested parties.)

This was reiterated in the Administrator's September 11, 1992, document closing out the 1992 PIP entitled "Setting the Financial Course for Fiscal Years 1993, 1994, 1995." The Administrator described Attachment B to the document as showing "final program levels," and stated, "These levels will not be revisited in the upcoming rate case, although BPA is willing to further discuss them as part of a comprehensive settlement of rate case issues.

Consistent with BPA's prior agreement, implementation of the 10-Year Financial Plan will be addressed in this rate case. Except for the limited exceptions hereafter noted, program and program level decisions will not be addressed in this rate case. Accordingly, pursuant to § 1010.3(f) of the "Procedures Governing Bonneville Power Administration Rate Hearings," 51 FR 7611 (March 5, 1986), the Administrator directs the Hearing Officer to exclude from the record any material attempted to be submitted or arguments attempted to be made in the hearing which seek to in any way visit the appropriateness or reasonableness of BPA's decisions on programs or program levels, as included in BPA's cost evaluation period of FY 1993 through FY 1995 and its test period revenue requirements for FY 1994 and FY 1995. Excepted from this direction on account of their variable nature, dependency on BPA's rate case models, or timing, are:

(1) Forecasts of residential exchange benefits;

(2) Forecasts of purchase power costs;

(3) Provision in BPA's revenue requirement for cash working capital or cash lag needs;

(4) Repayment matters, such as interest rate forecasts, scheduled amoritzation, depreciation, replacements, and interest expense; and

(5) Updates to forecasts by BPA which may occur in the Spring of 1993 and for which no other review forum has been provided.

IV. Transmission Rate Schedules and General Transmission Rate Schedule Provisions (GTRSPs)

A. Transmission Rate Schedules

Schedule FPT–93.1, Formula Power Transmission

Section I. Availability

This schedule supersedes schedule FPT–91.1 for all firm transmission agreements which provide that rates may be adjusted not more frequently than once a year. It is available for firm transmission of electric power and energy using the Main Grid and/or Secondary System of the FCRTS. This schedule is for full-year and partial-year service and for either continuous or intermittent service when firm availability of service is required. For facilities at voltages lower than the Secondary System, a different rate schedule may be specified. Service under this schedule is subject to BPA's GTRSPs.

Section II. Rate

A. Full-Year Service

The monthly charge per kilowatt of billing demand shall be one-twelfth of the sum of the Main Grid Charge and the Secondary System Charge, as applicable and as specified in the Agreement.

1. Main Grid Charge

The Main Grid Charge per kilowatt of Transmission Demand shall be the sum of one or more of the following component factors as specified in the Agreement:

a. Main Grid Distance Factor: The amount computed by multiplying the Main Grid Distance by $0.0375 per mile;

b. Main Grid Interconnection Terminal Factor: $0.32

c. Main Grid Terminal Factor: $0.45

d. Main Grid Miscellaneous Facilities Factor: $1.90

2. Secondary System Charge

The Secondary System Charge per kilowatt of Transmission Demand shall be the sum of one or more of the following component factors as specified in the Agreement:

a. Secondary System Distance Factor: The amount determined by multiplying the Secondary System Distance by $0.2705 per mile;

b. Secondary System Transformation Factor: $4.01;

c. Secondary System Intermediate Terminal Factor: $1.29;

d. Secondary System Interconnection Terminal Factor: $0.70.

B. Partial-Year Service

The monthly charge per kilowatt of billing demand shall be as specified in Section II.A for all months of the year except for agreements with terms 5 years or less and which specify service for fewer than 12 months per year. The monthly charge shall be:

1. During months for which service is specified, the monthly charge defined in Section II.A, and

2. During other months, the monthly charge defined in Section II.A multiplied by 0.2.

Section III. Billing Factors

Unless otherwise stated in the Agreement, the billing demand shall be the largest of:

A. the Transmission Demand;

B. The highest hourly Scheduled Demand for the month; or

C. The Ratchet Demand.

Schedule FPT–91.3—Formula Power Transmission

Section I. Availability

This schedule continues schedule FPT–91.3 for all firm transmission agreements which provide that rates may be adjusted not more frequently than once every 3 years. It is available for firm transmission of electric power and energy using the Main Grid and/or Secondary System of the FCRTS. This schedule is for full-year and partial-year service and for either continuous or intermittent service when firm availability of service is required. For facilities at voltages lower than the Secondary System, a different rate schedule may be specified. Service under this schedule is subject to BPA's GTRSPs.

Section II. Rate

A. Full-Year Service

The monthly charge per kilowatt of billing demand shall be one-twelfth of the sum of the Main Grid Charge and the Secondary System Charge, as applicable and as specified in the Agreement.

1. Main Grid Charge

The Main Grid Charge per kilowatt of Transmission Demand shall be the sum of one or more of the following component factors as specified in the Agreement:

a. Main Grid Distance Factor: The amount computed by multiplying the Main Grid Distance by $0.0281 per mile;

b. Main Grid Interconnection Terminal Factor: $0.27;

c. Main Grid Terminal Factor: $0.30;

d. Main Grid Miscellaneous Facilities Factor: $1.31.

2. Secondary System Charge

The Secondary System Charge per kilowatt of Transmission Demand shall be the sum of one or more of the following component factors as specified in the Agreement:

a. Secondary System Distance Factor: The amount determined by multiplying the Secondary System Distance by $0.1961 per mile;

b. Secondary System Transformation Factor: $2.53;

c. Secondary System Intermediate Terminal Factor: $0.84;

d. Secondary System Interconnection Terminal Factor: $0.44.

B. Partial-Year Service

The monthly charge per kilowatt of billing demand shall be as specified in Section II.A for all months of the year except for agreements with terms 5 years or less and which specify service for fewer than 12 months per year. The charge shall be:

1. During months for which service is specified, the monthly charge defined in Section II.A, and

2. During other months, the monthly charge defined in Section II.A multiplied by 0.2.

Section III. Billing Factors

Unless otherwise stated in the Agreement, the billing demand shall be the largest of:

A. The Transmission Demand;

B. The highest hourly Scheduled Demand for the month; or

C. The Ratchet Demand.

Schedule IR–93—Integration of Resources

Section I. Availability

This schedule supersedes IR–91 and is available for firm transmission service for electric power and energy using the Main Grid and/or Secondary System of the FCRTS. The definitions of Main Grid and Secondary Systems are the same as for the FPT–93.1 and FPT–91.3 rate schedules and are contained in the GTRSPs. For facilities at voltages lower than the Secondary System, a different rate schedule may be specified. Service under this schedule is subject to BPA's GTRSPs.

Section II. Rate

The monthly charge shall be the sum of A and B where:

A. The Demand Charge shall be:

1. $0.430 per kilowatt of billing demand; or

2. For Points of Integration (POI) specified in the Agreement as being short distance POI's, for which Main Grid and Secondary System facilities are used for a distance of less than 75 circuit miles, the following formula applies:

[0.2+(0.8/75×transmission distance)] ($0.430 per kilowatt of billing demand)

Where:

the billing demand for a short distance POI is the demand level specified in the Agreement for such POI, and the transmission distance is the circuit miles between the POI for a generating resource of the customer and a designated Point of Delivery serving load of the customer. Short distance POI's are determined by BPA after considering factors in addition to transmission distance.

B. The Energy Charge shall be:

1.07 mills per kilowatthour of billing energy.

Section III. Billing Factors

To the extent that the Agreement provides for the customer to be billed for transmission in excess of the Transmission Demand or Total Transmission Demand, as defined in the Agreement, at the nonfirm transmission rate (currently ET–93), such transmission service shall not contribute to either the Billing Demand or the Billing Energy for the IR rate provided that the customer requests such treatment and BPA approves in accordance with the prescribed provisions in the Agreement.

A. Billing Demand

The billing demand shall be the largest of:

1. the Transmission Demand, except under General Transmission Agreements where a Total Transmission Demand is defined;

2. the highest hourly Scheduled Demand for the month; or

3. the Ratchet Demand.

B. Billing Energy

The billing energy shall be the monthly sum of scheduled kilowatthours.

Schedule IS–93—Southern Intertie Transmission

Section I. Availability

This schedule supersedes IS–91 and is available for all transmission on the Southern Intertie. Service under this schedule is subject to BPA's GTRSPs.

Section II. Rate

A. Nonfirm Rate

The charge for nonfirm transmission of non-Federal power shall be 2.8 mills

per kilowatthour of billing energy. This charge applies for both north-to-south and south-to-north transactions.

B. Firm Power Transmission Rate

The charge for firm transmission service granted access by BPA shall be $0.633 per kilowatt per month of billing demand and 1.43 mills per kilowatthour of billing energy. Firm transmission will only be made available to customers under this rate schedule who have executed a contract with BPA specifying use of the Firm Power Transmission rate for either north-to-south or south-to-north transactions.

Section III. Billing Factors

A. For services under Section II.A, the billing energy shall be the monthly sum of the scheduled kilowatthours, plus the monthly sum of kilowatthours allocated but not scheduled. The amount of allocated but not scheduled energy that is subject to billing may be reduced pro rata by BPA due to forced Intertie outages and other uncontrollable forces that may reduce Intertie capacity. The amount of allocated but not scheduled energy that is subject to billing also may be reduced upon mutual agreement between BPA and the customer.

B. For services under Section II.B, the billing demand shall be the Transmission Demand as defined in the Agreement. The billing energy shall be the monthly sum of scheduled kilowatthours, unless otherwise specified in the Agreement.

Schedule IN–93—Northern Intertie Transmission

Section I. Availability

This schedule supersedes IN–91 and is available for all transmission on the Northern Intertie. Service under this schedule is subject to BPA's GTRSPs.

Section II. Rate

The charge for transmission of non-Federal power on the Northern Intertie shall be 0.96 mills per kilowatthour.

Section III. Billing Factors

Billing Energy

The billing energy shall be the monthly sum of the scheduled kilowatthours.

Schedule IE–93—Eastern Intertie Transmission

Section I. Availability

This schedule supersedes IE–91 and is available for all nonfirm transmission on the Eastern Intertie. Service under this schedule is subject to BPA's GTRSPs.

Section II. Rate

The charge for transmission of nonfirm energy on the Eastern Intertie shall be 2.09 mills per kilowatthour.

Section III. Billing Factors

Billing Energy

The billing energy shall be the monthly sum of the scheduled kilowatthours.

Schedule ET–93—Energy Transmission

Section I. Availability

This schedule supersedes ET–91, unless otherwise specified in the Agreement, with respect to delivery using FCRTS facilities other than the Southern Intertie, Eastern Intertie, or the Northern Intertie, and is available for firm (of not more than 1 year duration) or nonfirm transmission between points within the Pacific Northwest. BPA may interrupt nonfirm service which is provided under this rate schedule. Service under this schedule is subject to BPA's GTRSPs.

Section II. Rate

The charge for transmission of non-Federal electric energy shall be 2.06 mills per kilowatthour.

Section III. Billing Factors

Billing Energy

The billing energy shall be the monthly sum of scheduled kilowatthours.

Schedule MT–91—Market Transmission

Section I. Availability

This schedule supersedes MT–89 and is available for Transmission Service for transactions using FCRTS facilities pursuant to the Western Systems Power Pool (WSPP) Agreement. Service under this schedule is subject to BPA's GTRSPs.

Section II. Rate

The charge shall be determined in advance by BPA. The charge shall be based on the duration of the proposed transaction and shall not exceed the following rates.

A. Hourly Rate

The maximum charge shall be 6.5 mills per kilowatthour where the total hourly revenues from a given transaction during a calendar day shall not exceed the product of the Daily rate and the maximum demand scheduled during such day.

B. Daily Rate

The maximum charge shall be $.105 per kilowattday where the total demand charge revenues in any consecutive 7-day period shall not exceed the product of the Weekly rate and the highest demand experienced on any day in the 7-day period.

C. Weekly Rate

The maximum charge shall be $.52 per kilowattweek.

D. Monthly Rate

The maximum charge shall be $2.27 per kilowattmonth.

Section III. Billing Factors

The billing factors shall be specified in advance by BPA, as to representing the Transmission Service use or reservation.

Schedule UFT–83—Use-of-Facilities Transmission

Section I. Availability

This schedule supersedes UFT–1 and UFT–2 unless otherwise provided in the Agreement, and is available for firm transmission over specified FCRTS facilities. Service under this schedule is subject to BPA's GTRSPs.

Section II. Rate

The monthly charge per kilowatt of Transmission Demand specified in the Agreement shall be one-twelfth of the annual cost of capacity of the specified facilities divided by the sum of Transmission Demands (in kilowatts) using such facilities. Such annual cost shall be determined in accordance with Section III.

Section III. Determination of Transmission Rate

A. From time to time, but not more often than once in each Contract Year, BPA shall determine the following data for the facilities which have been constructed or otherwise acquired by BPA and which are used to transmit electric power:

1. The annual cost of the specified FCRTS facilities, as determined from the capital cost of such facilities and annual cost ratios developed from the FCRTS financial statement, including interest and amortization, operation and maintenance, administrative and general, and general plant costs.

2. The yearly noncoincident peak demands of all users of such facilities or other reasonable measurement of the facilities' peak use.

B. The monthly charge per kilowatt of billing demand shall be one-twelfth of the sum of the annual cost of the FCRTS facilities used divided by the sum of Transmission Demands. The annual cost per kilowatt of Transmission Demand for a facility constructed or otherwise

acquired by BPA shall be determined in accordance with the following formula:

$$\frac{A}{D}$$

Where:

A=The annual cost of such facility as determined in accordance with A.1. above.

D=The sum of the yearly noncoincident demands on the facility as determined in accordance with A.2. above.

The annual cost per kilowatt of facilities listed in the Agreement which are owned by another entity, and used by BPA for making deliveries to the transferee, shall be determined from the costs specified in the Agreement between BPA and such other entity.

Section IV. Determination of Billing Demand

Unless otherwise stated in the Agreement, the factor to be used in determining the kilowatts of billing demand shall be the largest of:

A. the Transmission Demand in kilowatts specified in the Agreement;

B. the highest hourly Measured or Scheduled Demand for the month, the Measured Demand being adjusted for power factor; or

C. the Ratchet Demand.

Schedule TGT–1—Townsend-Garrison Transmission

Section I. Avilability

This schedule shall apply to all agreements which provide for the firm transmission of electric power and energy over transmission facilities of BPA's section of the Montana [Eastern] Intertie. Service under this schedule is subject to BPA's GTRSPs.

Section II. Rate

The monthly charge shall be one-twelfth of the sum of the annual charges listed below, as applicable and as specified in the agreements for firm transmission. The Townsend-Garrison 500–kV lines and associated terminal, line compensation, and communication facilities are a separately identified portion of the Federal Transmission System. Annual revenues plus credits for government use should equal annual costs of the facilities, but in any given year there may be either a surplus or a deficit. Such surpluses or deficits for any year shall be accounted for in the computation of annual costs for succeeding years. Revenue requirements for firm transmission use will be decreased by any revenues received from nonfirm use and credits for all government use. The general methodology for determining the firm rate is to divide the revenue requirement by the total firm capacity requirements. Therefore, the higher the total capacity requirements, the lower will be the unit rate.

If the government provides firm transmission service in its section of the Montana [Eastern] Intertie in exchange for firm transmission service in a customer's section of the Montana Intertie, the payment by the government for such transmission services provided by such customer will be made in the form of a credit in the calculation of the Intertie Charge for such customer. During an estimated 1- to 3-year period following the commercial operation of the third generating unit at the Colstrip Thermal Generating Plant at Colstrip, Montana, the capability of the Federal Transmission System west of Garrison Substation may be different from the long-term situation. It may not be possible to complete the extension of the 500-kV portion of the Federal Transmission System to Garrison by such commercial operation date. In such event, the 500/230 kV transformer will be an essential extension of the Townsend-Garrison Intertie facilities, and the annual costs of such transformer will be included in the calculation of the Intertie Charge.

However, starting 1 month after extension to Garrison of the 500-kV portion of the Federal Transmission System, the annual costs of such transformer will no longer be included in the calculation of the Intertie Charge.

A. Nonfirm Transmission Charge:

This charge will be filed as a separate rate schedule and revenues received thereunder will reduce the amount of revenue to be collected under the Intertie Charge below.

B. Intertie Charge for Firm Transmission Service:

$$\text{Intertie Charge} = \left[(TAC/12\text{-}NFR) \times \frac{(CR\text{-}EC)}{TCR}\right]$$

Section III. Definitions

A. TAC=Total Annual Costs of facilities associated with the Townsend-Garrison 500-kV Transmission line including terminals, and prior to extension of the 500-kV portion of the Federal Transmission System to Garrison, the 500/230 kV transformer at Garrison. Such annual costs are the total of:

(1) Interest and amortization of associated Federal investment and the appropriate allocation of general plant costs;

(2) Operation and maintenance costs;

(3) Allowance for BPA's general administrative costs which are appropriately allocable to such facilities, and

(4) Payments made pursuant to section 7(m) of Public Law 96–501 with respect to these facilities. Total Annual Costs shall be adjusted to reflect reductions to unpaid total costs as a result of any amounts received, under agreements for firm transmission service over the Montana Intertie, by the government on account of any reduction in Transmission Demand, termination or partial termination of any such agreement or otherwise to compensate BPA for the unamortized investment, annual cost, removal, salvage, or other cost related to such facilities.

B. NFR=Nonfirm Revenues, which are equal to:

(1) The product of the Nonfirm Transmission Charge described in II(A) above, and the total nonfirm energy transmitted over the Townsend-Garrison line segment under such charge for such month;

Plus (2) the product of the Nonfirm Transmission Charge and the total nonfirm energy transmitted in either direction by the Government over the Townsend-Garrison line segment for such month.

C. CR=Capacity Requirement of a customer on the Townsend-Garrison 500-kV transmission facilities as specified in its firm transmission agreement.

D. TCR=Total Capacity Requirement on the Townsend-Garrison 500-kV transmission facilities as calculated by adding (1) the sum of all Capacity Requirements (CR) specified in transmission agreements described in section I; and (2) the Government's firm capacity requirement. The Government's firm capacity requirement shall be no less than the total of the amounts, if any, specified in firm transmission agreements for use of the Montana Intertie.

E. EC=Exchange Credit for each customer which is the product of (1) the ratio of investment in the Townsend-Broadview 500-kV transmission line to the investment in the Townsend-Garrison 500-kV transmission line; and (2) the capacity which the Government obtains in the Townsend-Broadview 500-kV transmission line through exchange with such customer. If no exchange is in effect with a customer, the value of EC for such customer shall be zero.

Schedule AC–93—Southern Intertie Annual Cost

Section I. Availability

This schedule is applicable to all parties (New Owners) that execute PNW AC Intertie Capacity Ownership Agreements (Agreements) will be effective on the date of commercial operation of the facilities described in the Agreement. Service under this schedule is subject to BPA's GTRSPs.

Section II. Rate

The rate charges reflect the terms of the Memorandum of Understanding (MOU), signed in the Fall of 1991, between BPA and potential New Owners. The MOU provides for the payment by New Owners of:

(1) 21 percent of BPA's annual operations, maintenance, and general plant expense (including applicable overheads) properly chargeable to the AC Intertie facilities; and (2) 21 percent of BPA's share of capitalized replacements on the AC intertie. The monthly charge shall be the sum of the charges specified in sections II.A and II.B.

A. Maintenance and General Plant

The monthly charge shall equal $328 per megawatt of billing demand.

B. Replacement

The monthly charge shall equal $0 per megawatt of billing demand.

Section III. Adjustment to Replacements Rate

A. Determination of Billing Adjustment

New Owners will receive a billing adjustment for the difference between actual AC Intertie replacement cost and the amount paid under section II.B. The Replacement Rate Adjustment equals:

$$\frac{\text{AC Intertie work orders (\$000)} * .21}{725\ \text{MW} * \#\ \text{months}} - \text{Replacements Rate (Section II.B) (\$/MWmo)}$$

where "# months" equals: (1) The number of months that this rate schedule is in effect during the fiscal year for the Initial Replacement Rate Adjustment; or (2) the number of months in the rate period for the Final Replacement Rate Adjustment.

B. Initial Replacements Rate Adjustment

New Owners will receive a billing adjustment for each fiscal year that the actual AC Intertie replacement cost differs from the amount paid under section II.B. At the end of each year, the cost associated with AC Intertie work orders that have closed during the fiscal year will be determined. The unit rate that would result using these closed work orders is compared to the Replacements rate in section II.B to determine the Initial Replacements Rate Adjustment.

1. Notice Provisions

Following each fiscal year, BPA shall notify all New Owners by December 15 of the proposed Replacements Rate Adjustment. BPA will provide the calculation of the adjustment and a short description of the work performed and the associated cost used as the basis for the billing adjustment. In addition to written notification, BPA may, but is not obligated to, hold a public meeting to clarify its determinations.

Written comments on the Initial Replacements Rate Adjustment will be accepted through the end of January. Consideration of comments submitted by the New Owners may result in the billing adjustment differing from the initially proposed adjustment. BPA shall notify all New Owners of the Initial Replacements Rate Adjustment by February 28.

2. Adjustment of Monthly Bills

An adjustment will be made on the New Owner's monthly bill prepared during March. The Initial Replacements Rate adjustment will be multiplied by the sum of the monthly billing factors from the relevant fiscal year (or the New Onwer's share in megawatts of BPA's PNW AC Intertie Rated Transfer Capability multiplied by the number of months that this rate schedule is effective during the fiscal year). If the Initial Replacements Rate Adjustment is positive, an adjustment on the monthly bill prepared during March will be made as an additional charge to the New Owner. If the result is negative, an adjustment on the monthly bill prepared during April will be made to credit the New Owner.

C. Final Replacements Rate Adjustment

The actual cost associated with the AC Intertie work orders that occur during the rate period may change after BPA performs its final analysis of the work orders. BPA shall compare the unit rate for the rate period using the results of the final work order analysis to the average of the unit rates from the Initial Replacements Rate Adjustments.

1. Notice Provisions

BPA shall notify all New Owners in May 1998 of the results of the calculations, an explanation of work order change(s), and any resulting billing adjustment. Written comments from New Owners will be accepted through the end of June. BPA shall notify all New Owners of the Final Replacements Rate Adjustment by July 31. Consideration of comments submitted by the New Owners may result in the Final Replacements Rate Adjustment differing from the initially proposed adjustment.

2. Adjustment of Monthly Bills

If the absolute value of the Final Replacements Rate Adjustment is greater than or equal to $1 per megawatt per month, an adjustment will be made on the New Owner's monthly bill prepared during July. For each New Owner, the Final Replacements Rate Adjustment will be multiplied by the sum of the monthly billing factors from the relevant fiscal year (or the New Owner's share in megawatts of BPA's PNW AC Intertie Rated Transfer Capability multiplied by the number of months that this rate schedule is effective during the fiscal year). If the Final Replacements Rate Adjustment is positive, an adjustment on the monthly bill prepared during July will be made as an additional charge to the New Owner. If the result is negative, an adjustment on the monthly bill prepared during July will be made to credit the New Owner. Interest will be included in any adjustment.

Section IV. Billing Factor

The billing demand shall be the New Owner's capacity ownership share in megawatts of BPA's PNW AC Inertie Rated Transfer Capability as specified in the Agreement.

B. General Transmission Rate Schedule Provisions

Section I. Adoption of Revised Transmission Rate Schedules and General Transmission Rate Schedule Provisions

A. Approval of Rates

These rate schedules and GTRSP shall become effective upon interim approval or upon final confirmation and approval by FERC. BPA will request FERC approval effective October 1, 1993 through September 30, 1995.

B. General Provisions

These 1993 Transmission Rate Schedules and associated GTRSPs are virtually identical to and supersede BPA's 1991 Transmission Rate Schedules and GTRSPs (which became effective October 1, 1991) but do not supersede prior rate schedules required by agreement to remain in force.

Transmission service provided shall be subject to the following Acts, as amended: the Bonneville Project Act, the Regional Preference Act (Pub. L. 88–552), the Federal Columbia River Transmission System Act, and the Pacific Northwest Electric Power Planning and Conservation Act, and the Energy Policy Act of 1992, Pub. L. 102–486, 106 Stat. 2776 (1992).

The meaning of terms used in the transmission rate schedules shall be as defined in agreements or provisions which are attached to the Agreement or as in any of the above Acts.

Section II. Billing Factor Definitions and Billing Adjustments

A. Billing Factors

1. Scheduled Demand

The largest of hourly amounts wheeled which are scheduled by the customer during the time period specified in the rate schedules.

2. Metered Demand

The Metered Demand in kilowatts shall be the largest of the 60-minute clock-hour integrated demands measured by meters installed at each POD during each time period specified in the applicable rate schedule. Such measurements shall be made as specified in the Agreement. BPA, in determining the Metered Demand, will exclude any abnormal readings due to or resulting from: (a) emergencies or breakdowns on, or maintenance or, the FCRTS; or (b) emergencies on the customer's facilities, provided that such facilities have been adequately maintained and prudently operated as determined by BPA. If more than one class of power is delivered to any POD, the portion of the metered quantities assigned to any class of power shall be as agreed to by the parties. The amount so assigned shall constitute the Metered Demand for such class of power.

3. Transmission Demand

The demand as defined in the Agreement.

4. Total Transmission Demand

The sum of the transmission demands as defined in the Agreement.

5. Ratchet Demand

The maximum demand established during the previous 11 billing months. Exception: If a Transmission demand or Total Transmission Demand has been decreased pursuant to the terms of the Agreement during the previous 11 billing months, such decrease will be reflected in determining the Ratchet Demand.

B. Billing Adjustments

Average Power Factor

The adjustment for average power factor, when specified in a transmission rate schedule or in the Agreement, shall be made in accordance with the average power factor section of the General Wheeling Provisions.

To maintain acceptable operating conditions on the Federal system, BPA may restrict deliveries of power at any time that the average leading power factor or average lagging power factor for all classes of power delivered to such point or to such system is below 85 percent.

Section III. Other Definitions

Definitions of the terms below shall be applied to these provisions and the Transmission Rate Schedules, unless otherwise defined in the Agreement.

A. Agreement

An agreement between BPA and a customer to which these rate schedules and provisions may be applied.

B. Eastern Intertie

The segment of the FCRTS for which the transmission facilities consist of the Townsend-Garrison double-circuit 500 kV transmission line segment including related terminals at Garrison.

C. Electric Power

Electric peaking capacity (kW) and/or electric energy (kWh).

D. FCRTS

The transmission facilities of the Federal Columbia River Power System, which include all transmission facilities owned by the government and operated by BPA, and other facilities over which BPA has obtained transmission rights.

E. Firm Transmission Service

Transmission service which BPA provides for any non-Federal power except for transmission service which is scheduled as nonfirm. If the firm service is provided pursuant to the Agreement, the terms of the Agreement may further define the service.

F. Integrated Network

The segment of the FCRTS for which the transmission facilities provide the bulk of transmission of electric power within the Pacific Northwest, excluding facilities not segmented to the network as shown in the Wholesale Power Rate Development Study used in BPA's rate development.

G. Main Grid

As used in the FPT and IR rate schedules, that portion of the Integrated Network with facilities rated 230 kV and higher.

H. Main Grid Distance

As used in the FPT rate schedules, the distance in airline miles on the Main Grid between the POI and the POD, multiplied by 1.15.

I. Main Grid Interconnection Terminal

As used in the FPT rate schedules, Main Grid terminal facilities that interconnect the FCRTS with non-BPA facilities.

J. Main Grid Miscellaneous Facilities

As used in the FPT rate schedules, switching, transformation, and other facilities of the Main Grid not included in other components.

K. Main Grid Terminal

As used in the FPT rate schedules, the Main Grid terminal facilities located at the sending and/or receiving end of a line exclusive of the Interconnection terminals.

L. Nonfirm Transmission Service

Interruptible transmission service which BPA may provide for non-BPA power.

M. Northern Intertie

The segment of the FCRTS for which the transmission facilities consist of two 500 kV lines between Custer Substation and the United States-Canadian border, one 500 kV line between Custer and Monroe Substations, and two 230 kV lines from Boundary Substation to the United States-Canadian border, and the associated substation facilities.

N. Point of Integration (POI)

Connection points between the FCRTS and non-BPA facilities where non-Federal power is made available to BPA for wheeling.

O. Point of Delivery (POD)

Connection points between the FCRTS and non-BPA facilities where non-Federal power is delivered to a customer by BPA.

P. Secondary System

As used in the FPT and IR rate schedules, that portion of the Integrated Network facilities with operating voltage of 115 kV or 69 KV.

Q. Secondary System Distance

As used in the FPT rate schedules, the number of circuit miles of Secondary System transmission lines between the secondary POI and the Main Grid or the secondary POD, or the Main Grid and the secondary POD.

R. Secondary System Interconnection Terminal

As used in the FPT rate schedules, the terminal facilities on the Secondary System that interconnect the FCRTS with non-BPA facilities.

S. Secondary System Intermediate Terminal

As used in the FPT rate schedules, the first and final terminal facilities in the Secondary System transmission path exclusive of the Secondary System Interconnection terminals.

T. Secondary Transformation

As used in the FPT rate schedules, transformation from Main Grid to Secondary System facilities.

U. Southern Intertie

The segment of the FCRTS for which the major transmission facilities consist of two 500 kV AC lines from John Day Substation to the Oregon-California border; a portion of the 500 kV AC line from Buckley Substation to Summer Lake Substation; when completed, the Third AC facilities, which include Captain Jack Substation and the Alvey-Meridian 500 kV AC line; one 1,000 kV DC line between the Celilo Substation and the Oregon-Nevada border; and associated substation facilities.

V. Transmission Service

As used in the MT rate schedule, Transmission Service is as defined in the WSPP Agreement.

Section IV. Billing Information

A. Payment of Bills

Bills for transmission service shall be rendered monthly by BPA. Failure to receive a bill shall not release the customer from liability for payment. Bills for amounts due of $50,000 or more must be paid by direct wire transfer; customers who expect that their average monthly bill will not exceed $50,000 and who expect special difficulties in meeting this requirement may request, and BPA may approve, an exemption from this requirement. Bills for amounts due BPA under $50,000 may be paid by direct wire transfer or mailed to the Bonneville Power Administration, P.O. Box 6040, Portland, Oregon 97228–6040, or to another location as directed by BPA. The procedures to be followed in making direct wire transfers will be provided by the Office of Financial Management and updated as necessary.

1. Computation of Bills

The transmission billing determinant is the electric power quantified by the method specified in the Agreement or Transmission Rate Schedule. Scheduled power or metered power will be used.

The transmission customer shall provide necessary information to BPA for any computation required to determine the proper charges for use of the FCRTS, and shall cooperate with BPA in the exchange of additional information which may be reasonably useful for respective operations.

Demand and energy billings for transmission service under each applicable rate schedule shall be rounded to whole dollar amounts, by eliminating any amount which is less than 50 cents and increasing any amounts from 50 cents through 99 cents to the next higher dollar.

2. Estimated Bills

At its option, BPA may elect to render an estimated bill to be followed at a subsequent billing date by a final bill. The estimated bill shall have the validity of and be subject to the same payment provisions as a final bill.

3. Billing Month

For charges based on scheduled quantities, the billing month is the calendar month. For charges based on metered quantities, the billing month is defined as the interval between scheduled meter-reading dates. The billing month will not exceed 31 days in any case. While it may be necessary to read meters on a day other than the scheduled meter-reading date, for determination of billing demand, the billing month will cease at 2400 hours on the last scheduled meter-reading date. Schedules will be predetermined. The customer must give 30 days notice to request a change to the schedule.

4. Due Date

Bills shall be due by close of business on the 20th day after the date of the bill (due date). Should the 20th day be a Saturday, Sunday, or holiday (as celebrated by the customer), the due date shall be the next following business day.

5. Late Payment

Bills not paid in full on or before close of business on the due date shall be subject to a penalty of $25. In addition, an interest charge of one-twentieth percent (0.05 percent) shall be applied each day to the sum of the unpaid amount and the penalty charge. This interest charge shall be assessed on a daily basis until such time as the unpaid amount and penalty charge are paid in full.

Remittances received by mail will be accepted without assessment of the charges referred to in the preceding paragraph provided the postmark indicates the payment was mailed on or before the due date. Whenever a power bill or a portion thereof remains unpaid subsequent to the due date and after giving 30 days' advance notice in writing, BPA may cancel the contract for service to the customer. However, such cancellation shall not affect the customer's liability for any charges accrued prior thereto under such agreement.

6. Disputed Billings

In the event of a disputed billing, full payment shall be rendered to BPA and the disputed amount noted. Disputed amounts are subject to the late payment provisions specified above. BPA shall separately account for the disputed amount. If it is determined that the customer is entitled to the disputed amount, BPA shall refund the disputed amount with interest, as determined by BPA's Office of Financial Management.

BPA retains the right to verify, in a manner satisfactory to the Administrator, all data submitted to BPA for use in the calculation of BPA's rates and corresponding rate adjustments. BPA also retains the right to deny eligibility for any BPA rate or corresponding rate adjustment until all submitted data have been accepted by BPA as complete, accurate, and appropriate for the rate or adjustment under consideration.

7. Revised Bills

As necessary, BPA may render a revised bill.

a. If the amount of the revised bill is less than or equal to the amount of the original bill, the revised bill shall replace all previous bills issued by BPA that pertain to the specified customer for the specified billing period and the revised bill shall have the same date as the replaced bill.

b. If a revision causes an additional amount to be due BPA or the *specified customer* beyond the amount of the original bill, a revised bill will be issued for the difference and the date of the revised bill shall at its date of issue.

Issued in Portland, Oregon, on January 5, 1993.

Randall W. Hardy,

Administrator.

[FR Doc. 93–941 Filed 1–13–93; 8:45 am]

BILLING CODE 6450–01–M

Office of Energy Research

Basic Energy Sciences Advisory Committee; Reestablishment

Pursuant to section 9(a)(2) of the Federal Advisory Committee Act and in accordance with title 41 of the Code of Federal Regulations, § 101–6.1015, and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the Basic Energy Sciences Advisory Committee has been re-established for a 2-year period beginning in December 1992. The Committee will provide advice to the Director, Office of Energy Research, on the Basic Energy Sciences program.

The re-establishment of the Basic Energy Sciences Advisory Committee has been determined to be essential to the conduct of the Department's business and to be in the public interest in connection with the performance of duties imposed upon the Department of Energy by law. The Committee will operate in accordance with the provisions of the Federal Advisory Committee Act, the Department of Energy Organization Act (Pub. L. 95–91), and rules and regulations issued in implementation of those Acts.

Further information regarding this advisory committee can be obtained from Rachel Murphy at (202) 586–3279.

Issued in Washington, DC, on January 8, 1993.

Marcia L. Morris,

Deputy Advisory Committee Management Officer.

[FR Doc. 93–963 Filed 1–13–93; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. ER93–263–000]

Tampa Electric Co.; Filing

January 8, 1993.

Take notice that on December 7, 1992, Tampa Electric Company (Tampa Electric) tendered for filing a Letter of Commitment providing for the sale by Tampa Electric to the Seminole Electric Cooperative, Inc. (Seminole) of available capacity and/or energy. The Letter of Commitment was tendered as a supplement to Service Schedule G (Backup/Reserve Interchange Service) under the existing contract for interchange service between Tampa Electric and Seminole.

Tampa Electric proposes an effective date of the earlier of February 5, 1993, or the date that the Letter of Commitment is accepted for filing, and therefore requests waiver of the Commission's notice requirement.

Copies of the filing have been served on Seminole and the Florida Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before January 19, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–830 Filed 1–13–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–63–000]

Transcontinental Gas Pipe Line Corporation; Tariff Filing

January 8, 1993.

Take notice that Transcontinental Gas Pipe Line Corporation (TGPL) tendered for filing on January 6, 1993 Fourth Revised Fourth Revised Sheet No. 50 to its FERC Gas Tariff, Third Revised Volume No. 1, which tariff sheet is proposed to be effective February 1, 1993.

The revised tariff sheet is filed pursuant to Section 4 of the National Gas Act and part 154 of the Federal Energy Regulatory Commission's regulations. TGPL states that the instant filing is for the limited purpose of revising rates under TGPL's FT–NT Rate Schedule such that the cost factors and rate design methodology underlying such rates are consistent with the cost factors and rate design methods reflected in TGPL's Docket No. RP92–137 general rate filing.

Included in appendix A to the filing are schedules and supporting workpapers underlying the rates submitted therein and an explanation of the derivation of such rates.

TGPL states that copies of the instant filing were mailed to each of its Rate Schedule FT–NT shippers and interested State Commissions. In accordance with provisions of § 154.16 of the Commission's Regulations, copies of this filing are available for public inspection, during regular business hours, in a convenient form and place at TGPL's main offices at 2800 Post Oak Boulevard in Houston, Texas.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protect with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before January 15, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–852 Filed 1–13–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP92–165–000]

Trunkline Gas Company; Informal Settlement Conference

January 8, 1993.

Take notice that an informal settlement conference will be convened in this proceeding on Friday, January 15, 1993, at 10 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC, for the purpose of finalizing a draft

settlement document in the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Betsy Carr at (202) 208–1240 or Marc G. Denkinger at (202) 208–2215.

Lois D. Cashell,

Secretary.

[FR Doc. 93–851 Filed 1–13–93; 8:45 am]

BILLING CODE 6717–01–M

Office of Fossil Energy

[Docket No. FE C&E 92–21 & 92–22; Certification Notice—112]

Filing Certification of Compliance: Coal Capability of New Electric Powerplant and Industrial Fuel Use Act

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of filing.

SUMMARY: Eagle Point Cogeneration Partnership (C&E 92–21) and Kissimmee Utility Authority (C&E 92–22) have submitted coal capability self-certifications pursuant to section 201 of the Powerplant and Industrial Fuel Use Act of 1978, as amended.

ADDRESSES: Copies of the self-certification filings are available for public inspection upon request in the Office of Fuels Programs, Fossil Energy, room 3F–056, FE–52, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Ellen Russell at (202) 586–9624.

SUPPLEMENTARY INFORMATION: Title II of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended (42 U.S.C. 8301 *et seq.*), provides that no new baseload electric powerplant may be constructed or operated without the capability to use coal or another alternate fuel as a primary energy source. In order to meet the requirement of coal capability, the owner or operator of such facilities proposing to use natural gas or petroleum as its primary energy source shall certify, pursuant to FUA section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) on the day it is filed with the Secretary The Secretary is required to publish a notice in the **Federal Register** that a certification has been filed. The following owners/operators of proposed new baseload powerplants have filed self-certifications in accordance with section 201(d).

Owner: Eagle Point Cogeneration Partnership, Roanoke, Virginia
Operator: Coastal Technology, Inc., Roanoke, Virginia
Location: Gloucester County, New Jersey
Plant Configuration: Combined cycle cogeneration
Capacity: 217 megawatts
Fuel: Natural gas and refinery by-product gas
Purchasing Utilities: Public Service Electric and Gas Company
Expected In-Service Date: May, 1991.
Note: On November 13, 1987, ANR Venture Management Co. filed a certification for this facility stating that the net electrical capacity was 170 MW. This latest certification has been filed to notify DOE of a change in the name of the owner of the facility and also to note an increase in net electrical capacity to 217 MW.
Owner: Kissimmee Utility Authority, Kissimmee, Florida
Operator: Kissimmee Utility Authority
Location: Osceola County, Florida
Plant Configuration: Simple cycle combustion turbine (Unit 1); Combined cycle (Unit 2)
Capacity: 40 megawatts (Unit 1); 120 megawatts (Unit 2)
Fuel: Natural gas
Purchasing Utilities: Kissimmee Utility Authority and Florida Municipal Power Agency systems.
Expected In-Service Date: March, 1994 (Unit 1); January, 1995 (Unit 2)

Issued in Washington, DC, on January 6, 1993.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–940 Filed 1–13–93; 8:45 am]

BILLING CODE 6450–01–M

Office of Hearings and Appeals

Proposed Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of proposed implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the proposed procedures for disbursement of $340,000, plus accrued interest, in alleged crude oil overcharges obtained by the DOE under the terms of a Consent Order and Settlement Agreements entered into with Walter J. Scott & Benjamin J. Agajanian Oil Producers, William J. Scott, and Walter J. Scott d/b/a Scott Oil Company, Case No. LEF–0053. The OHA has tentatively determined that the funds obtained from these three firms, plus accrued interest, will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges.

DATES AND ADDRESSES: Comments must be filed in duplicate on or before February 16, 1993, and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. All comments should display a reference to case number LEF–0053.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Roger Klurfeld, Assistant Director, Office of Hearings and Appeals, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–2094 (Mann); 586–2383 (Klurfeld).

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision and Order sets forth the procedures that the DOE has tentatively formulated to distribute to eligible claimants $340,000, plus accrued interest, obtained by the DOE under the terms of Consent Order Settlement Agreements entered into with Walter J. Scott & Benjamin J. Agajanian Oil Producers, Walter J. Scott d/b/a Scott Oil Company, and William J. Scott on December 17, 1986, July 27, 1991, and December 2, 1991. The funds were paid by these three firms towards the settlements of common violations of the Federal petroleum price and allocation regulations that were in effect from August 19, 1973 through January 28, 1981.

The OHA has proposed to distribute the Scott Settlement fund in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986) (the MSRP). Under the MSRP, crude oil overcharge monies are divided between the federal government, the states, and injured purchasers of refined petroleum products. Refunds to the states would be distributed in proportion to each state's consumption of petroleum products during the price control period. Refunds to eligible

purchasers would be based on the number of gallons of petroleum products which they purchased and the degree to which they can demonstrate injury.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to provide two copies of their submissions. Comments must be submitted within 30 days of publication of this notice in the **Federal Register** and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for public inspection between the hours of 1 p.m. and 5 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in room 1E–234,1000 Independence Avenue SW., Washington, DC 20585.

Dated: January 7, 1993.

Geogre B. Breznay,

Director, Office of Hearings and Appeals.

January 7, 1993.

Proposed decision and Order of the Department of Energy—Implementation of Special Refund Procedures

Name of Firm: Walter J. Scott & Benjamin J. Agaianian, Oil Producers, William J. Scott, Walter J. Scott d/b/a Scott Oil Company

Date of Filing: December 11, 1992

Case Number: LEF–0053

On December 11, 1992, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) filed a Petition for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA), to distribute the funds which Walter J. Scott & Benjamin J. Agajanian Oil Producers, Walter J. Scott d/b/a Scott Oil Company, and William J. Scott remitted to the DOE pursuant to a December 17, 1986 Consent Order, a July 27, 1991 Settlement Agreement and General Agreement and a December 2, 1991 Settlement Agreement and General Release. These three firms have remitted $340,000 pursuant to their respective Consent Order and Settlement Agreements, to which $57,099 has accrued as of November 30, 1992. In accordance with the procedural regulations codified at 10 CFR part 205, subpart V (subpart V), the ERA requests in its Petition that the OHA establish special procedures to make refunds in order to remedy the effects of alleged regulatory violations which were resolved by the above mentioned Consent Order and Settlement Agreements. This Proposed Decision and Order sets forth the OHA's plan to distribute these funds.

I. Background

The ERA issued Proposed Remedial Orders (PROs) to the above mentioned firms on June 4, 1982, alleging that they had violated the DOE price regulations. In the PROs, the ERA found that the three firms had sold crude oil from various leases during the respective audit periods at prices in excess of the lower-tier ceiling price specified in 10 CFR 212.73. On March 21, 1984, the DOE issued a Remedial Order that consolidated the proposed Remedial Orders issued to the three firms for common violations of the Federal petroleum price and allocation regulations that were in effect from August 19, 1973 through January 28, 1981. The DOE and Benjamin J. Agajanian entered into a December 17, 1986 Consent Order, whereby Agajanian was directed to pay the sum of $105,000, plus interest, to the DOE. The DOJ and William J. Scott entered into a July 27, 1991 Settlement Agreement and General Agreement, whereby Scott was directed to pay the sum of $125,000, plus interest, to the DOJ to settle all claims. In addition, the DOJ and Walter J. Scott entered into a December 2, 1991 Settlement Agreement and General Release, whereby Scott was directed to pay the sum of $110,000, plus interest to the DOJ to settle all claims. The three firms in total have remitted $340,000, to which $57,099 in interest has accrued as of November 30, 1992, making available a total of $397,099 (the Scott Settlement fund) for distribution through subpart V. These funds are being held in an interest-bearing escrow account maintained at the Department of the Treasury pending a determination regarding their proper distribution.

II. Jurisdiction and Authority

The subpart V regulations set forth general guidelines which may be used by the OHA in formulating and implementing a plan of distribution of funds received as a result of an enforcement proceeding. The DOE policy is to use the subpart V process to distribute such funds. For a more detailed discussion of subpart V and the authority of OHA to fashion procedures to distribute refunds, see Petroleum Overcharge Distribution and Restitution Act of 1986, 15 U.S.C. 4501–07, Office of Enforcement, 9 DOE ¶ 82,508 (1981), and Office of Enforcement, 8 DOE ¶ 82,597 (1981) (Vickers).

We have considered the ERA's petition that we implement a subpart V proceeding with respect to the Scott Settlement fund and have determined that such a proceeding is appropriate. This Proposed Decision and Order sets forth the OHA's tentative plan to distribute this fund.

III. Proposed Refund Procedures

A. Crude Oil Refund Policy

We propose to distribute the funds obtained pursuant to the above mentioned Consent Order and Settlement Agreements in accordance with the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases, 51 FR 27899 (August 4, 1986) (the MSRP). The MSRP was issued as a result of a court-approved Settlement Agreement In re: The Department of Energy Stripper Well Exemption Litigation, 653 F. Supp. 108 (D. Kan.), 6 Fed. Energy Guidelines ¶ 90,509 (1986) (the Stripper Well Settlement Agreement). The MSRP establishes that 40 percent of the crude oil overcharge funds will be remitted to the federal government, another 40 percent to the states, and up to 20 percent may be initially reserved for the payment of claims by injured parties. The MSRP also specifies that any monies remaining after all valid claims by injured purchasers are paid be disbursed to the federal government and the states in equal amounts.

The OHA has utilized the MSRP in all subpart V proceedings involving alleged crude oil violations. See Order Implementing the MSRP, 51 FR 29689 (August 20, 1986). This Order provided a period of 30 days for the filing of comments or objections to our proposed use of the MSRP as the groundwork for evaluating claims in crude oil refund proceedings. Following this period, the OHA issued a Notice evaluating the numerous comments which it received pursuant to the Order Implementing the MSRP. This Notice was published at 52 FR 11737 (April 10, 1987) (the April 10 Notice).

The April 10 Notice contained guidance to assist potential claimants wishing to file refund applications for crude oil monies under the subpart V regulations. Generally, all claimants would be required to (1) document their purchase volumes of petroleum products during the August 19, 1973 through January 27, 1981 crude oil price control period, and (2) prove that they were injured by the alleged crude oil overcharges. We also specified that end-users of petroleum products whose businesses are unrelated to the petroleum industry will be presumed to have been injured by the alleged crude oil overcharges and need not submit any additional proof of injury beyond documentation of their purchase

volumes. See City of Columbus, Georgia, 16 DOE ¶ 85,550 (1987). Additionally, we stated that crude oil refunds would be calculated on the basis of a per gallon (or "volumetric") refund amount, which is obtained by dividing the crude oil refund pool by the total consumption of petroleum products in the United States during the crude oil price control period. The OHA has adopted the refund procedures outlined in the April 10 Notice in numerous cases. See, e.g., Shell Oil Co., 17 DOE ¶ 85,204 (1988) (Shell); Mountain Fuel Supply Co., 14 DOE ¶ 85,475 (1986) (Mountain Fuel).

B. Refund Claims

We propose to adopt the DOE's standard crude oil refund procedures to distribute the monies in the Scott Settlement fund. We have chosen to initially reserve 20 percent of the fund, plus accrued interest, for direct refunds to claimants in order to ensure that sufficient funds will be available for injured parties. This reserve figure may later be reduced if circumstances warrant.

The OHA will evaluate crude oil refund claims in a manner similar to that used in subpart V proceedings to evaluate claims based on alleged refined product overcharges. See Mountain Fuel, 14 DOE at 88,869. Under these procedures, claimants will be required to document their purchase volumes of petroleum products and prove that they were injured as a result of the alleged violations.

We will adopt a presumption that the crude oil overcharges were absorbed, rather than passed on, by applicants which were (1) end-users of petroleum products, (2) unrelated to the petroleum industry, and (3) not subject to the regulations promulgated under the Emergency Petroleum Allocation Act of 1973 (EPAA), 15 U.S.C. 751–760h. In order to receive a refund, end-user claimants need not submit any evidence of injury beyond documentation of their purchase volumes. See *Shell*, 17 DOE at 88,406.

Petroleum retailer, reseller, and refiner applicants must submit detailed evidence of injury, and they may not rely upon the injury presumptions utilized in some refined product refund cases. Id. These applicants may, however, use econometric evidence of the type found in the OHA Report on Stripper Well Overcharges, 6 Fed. Energy Guidelines ¶ 90,507 (1985). See also Petroleum Overcharge Distribution and Restitution Act section 3003(b)(2), 15 U.S.C. 4502(b)(2). If a claimant has executed and submitted a valid waiver pursuant to one of the escrows established by the Stripper Well Settlement Agreement, it has waived its rights to file an application for subpart V crude oil refund monies. *See Mid-America Dairymen* v. *Herrington*, 878 F.2d 1448 (Temp. Emer. Ct. App.), 3 Fed. Energy Guidelines ¶ 26,617 (1989); In re: Department of Energy Stripper Well Exemption Litigation, 707 F. Supp. 1267 (D. Kan.), 3 Fed. Energy Guidelines ¶ 26,613 (1987).

As has been stated in prior Decisions, a crude oil refund applicant will only be required to submit one application for its share of all available crude oil overcharge funds. See, e.g., *A. Tarricone, Inc.*, 15 DOE ¶ 85,495 (1987). A party that has already submitted a claim in any other crude oil refund proceeding implemented by the DOE need not file another claim. The prior application will be deemed to be filed in all crude oil refund proceedings finalized to date. The DOE has established June 30, 1994 as the current deadline for filing an Application for Refund from the crude oil funds. Quintana Energy Corp., 21 DOE ¶ 85,032 (1991). It is the policy of the DOE to pay all crude oil refund claims at the rate of $.0008 per gallon. While we anticipate that applicants that filed their claims before June 30, 1988 will receive a supplemental refund payment, we will decide in the future whether claimants that filed later applications should receive additional refunds. See, e.g., *Seneca Oil Co.*, 21 DOE ¶ 85,327 (1991). Notice of any additional amounts available in the future will be published in the **Federal Register**.

C. Payments to the Federal Government and the States

Under the terms of the MSRP, we propose that the remaining eighty percent of the alleged crude oil overcharge amounts subject to this Proposed Decision, plus accrued interest, should be disbursed in equal shares to the states and federal government for indirect restitution. Refunds to the states will be in proportion to the consumption of petroleum products in each state during the period of price controls. The share or ration of the funds which each state will receive is contained in Exhibit H of the Stripper Well Settlement Agreement, 6 Fed. Energy Guidelines ¶ 90,509 at 90,687. When disbursed, these funds will be subject to the same limitations and reporting requirements as all other crude oil monies received by the states under the Stripper Well Settlement Agreement.

It Is Therefore Ordered That

The refund amount remitted to the Department of Energy by Walter J. Scott & Benjamin J. Agajanian Oil Producers, William J. Scott, and Walter J. Scott d/b/a Scott Oil Company pursuant to the Consent Order and Settlement Agreements entered into on December 17, 1986, July 27, 1991, and December 2, 1991, will be distributed in accordance with the foregoing Decision.

[FR Doc. 93–961 Filed 1–13–93; 8:45 am]

BILLING CODE 6450–01–M

Pittsburgh Energy Technology Center

Unsolicited Financial Assistance Award

AGENCY: U.S. Department of Energy.

ACTION: Acceptance of an unsolicited proposal application of a grant award with the University of Arizona.

SUMMARY: The Department of Energy (DOE) announces that pursuant to 10 CFR 600.14 (D) and (E), it intends to award financial assistance (grant) through the Pittsburgh Energy Technology Center to the University of Arizona for a research effort entitled "Regeneration of FGD Waste Liquors: Production of Ammonium and Potassium Sulfate Mixed Fertilizer."

ADDRESSES: Department of Energy, Pittsburgh Energy Technology Center, Acquisition and Assistance Division, P.O. Box 10940, MS 921–118, Pittsburgh, PA 15236.

FOR FURTHER INFORMATION CONTACT: Cynthia Y. Mitchell, Contract Specialist (412) 892–4862.

SUPPLEMENTARY INFORMATION:

Grant Number: DE–FG22–93PC92582.

Title of Research Effort: "Regeneration of FGD Waste Liquors: Production of Ammonium and Potassium Sulfate Mixed Fertilizer."

Awardee: University of Arizona.

Term of Assistance Effort: Twelve (12) months.

Grant Estimated Total Value: 48,787.

Objective: Based upon the authority of 10 CFR 600.14 (D) and (E), the objective of this grant is for Arizona University to study a method for regenerating the waste FGD Liquors from the Miami Fort pilot tests and to produce an ammonia and potassium sulfate mixed fertilizer product. This process involves the precipitation of the N–S compounds followed by their hydrolysis. The proposed work is considered to be relevant to the DOE mission in that the program will provide a mechanism for communication, interaction and research between DOE and Arizona University in the continuous process for the regeneration of waste scrubber liquors from the combined SO_x–NO_x

scrubbing systems. The development of this technology would assist utilities in complying with the 1990 Clean Air Act, while still encouraging and enhancing the use of coal, which is a major goal of the DOE Flue Gas Cleanup program.

Dated: December 18, 1992.

Dale A. Siciliano,

Contracting Officer.

[FR Doc. 93–939 Filed 1–13–93; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–36188; FRL–4184–6]

Sugarcane Borer Control in Louisiana and the Ecological Risks Associated With Control of the Sugarcane Borer; Notice of Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Meeting.

SUMMARY: EPA will conduct a public meeting on February 4, 1993, to solicit public comment on sugarcane borer control in Louisiana, including risks, benefits, alternative control methods and possible risk reduction measures. EPA believes that when used in the present manner, azinphos-methyl (trade name Guthion), the primary pesticide used to control the sugarcane borer, poses a hazard to the environment. EPA notes that the other pesticides used to control sugarcane borer also pose ecological hazards.

EPA intends to take action to reduce the adverse ecological effects posed by pesticides from control of the sugarcane borer and encourages public participation to assist in its decision.

DATES: The meeting will be held on February 4, 1993. Written comments from interested parties not able to attend the meeting must be received on or before February 5, 1993. Persons who wish to speak at the public meeting are encouraged to register in advance by submitting a brief written request to EPA on or before January 29, 1993.

ADDRESSES: The meeting is open to the public and will be held in the Norman Efferson Louisiana State University Agriculture Center Building, Room 214, Louisiana State University Campus, Highland Road, Baton Rouge, LA 70894-5203. The public meeting will begin at 1:00 p.m. and will continue to 7:00 p.m. Interested parties who cannot attend the public meeting but who wish to comment may do so by submitting written comments. Comments should be addressed to the person listed under **FOR FURTHER INFORMATION CONTACT.** Comments received on or before the specified date will be considered by the Agency before a final decision is reached on the appropriate action to be taken with regard to sugarcane borer control at this use site.

FOR FURTHER INFORMATION CONTACT: By mail: Tom Moriarty, Special Review and Reregistration Division, Office of Pesticide Programs (H7508W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person: Crystal Station 3rd Floor, 2800 Jefferson-Davis Highway, Arlington, VA, (703) 308-8035 (telephone), (703) 308-8041 (fax).

SUPPLEMENTARY INFORMATION:

I. Background

Sugarcane production in Louisiana accounts for 35 percent of the total U.S. sugarcane production and the sugarcane borer is one of the pests that threaten sugarcane production. Without control of this pest, the Agency estimates that the potential yield loss in Louisiana would be significant.

Several insecticides are used for control of the sugarcane borer in Louisiana. The pesticide most often used is Guthion, which is produced by Miles Incorporated and Makhteshim Chemical Works of Israel. Guthion is an organophosphate pesticide registered for use on over 100 crops for control of over 200 pests. It is an acutely toxic pesticide and all liquid formulations with concentrations of 13.5% active ingredient or greater have been classified for "restricted use".

Laboratory data indicate that Guthion is very highly toxic to aquatic organisms. Field data on Guthion confirm the laboratory data and the Agency's ecological risk concerns for this chemical. Because Guthion is moderately mobile and water soluble, it is likely to move from where it is applied into surface water. Guthion is also persistent in the terrestrial environment with a field dissipation half-life ranging from 30 to 181 days. This means a portion of the product may remain on or near the surface of the plant for the duration of this time and will likely be present even longer.

The environmental conditions under which sugarcane is grown in Louisiana and the chemical characteristics of Guthion promote runoff of this chemical into surrounding surface water. Guthion is typically applied during a time of year when Louisiana receives frequent rain showers. In addition, the predominantly clay-rich soil in which sugarcane is grown favors runoff. This has led to direct fish mortality.

In 1991, several fish-kill incidents were reported in which the total number of dead fish was estimated to range from 400,000 to 750,000. Following the 1991 incidents, significant label changes were made for Guthion use on sugarcane to try to reduce the risk to aquatic organisms. Despite the label changes that were implemented in time for the 1992 use season, further fish-kill incidents were reported which resulted in an estimated total of 26,000 fish mortalities. Because of the characteristics of both Guthion and its use in Louisiana, the Agency believes that similar fish-kill events are likely to occur.

The primary alternative to Guthion for control of the sugarcane borer is esfenvalerate (trade name Asana). Asana, a synthetic pyrethroid manufactured by DuPont, is very highly toxic to aquatic invertebrates and is also toxic to fish. EPA's data indicate that Asana is equally as efficacious as Guthion in controlling the sugarcane borer and is slightly less expensive.

Other pesticide alternatives for control of the sugarcane borer include diazinon, flowable carbofuran, and phorate. While each of these alternatives is less toxic to fish than either Guthion or Asana, all are highly toxic to birds or mammals.

It is unclear what the exact impact on yields would be if Guthion was no longer available for use on sugarcane in Louisiana; however, it appears that Asana offers similar control at similar costs. Therefore, the Agency believes that growers would not experience any significant economic impact without the availability of Guthion.

While all of the chemical alternatives pose risks to the environment, it appears that Guthion poses a greater risk than the alternatives. Nonetheless, the Agency is interested in reducing risk posed by pesticides used to control the sugarcane borer.

II. Information Sought by EPA

EPA is required by law to ensure that pesticides do not cause unreasonable adverse effects on people or the environment. As part of its evaluation process, the Agency collects information on the risks and benefits of pesticides. The Agency is interested in soliciting public comment on means to control the sugarcane borer in Louisiana while protecting the environment. An attempt has already been made to reduce the ecological risk from Guthion (through 1991 label changes) and the Agency is unaware of any effective alternative means to control the sugarcane borer which does not also cause adverse ecological effects. Therefore, the Agency

has decided to solicit comment from all interested parties on this issue before it decides what action it will take, if any, to mitigate risks from control of the sugarcane borer.

The Agency is specifically interested in hearing public comment, or receiving written comment on the following topics.

1. *Quantity and use of pesticides to control sugarcane borer.* This includes the number of the different pesticides used to control the sugarcane borer by farmers, sugarcane grower organizations, or the State, (including the amount of pesticides stored), and the number of acres treated with pesticides to control the sugarcane borer. In addition, the Agency is interested in how the different pesticides are used such as application rates, methods of application, frequency of applications and timing.

2. *Efficacy of the various pesticide controls of sugarcane borer.* The Agency would like information on the biological efficacy of the available pesticide control alternatives (whether growers would anticipate any yield loss from the use of Guthion alternatives taking into consideration the wet conditions under which sugarcane is grown in Louisiana). In addition, the Agency would like to know if there would be, and to what degree, a resurgence of aphids if only the Guthion alternatives were available.

3. *Pest management practices and risk reduction.* The Agency would like public input on the possibility and effectiveness of different pest management techniques to control the sugarcane borer, including non-chemical pest controls. The Agency encourages comment on, but not limited to: Restriction of application, use of buffer zones, integrated pest management techniques, different tank mixes, or reduced wing span for aerial applications. The Agency is specifically interested in possible risk mitigation measures that could be used to reduce the ecological risk from Guthion.

4. *Cost of sugarcane borer control.* The Agency would like to know what costs (gains or losses to profits) would be incurred by sugarcane growing parties if only Guthion alternatives were available. For example, cost for additional extension agent service, or increased applications, or change in application equipment. Information on sugarcane crop budget would also be helpful in the Agency's benefit analysis of this use site.

5. *Environmental and human health effects from control of the sugarcane borer.* Finally, the Agency invites public comment on any known human poisoning events or additional ecological effects (fish or bird or mammal mortalities) associated with the use of Guthion or any of the alternatives when used to control the sugarcane borer.

III. Registration to Make Comments

Persons who wish to speak at the public meeting are encouraged to register in advance by submitting a brief written request to EPA on or before January 29, 1993. However, those who do not register by January 29 may register in person, on February 4th, to make a presentation at the meeting, if time permits.

The Agency encourages parties to submit data to substantiate comments whenever possible. All comments, as well as information gathered at the public meetings will be available for public inspection from 8:00 a.m. to 4:30 p.m., Monday through Friday (except legal holidays), at the Public Response and Program Resource Branch, Field Operations Division, Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as part of any comment may be claimed as confidential by marking any or all of that information as Confidential Business Information (CBI). Information so marked will not be disclosed except in accordance with the procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by the Agency without prior notice to the submitter. The Agency anticipates that most of the comments will not be classified as CBI, and prefers that all information submitted be publicly available. Any records or transcripts of the open meetings will be considered public information and cannot be declared CBI.

IV. Structure of the Meeting

EPA will open the meeting with brief introductory comments. EPA will then invite those parties who have registered by January 29 to present their comments. Those who registered the day of the meeting will be offered the opportunity to present their comments, if time permits. EPA anticipates that each speaker will be permitted about 10 minutes to make comments. After each speaker, Agency representatives may ask the presenter questions of clarification. The Agency reserves the right to adjust the time for presenters depending upon the number of speakers.

Members of the public are encouraged to submit written documentation to EPA at the meeting to ensure that their entire position goes on record in the event that time does not permit a complete oral presentation. Written comments should include the name and address of the author as well as any sources used. Any information may be delivered to Tom Moriarty at the address stated earlier in this Notice.

Dated: January 8, 1993.

Daniel M. Borolo,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 93–926 Filed 1–13–93; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–50752; FRL–4178–7]

Issuance of Experimental Use Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits to the following applicants. These permits are in accordance with, and subject to, the provisions of 40 CFR part 172, which defines EPA procedures with respect to the use of pesticides for experimental use purposes.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person or by telephone: Contact the product manager at the following address at the office location or telephone number cited in each experimental use permit: 1921 Jefferson Davis Highway, Arlington, VA.

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permits:

100–EUP–95. Issuance. Ciba-Geigy Corporation, P.O. Box 18300, Greensboro, NC 27419. This experimental use permit allows the use of 16,000 pounds of the insecticide-miticide methidathion on 4,000 acres of almonds and citrus to evaluate the control of various insects and mites. The program is authorized only in the State of California. The experimental use permit is effective from November 4, 1992 to November 4, 1993. A permanent tolerance for residues of the active ingredient in or on almonds and citrus has been established (40 CFR 180.298). (Dennis Edwards, PM 19, Rm. 207, CM #2, (703–305–6386))

264–EUP–85. Renewal. Rhone-Poulenc Ag Company, P.O. Box 12014,

2 T.W. Alexander Drive, Research Triangle Park, NC 27709. This experimental use permit allows the use of 215 pounds of the fungicide iprodione on 160,000 bushels of shelled corn to evaluate the control of storage molds (aspergillus and penicillium). The program is authorized only in the States of Iowa, Illinois, Indiana, Kansas, Minnesota, and Nebraska. The experimental use permit is effective from October 28, 1992 to December 31, 1992. A temporary tolerance for residues of the active ingredient in or on field corn has been established. (Susuan Lewis, PM 21, Rm. 227, CM #2, (703–305–6900))

Persons wishing to review these experimental use permits are referred to the designated product manager. Inquires concerning these permits should be directed to the person cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Authority: 7 U.S.C. 136.

Dated: January 5, 1993.

Lawrence E. Culleen,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 93–933 Filed 1–13–93; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–180882; FRL 4183–1]

Receipt of Application for Emergency Exemption To Use Fenoxycarb; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Washington Department of Agriculture (hereafter referred to as the "Applicant") for use of the pesticide fenoxycarb (CAS 72490–01–8) to control pear psylla (*Cacopsylla pyricola*) on up to 16,000 acres of pears. The Applicant proposes the first food use of an active ingredient; therefore, in accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before January 29, 1993.

ADDRESSES: Three copies of written comments, bearing the identification notation "OPP–180882" should be submitted by mail to: Public Docket and Freedom of Information Section, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. In person, bring comments to: Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Andrea Beard, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. Office location and telephone number: Rm. 718, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703–305–7890).

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State agency from any registration provision of FIFRA if he determines that emergency conditions exist which require such exemption. The Applicant has requested the Administrator to issue a specific exemption for the use of the insecticide, fenoxycarb, manufactured as Fenoxycarb 25 WP, by Ciba-Geigy Corporation, to control pear psylla, on up to 16,000 acres of pears. Information in accordance with 40 CFR part 166 was submitted as part of this request.

The Applicant states that pear psylla is a major, chronic pest of all Washington and Oregon pear orchards. The pear psylla causes damage by injecting a toxin into the tree during the feeding process, which, in the long run, is debilitating and reduces vigor and, ultimately, yield. The pear psylla also causes injury by the copious amounts of honeydew which are secreted by the feeding nymphs. Honeydew on the fruit causes deformed fruit and russeting, major quality problems which cause downgrading of fruit and increased cullage. In addition, the honeydew causes secondary problems with black sooty mold on the fruit. If the pest is left totally uncontrolled, it will cause eventual tree debilitation and dramatic yield decreases. Pear psylla overwinter as adults in the trees. Dormant spraying is necessary to reduce the overwintering adult population before they lay eggs. The only effective winter spray materials for some years were the synthetic pyrethroids, permethrin and fenvalerate. When widespread resistance to these materials became evident in the psylla population by 1987–88, the Applicant states that cyfluthrin was used under crisis exemptions in 1988 and 1990, and under specific exemption in 1989 and 1991 and found to be highly efficacious. The Applicant also made use of cyfluthrin in 1992 under the provisions of a specific exemption. The Applicant claims that an emergency situation now exists, in that failure of cyfluthrin has been demonstrated, indicating the development of pear psylla populations which are resistant to this previously effective material.

The Applicant is requesting the use of fenoxycarb, and claims that field trials have demonstrated that this material provides excellent control of pear psylla in pears. The Applicant wishes to treat up to 16,000 acres of pear trees using up to 4,000 pounds of active ingredient. Up to two applications would be made per growing season, at a maximum rate of 2 oz. active ingredient (8 oz. product) per acre, diluted in water to make a minimum spray volume of 50-400 gallons per acre. Application of fenoxycarb would not be allowed by air or through chemigation equipment. This is the first year that the Applicant has requested this use of fenoxycarb.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require publication of a notice of receipt in the **Federal Register** and solicit public comment on an application for a specific exemption proposing the first food use of an active ingredient. Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above.

The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the Washington Department of Agriculture.

Dated: December 29, 1992.

Lawrence E. Culleen,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 93–932 Filed 1–13–93 8:45 am]

BILLING CODE 6560–50–F

FEDERAL RESERVE SYSTEM

First Bank System, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than February 8, 1993.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. First Bank System, Inc., Minneapolis, Minnesota; and Central Bancorporation, Inc., Denver, Colorado; to acquire 100 percent of the voting shares of Bank Western National Association, Denver, Colorado, a *de novo* bank.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Cherokee County Banshares, Inc., Hulbert, Oklahoma; to become a bank holding company by acquiring 100 percent of the voting shares of First State Bank, Hulbert, Oklahoma.

C. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. First Bancorp, Inc., Denton, Texas, Texas Financial Bancorporation, Inc., Minneapolis, Minnesota, and First Delaware Bancorp, Inc., Dover, Delaware; to acquire 100 percent of the voting shares of The Terrell State Bank, Terrell, Texas.

Board of Governors of the Federal Reserve System, January 8, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–952 Filed 1–13–93; 8:45 am]

BILLING CODE 6210–01–F

UJB Financial Corp., et al.; Notice of Applications To Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 3, 1993.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. UJB Financial Corp., Princeton, New Jersey; to engage *de novo* through its subsidiary, Richard Blackman & Co., Inc., Paramus, New Jersey, in securities brokerage activities pursuant to § 225.25(b)(15); and investment and financial advisory services pursuant to § 225.25(b)(4)(iii) of the Board's Regulation Y.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Dunn County Bankshares, Inc., Menomonie, Wisconsin; to engage *de novo* in making and servicing one loan pursuant to § 225.25(b)(1) of the Board's Regulation Y. This activity will be conducted in Eau Claire, Wisconsin.

Board of Governors of the Federal Reserve System, January 8, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–953 Filed 1–13–93; 8:45 am]

BILLING CODE 6210–01–F

First Bank System, Inc. and Central Bancorporation, Inc.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies; and Acquisitions of Nonbanking Companies

The companies listed in this notice have applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed companies have also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The applications are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of

Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 8, 1993.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. First Bank System, Inc., Minneapolis, Minnesota, and Central Bancorporation, Inc., Denver, Colorado; to merge with or acquire up to 100 percent of the voting shares of Colorado National Bankshares, Inc., Denver, Colorado, and thereby indirectly acquire Colorado National Bank, Denver, Colorado; Colorado National Bank - Belmont, Pueblo, Colorado; Colorado National Bank - Pueblo, Pueblo, Colorado; Colorado National Bank - Glenwood, Glenwood Springs, Colorado; Colorado National Bank - Grand Junction, Grand Junction, Colorado; Colorado National Bank - Longmont, Longmont, Colorado; Colorado National Bank - Ft. Collins, Fort Collins, Colorado; and Colorado National Bank - Exchange, Colorado Springs, Colorado.

In connection with this application, Applicants also propose to acquire Colorado National Insurance Agency, Inc., Denver, Colorado, and thereby engage in selling credit life, and accident and disability insurance pursuant to § 225.25(b)(8)(i); and Colorado National Life Insurance Company, Inc., Denver, Colorado, and thereby engage in reinsuring credit life, and accident and disability insurance pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 8, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–954 Filed 1–13–93; 8:45 am]

BILLING CODE 6210–01–F

First State BancShares, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 8, 1993.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. First State BancShares, Inc., Scottsbluff, Nebraska; to acquire Security First Savings & Loan Association, Cheyenne, Wyoming, and thereby engage in operating a savings association pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 8, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–955 Filed 1–13–93; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR–66]

Request for Nominations for Peer Reviewers

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Public Health Service (PHS), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Agency for Toxic Substances and Disease Registry (ATSDR), United States Public Health Service, Department of Health and Human Services, is seeking nominations for peer reviewers for studies and research projects conducted or sponsored by ATSDR.

FOR FURTHER INFORMATION CONTACT: John S. Andrews, Jr., M.D., Associate Administrator for Science, Mailstop E–28, ATSDR, 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone (404) 639–0708. Persons interested in serving as peer reviewers should send the following information: Name, address, telephone number, FAX number, and a curriculum vitae to Dr. Andrews at the above address. Persons who have previously applied should submit a revised curriculum vitae.

SUPPLEMENTARY INFORMATION: ATSDR in carrying out the health-related authorities of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (CERCLA) (42 U.S.C. 9601 *et seq.*), conducts epidemiological studies of persons exposed to hazardous substances and toxicilogical studies of hazardous substances. Protocols and final reports of studies and results of research funded, sponsored, or conducted by ATSDR will be peer reviewed in accordance with the mandates of CERCLA, section 104(i)(13) (42 U.S.C. 9604(i)(13)), which requires that all studies and results of research conducted under this subsection (other than health assessments) shall be reported or adopted only after

appropriate peer review. Such peer review shall be completed, to the maximum extent practicable, within a period of 60 days. Such peer review shall be conducted by panels consisting of no less than three nor more than seven members, who shall be disinterested scientific experts selected for such purpose by the Administrator of ATSDR on the basis of their reputation for scientific objectivity and the lack of institutional ties with any persons involved in the conduct of the study or research under review. Peer reviewers will be asked to sign statements indicating they acknowledge compliance with the conflict-of-interest provision of CERCLA section 104(i)(13) (42 U.S.C. 9604(i)(13)).

Peer reviewers will be sent protocols and final reports of studies and results of research and asked to provide their individual written comments within an agreed-upon time frame. Peer reviewers will categorize these protocols and final reports as (1) recommended, (2) recommended with required changes, or (3) not recommended. After categorization, protocols and final reports of studies and results of research will be returned to ATSDR. Individual peer review comments will be released to principal investigators and the appropriate ATSDR Divisions and may be subject to release under the Freedom of Information Act (5 U.S.C. 552, as amended).

Experts in the following areas are needed:

Analytical Chemistry
Aquatic Toxicity/Toxicity Testing
Biostatistics
Cellular and Molecular Epidemiology
Cellular and Molecular Toxicology
Chronic Disease Epidemiology
Clinical Pathology
Communication
Community Medicine
Computer Science
Developmental Pediatrics
Demography
Environmental Chemistry
Environmental Engineering
Environmental Epidemiology
Environmental Fate and Transport of Pollutants
Environmental Health
Epidemiology
Ethics
Genetic Toxicology
Health Physics
Hydrogeology
Immunology
Internal Medicine
Laboratory Medicine
Marine Biology
Minority Health Issues
Neurobehavior
Neurobehavioral Testing
Neurotoxicity
Neurotoxicology
Occupational Medicine
Pathology
Pediatrics
Physiology
Preventive Medicine
Psychology
Public Health
Pulmonary
Reproductive Health
Reproductive Toxicology
Risk Assessment
Science Policy
Sociology
Statistics
Toxicokinetics/Pharmacokinetics
Toxicology

Reviewers will be paid a consultation fee for their reviews. In general, persons who review the protocol for a particular study or research will also be asked to review the final report for the study or research.

Dated: January 8, 1993.

Walter R. Dowdle,

Acting Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 93–838 Filed 1–13–93; 8:45 am]

BILLING CODE 4160–70–M

National Institutes of Health

Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HN (National Institutes of Health) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (40 FR 22859, May 27, 1975, as amended most recently at 57 FR 54243, November 17, 1992), is amended to: (1) Correct the standard administrative codes (SAC) for the Office of Research on Minority Health from (HNE) to HNAE), and the Office of Research on Women's Health from (HNAF) to (HNAG) at the above-mentioned citation; and (2) reflect the reorganization of the Division of Computer Research and Technology (DCRT), National Institutes of Health (NIH), to better meet the needs of the biomedical community, and the NIH community at large, in the application of advanced computing technology; and more clearly reflect its reporting relationships. The reorganization consists of: (1) The realignment of the Office of Administration Management (HNU14), and the establishment of the Office of Information Resources Management (HNU18) within the Office of the Director, DCRT; (2) the establishment of the Office of Computing Resources and Services (HNU2), and the Office of Computational Bioscience (HNU3); and (3) the realignment of DCRT's standard administrative codes (SACs).

Section HN–B, Organization and Functions, is amended as follows: (1) Under the heading Office of Research on Minority Health (HNE), replace the standard administrative code (HNE) with the standard administrative code (HNAE).

(2) Under the heading Office of Research on Women's Health (HNAF), replace the standard administrative code (HNAF) with the standard administrative code (HNAG).

(3) Under the heading Division of Computer Research and Technology (HNU), insert the following:

Office of Administrative Management (HNU14)

(1) Advises the DCRT Director on management aspects of the Division's programs, policies, and procedures; (2) provides administrative services in support of DCRT program efforts; (3) coordinates DCRT's response to NIH-wide management programs; (4) provides staff support in information sciences in support of the DCRT and NIH mission; (5) plans and carries out scientific and technical communications activities for DCRT; and (6) manages a core collection of computer and computer science-related information for NIH.

Office of Information Resources Management (HNU18)

(1) Advises the Director and Deputy Director on all aspects of Information Resources Management (IRM) activities, including DCRT IRM strategic planning, capacity management and planning, security, and coordination of the acquisition of Federal Information Processing (FIP) resources; (2) manages the DCRT IRM program activities; (3) plans and conducts user surveys and studies to assess NIH computing requirements; (4) serves as the DCRT liaison to the Office of Information Resources Management, OD/NIH, on all IRM matters; and (5) assists DCRT staff in IRM management, including procurement of major FIP resources.

Office of Computational Bioscience (HNU2)

(1) Coordinates and manages all Division activities related to the conduct and support of NIH research in the computational biosciences; (2) applies computing technology to research involving molecular structure determination and modeling, protein and DNA sequence analysis and

biomedical imaging; (3) conducts and supports research in mathematical theory and biophysical instrumentation to explain biological phenomena in terms of chemistry and physics; (4) conducts research and development in computer science and computational engineering; (5) promotes the application of high performance computing to biomedical research and represents the Division to the Federal program in High Performance Computing and Communication (HPCC); (6) evaluates the overall performance of these programs; and (7) communicates and collaborates with researchers both within and outside NIH to obtain and provide information concerning DCRT's ongoing and future research, and support for research.

Office of Computing Resources and Services (HNU3)

(1) Advises the Director and Deputy Director, DCRT, on all matters pertaining to the management of DCRT ADP service and support programs; (2) coordinates and oversees all programs related to the development and provision of networking facilities; (3) provides centralized computational and data processing facilities and professional programming services; (4) provides guidance and support for end users of distributed computing technology, including personal computers, workstations, and local area networks; (5) provides engineering design to facilitate laboratory and clinical applications of automation technology; and (6) provides central systems analysis, and design and programming resources for database projects relating to scientific, technical, management, financial and administrative data.

Dated: January 6, 1993.

Bernadine Healy,

Director, NIH.

[FR Doc. 93–835 Filed 1–13–93; 8:45 am]

BILLING CODE 4140–01–M

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Prevention; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Substance Abuse Prevention Conference Review Committee of the Center for Substance Abuse Prevention for January 1993.

The initial review group will be performing review of applications for Federal assistance; therefore, a portion of this meeting will be closed to the public as determined by the Acting Administrator, SAMHSA, in accordance with 5 U.S.C. 552b(c)(6) and 5 U.S.C. app. 2 10(d).

A summary of the meeting and roster of committee members may be obtained from: Ms. D. Herman, CSAP Committee Management Officer, Substance Abuse and Mental Health Services Administration, Rockwall II Building, suite 630, 5600 Fishers Lane, Rockville, MD 20857 (Telephone: 301–443–4783).

Substantive program information may be obtained from the contact whose name, room number, and telephone number is listed below.

Committee Name: Substance Abuse Prevention Conference Review Committee.

Meeting Date(s): January 25–29, 1993.

Place: Bethesda Hyatt Regency, One Bethesda Metro Center, Cartier Tiffany Room, Bethesda, Maryland 20857.

Open: January 25, 1993 8:30 a.m.–9 a.m.

Closed: Otherwise.

Contact: Substance Abuse Prevention Conference, Review Committee, Ferdinand W. Hui, Ph.D., Telephone: (301) 443–4952.

Dated: January 8, 1993.

Peggy W. Cockrill,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 93–801 Filed 1–13–93; 8:45 am]

BILLING CODE 4160–20–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

Applicant: John J. Jackson, III, Metairie, LA. PRT–774792.

On December 24, 1992, a notice of the proposed import of one horn, removed from a live rhinoceros in Zimbabwe, was published in the **Federal Register**. The applicant has amended his application to request import of both horns taken from one sedated black rhinoceros (*Diceros bicornis*). The applicant proposes to dart a rhinoceros with anesthesia for removal of the horns by a qualified individual. He requests that the two horns be considered sport-hunted trophies and states the proposed import would serve to enhance survival of the species in the wild.

Applicant: Hunter Schuehle, San Antonio, TX. PRT–767310.

This application was previously published on October 8 and 21, 1992. Since that time, additional information has been received from the applicant and others that merits opening the comment period on the application for an additional 30 days. The applicant requests a permit to authorize interstate and foreign commerce, export, and cull of excess male red lechwe (*Kobus leche*), dama gazelle (*Gazella dama* spp.), barasingha (*Cervus duvauceli*), Eld's brow-antlered deer (*Cervus eldi*) and Arabian oryx (*Oryx leucoryx*) from his captive herd for the purpose of continued maintenance of the herd for enhancement of survival of the species.

Applicant: John Powers, Baton Rouge, LA. PRT–774116.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*), culled from the captive herd maintained by W.S. Murray, "Graaff Reinet", Groothoek, Cape Province, Republic of South Africa, for the purpose of enhancement of survival of the species.

Applicant: Hartwell A. Burnett, Jr., Woodinville, WA. PRT–774715.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*), culled from the captive herd maintained by J.C.P. Van Druten, "Victoria West", Riekertsfontein, Cape Province of South Africa, for the purpose of enhancement of survival of the species.

Applicant: Duke University Primate Center, Durham, NC. PRT–679043.

On June 17, 1992, a notice of this applicant's proposed activities was published in the **Federal Register**. Since that time the applicant has clarified that, in addition to dead specimens, they propose to take blood and tissue samples from live captive animals for sale in interstate and foreign commerce for purposes of scientific research and for enhancement of propagation or survival. Dead specimens and samples would be obtained from species within the following families: Lemuridae, Indriidae, Cheirogaleidae, Daubentoniidae, Tarsiidae and Lorisidae.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review by any party who

submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: January 11, 1993.

Susan Jacobsen,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 93–858 Filed 1–13–93; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Land Management

[CA–050–93–4333–13]

Closure Order of Public Lands in Mendocino County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Closure Order of Public Lands in Mendocino County, California.

SUMMARY: Notice is hereby given related to the closure of Bureau of Land Management (BLM) administered lands to public use from the hours of 9:00 p.m. to 5:00 a.m. in accordance with regulations contained in 43 CFR subpart 8364.1(a) and known as Little Darby Environmental Education Area, located in T18N, R13W, Section 1, in Mendocino County containing 20 acres more or less. This closure shall apply only to those lands included in the parking area and picnic site located adjacent to Berry Canyon Road. The closure will not apply to the remaining 980 acres nor will it apply to any peace officers, firefighters, or any other emergency service personnel while in the performance of their duties. Exemption to this closure may be granted to groups or individuals by permit from BLM.

DATES: This Closure Order is effective January 14, 1993.

SUPPLEMENTARY INFORMATION: The entire area is covered by dense chaparral and timber and was developed for wildlife habitat in 1965. In 1979, Little Darby became an environmental education area with a parking area, interpretive trail, and picnic site. Use of the area has increased as schools begin to recognize its convenience and value for environmental education. The interpretive trail is used by members of the public, particularly school children, to observe the wide variety of plant and animal species and the diversity of habitats including old growth Douglas Fir community found within the area. The night closure of the parking and picnic areas is necessitated by the increase in vandalism and consumption of alcohol occurring in these areas during the evening. The Bureau will continue to manage this area specifically for wildlife habitat as an environmental study area where members to the public can enjoy this area for hiking and nature study. The parking area and picnic site will be posted "Day Use Only", Closed 9 p.m. to 5 a.m.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Arcata, California office at (707) 822–7648.

Lynda Roush,

Arcata Resource Area Manager.

[FR Doc. 93–912 Filed 1–13–93; 8:45 am]

BILLING CODE 4310–40–M

[AZ–010–93–4332–02; 1784–010]

Arizona Strip District Grazing Advisory Board; Meetings

AGENCY: Bureau of Land Management, Arizona Strip District, Interior.

ACTION: Notice of meeting.

SUMMARY: The new District Manager will be introduced to the Arizona Strip District Grazing Advisory Board. Topics such as desert tortoise, incentive based grazing fee, and user maintenance will be discussed.

DATES: The meeting will be held at the District Office located at 390 North 3050 East, St. George, Utah at 8 a.m. on February 4, 1993.

FOR FURTHER INFORMATION CONTACT: Raymond D. Mapston, District Manager, Arizona Strip District, 390 North 3050 East, St. George, Utah 84770 (Phone 801/6773–3545).

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Any person who would like to comment may do so the final 30 minutes of the meeting.

Dated: January 6, 1993.

Raymond Mapston,

Arizona Strip District Manager.

[FR Doc. 93–909 Filed 1–13–93; 8:45 am]

BILLING CODE 4310–32–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–940–03–4730–02]

Land Resource Management

AGENCY: Bureau of Land Management, Montana State Office, Interior.

ACTION: Notice of filing of plat of survey.

SUMMARY: Plats of survey for the following described land accepted December 2, 1992, will be officially filed in the Montana State Office, Billings, Montana, effective 30 days after publication.

Principal Meridian, Montana

T. 23 N., Rs. 59 and 60 E.

The plat, of the NE¼ of section 13, representing the corrective dependent resurvey of portions of the east boundary, and certain subdivision of section lines, and the survey of a portion of the present left bank meanders of the Yellowstone River, and an abandoned channel of the Yellowstone River in section 13, Township 23 North, Range 59 East, and an island in the Yellowstone River in sections 13 and 18, Township 23 North, Ranges 59 and 60 East, Principal Meridian, Montana.

T. 2 N., R. 45 E.

The plat representing the dependent resurvey of a portion of the subdivisional lines and the adjusted original meanders of the former right bank of the Tongue River, downstream through section 10, and the subdivision of section 10, the survey of the new meanders of the present right bank of the Tongue River through section 10, and a division of accretion line, Township 2 North, Range 45 East, Principal Meridian, Montana.

The triplicate original of the preceding described plats will be immediately placed in the open files and will be available to the public as a matter of information.

If a protest against this survey, as shown on the plat, is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. The protested plat of survey will not be officially filed until the day after all protests have been accepted or dismissed and become final or appeals from the dismissal affirmed.

These surveys were executed at the request of the District Manager, Miles City District Office.

EFFECTIVE DATE: December 28, 1992.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 222 North 32nd Street, P.O. Box 36800, Billings, Montana 59107–6800.

Dated: December 31, 1992.

Robert H. Lawton,

State Director.

[FR Doc. 93–818 Filed 1–13–93; 8:45 am]

BILLING CODE 4310–DN–M

Minerals Management Service

Outer Continental Shelf (OCS) Oil and Gas Information Program; Republication

Editorial Note: FR Doc. 93-11 was originally published at page 352 in the issue of Tuesday, January 5, 1993. In that publication some paragraphs were omitted. The correction document is republished below in its entirety.

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of availability.

SUMMARY: Notice is hereby given that the Minerals Management Service has recently released a publication entitled "Accidents Associated with Oil and Gas Operations, Outer Continental Shelf, 1956–1990, OCS Report MMS 92–0058." This 324-page report is a compilation of descriptions of all blowouts, explosions and fires, pipeline breaks or leaks, significant pollution incidents, and major accidents that occurred on federally leased offshore lands for 1956 through 1990.

The report identifies accidents by area, block number, lease number, platform number, well number, and operator. It describes the type of accident, corrective action taken, and the amount of pollution. It provides figures on fatalities, injuries, and property and environmental damage.

ADDRESSES: This OCS REPORT, MMS 92–0058, is available for inspection at the Technical Communication Services; Document Distribution Center; Minerals Management Service, Mail Stop 4530; 381 Elden Street, room 1317; Herndon, Virginia 22070–4817, telephone (703) 787–1080. Copies of this report can be obtained from the same address.

FOR FURTHER INFORMATION CONTACT: Lloyd M. Tracey; Engineering and Standards Branch; Minerals Management Service, Mail Stop 4700; 381 Elden Street; Herndon, Virginia 22070–4817, telephone (703) 787–1600.

SUPPLEMENTARY INFORMATION: This report is published pursuant to 30 CFR part 252—OCS Oil and Gas Information Program, 44 FR 46408, August 7, 1979. An outline of the contents of the report is set forth below.

Accidents Associated with Oil and Gas Operations in the OCS.

I. Introduction

II. Gulf of Mexico (GOM) OCS Region

Table 1, Crude Oil and Condensate Spill Incidents of 200 or More Barrels, OCS—GOM.

Table 2–A, Accidents Associated with Oil and Gas Operations on the OCS, GOM, Blowouts.

Table 2–B, Accidents Associated with Oil and Gas Operations on the OCS, GOM, Explosions and Fires.

Table 2–C, Accidents Associated with Oil and Gas Operations on the OCS, GOM, Pipeline Breaks or Leaks.

Table 2–D, Accidents Associated with Oil and Gas Operations on the OCS, GOM, Significant Pollution Incidents, 50 bbl (2,100 gal) or More.

Table 2–E, Accidents Associated with Oil and Gas Operations on the OCS, GOM, Major Accidents.

III. Pacific OCS Region

Table 3, Crude Oil and Condensate Spill Incidents of 200 or More Barrels, OCS—Pacific.

Table 4–A, Accidents Associated with Oil and Gas Operations on the OCS, Pacific, Blowouts.

Table 4–B, Accidents Associated with Oil and Gas Operations on the OCS, Pacific, Explosions and Fires.

Table 4–C, Accidents Associated with Oil and Gas Operations on the OCS, Pacific, Pipeline Breaks or Leaks.

Table 4–D, Accidents Associated with Oil and Gas Operations on the OCS, Pacific, Significant Pollution Incidents, 50 bbl (2,100 gal) or More.

Table 4–E, Accidents Associated with Oil and Gas Operations on the OCS, Pacific, Major Accidents.

IV. Alaska OCS Region

Table 5–E, Accidents Associated with Oil and Gas Operations on the OCS, Alaska, Major Accidents.

V. Atlantic OCS Region

Table 6–E, Accidents Associated with Oil and Gas Operations on the OCS, Atlantic, Major Accidents.

VI. Summary Tables for the Entire OCS

Table 7, Summary of Crude Oil and Condensate Spill Incidents of 200 or More Barrels, OCS.

Table 8, Summary of Accidents Associated with Oil and Gas Operations on the OCS, 1956–1990.

VII. Graphs of Data Pertaining to Accidents Associated With Oil and Gas Operations on the OCS

Figure 1, Crude & Condensate Spills≥200 bbl, OCS—GOM.

Figure 2, Crude & Condensate Spills≥200 bbl, OCS—Pacific.

Figure 3, Volume of Crude & Condensate Spilled, OCS—GOM.

Figure 4, Volume of Crude & Condensate Spilled, OCS—Pacific.

Figure 5, Crude & Condensate Spills≥200 bbl, OCS.

Figure 6, Volume of Crude & Condensate Spilled, OCS.

Figure 7, Summary of Accidents Associated with Oil and Gas Operations on the OCS.

Dated: December 23, 1992.

Thomas Gernhofer,

Associate Director for Offshore Minerals Management.

[FR Doc. 93–11 Filed 1–4–93; 8:45am]

Billing Code 1505–01–D

National Park Service

Native American Graves Protection and Repatriation Review Committee: Meeting

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of meeting of the Native American Graves Protection and Repatriation Review Committee.

Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. Appendix (1988), that the Native American Graves Protection and Repatriation Review Committee will meet on February 26 and 27, 1993, on the island of Oahu, Hawaii.

The Committee was established by Congress to monitor, review, and assist in implementation of the inventory and identification process and repatriation activities required under the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001–3013).

The Committee will meet on Friday, February 26, 1993, at the Bishop Museum, 1525 Bernice Street, Honolulu, HI 96817–0916. Matters to be discussed will include a dispute between Hui Mālama I Nā Kūpuna 'O Hawai'i Nei and the P.A. Hearst Museum of Anthropology, Berkeley, CA.

The Committee will meet on Saturday, February 27, 1993, at the Turtle Bay Hilton Hotel, 57–091 Kamehameha Highway, Kahuku, HI 96731. Matters to be discussed will include: 1) progress made, and any barriers encountered, in implementing the statute in Hawaii, and 2) the Committee's 1992 report to Congress. The Committee is particularly interested in hearing from representatives of Native Hawaiian organizations, museums, and Federal agencies and from members of the public on issues related to identification of Native Hawaiian cultural items and the determination of cultural affiliation.

In the event that the meeting agenda is not completed on February 27, 1993, the Committee will reconvene Sunday, February 28, 1993, at the Turtle Bay Hilton, Kahuku, HI.

Meetings will begin each day at 8:30 a.m. and conclude not later than 5:00

p.m. Meetings will be open to the public. However, facilities and space for accommodating members of the public are limited and persons will be accommodated on a first-come, first-served basis. Any member of the public may file a written statement concerning the matters to be discussed with Dr. Francis P. McManamon, Departmental Consulting Archeologist.

Persons wishing further information concerning this meeting, or who wish to submit written statements may contact Dr. Francis P. McManamon, Departmental Consulting Archeologist, Archeological Assistance Division, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127, Telephone (202) 343–4101. Draft summary minutes of the meeting will be available for public inspection about eight weeks after the meeting at the office of the Departmental Consulting Archeologist, room 210, 800 North Capitol Street, Washington, DC.

Dated: January 7, 1993.

Francis P. McManamon,

Departmental Consulting Archeologist, Chief, Archeological Assistance Division.

[FR Doc. 93–891 Filed 1–13–93; 8:45 am]

BILLING CODE 4310–70–M

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information, related form and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirements should be made directly to the Bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1029–0039), Washington, DC 20503, telephone 202–395–7340.

Title: Underground Mining Permit Applications—Minimum Requirements for reclamation and Operation Plan—30 CFR part 784

OMB Number: 1029–0039

Abstract: Sections 507, 508 and 516 of Public Law 95–87 require underground coal mine permit applicants to submit an operations and reclamation plan and establish performance standards for the mining operation. Information submitted is used by the regulatory authority to determine if the applicant can comply with the applicable performance and environmental standards in Public Law 95–87.

Bureau Form Number: None

Freqeuency: On occasion

Description of Respondents: Underground Coal Mining Operators

Estimated Completion Time: 25 hours

Annual Responses: 3,017

Annual Burden Hours: 75,792

Bureau Clearance Officer: John A. Trelease, (202) 343–1475

Dated: October 16, 1992.

John P. Mosesso,

Chief, Division of Technical Services.

[FR Doc. 93–902 Filed 1–13–93; 8:45 am]

BILLING CODE 4310–05–M

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information, related form and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirements should be made directly to the Bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1029–0038), Washington, DC 20503, telephone 202–395–7340.

Title: Underground Mining Permit Applications—Minimum Requirements for Information on Environmental Resources, 30 CFR part 783

OMB Number: 1029–0038

Abstract: Applicants for underground coal mining permits are required to provide adequate descriptions of the environmental resources that may be affected by proposed underground coal mining activities.

Bureau Form Number: None.

Frequency: On occasion

Description of Respondents: Underground Coal Mining Operators

Estimated Completion Time: 21 hours

Annual Responses: 662

Annual Burden Hours: 14,092

Bureau Clearance Officer: John A. Trelease, (202) 343–1475

Dated: October 16, 1992.

John P. Mosesso,

Chief, Division of Technical Services.

[FR Doc. 93–903 Filed 1–13–93; 8:45 am]

BILLING CODE 4310–05–M

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related form and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget Paperwork Reduction Project (1029–0036), Washington, DC 20503, telephone 202–395–7340.

Title: Surface Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan—30 CFR part 780

OMB Number: 1029–0036

Abstract: Sections 507(b), 508(a) and 515(b) and (d) of Public Law 95–87 require applicants for surface mine permits to provide a description of each existing structure proposed to be used in the mining and reclamation operation and a compliance plan for structures proposed to be modified or constructed for use in the operation. This information is used by the regulatory authority in determining if the applicant can comply with the applicable performance and environmental standards.

Bureau Form Number: None

Frequency: On occasion

Description of Respondents: Surface Coal Mining Operators

Annual Responses: 7,487

Annual Burden Hours: 213,078

Average Burden Hours Per Response: 28

Bureau Clearance Officer: John A. Trelease (202) 343–1475

Dated: October 16, 1992.

John P. Mosesso,

Chief, Division of Technical Services.

[FR Doc. 93–904 Filed 1–13–93; 8:45 am]

BILLING CODE 4310–05–M

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related form may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the proposal should be made directly to the bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1029–0035), Washington, DC 20503, telephone 202–395–7340.

Title: Surface Mining Permit Applications—Minimum Requirements for Environmental Resources, 30 CFR part 779.

OMB approval number: 1029–0035.

Abstract: Applicants for surface coal mining permits are required to provide an adequate description of the environmental resources that may be affected by proposed surface mining activities. The information will be used by the regulatory authority to determine if the applicant can comply with environmental protection performance standards.

Bureau Form Number: None.

Frequency: On occasion.

Description of Respondents: Coal Mine Operators.

Annual Responses: 1,530.

Annual Burden Hours: 145,344.

Estimated Completion Time: 95 hours.

Bureau clearance officer: John A. Trelease 202–343–1475.

Dated: October 16, 1992.

John P. Mosesso,

Chief, Division of Technical Services.

[FR Doc. 93–908 Filed 1–13–93; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–622 (Final)]

Dry Film Photoresist From Japan

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of a final antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731–TA–622 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Japan of dry film photoresist, provided for in subheading 3707.90.30 of the Harmonized Tariff Schedule of the United States (HTS). (Dry film photoresist may also be entering under subheading 3702.39.00, 3702.42.00, 3702.43.00, 3702.44.00, and 3702.95.00 of the HTS).

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: December 30, 1992.

FOR FURTHER INFORMATION CONTACT: Larry Reavis (202–205–3185), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of dry film photoresist from Japan are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigation was requested in a petition filed on July 16, 1992, by E.I. Du Pont de Nemours & Co., Wilmington, DE; Morton International, Inc., Tustin, CA; and Hercules Incorporated, Middleton, DE.

Participation in the Investigation and Public Service List

Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, not later than twenty-one (21) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this final investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in this investigation will be placed in the nonpublic record on February 26, 1993, and a public version will be issued thereafter, pursuant to § 207.21 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on March 11, 1993, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before March 4, 1993. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on March 9, 1993, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by §§ 201.6(b)(2), 201.13(f), and 207.23(b) of the Commission's rules. Parties are strongly encouraged to submit as early in the investigation as possible any requests to present a portion of their hearing testimony *in camera*.

Written Submissions

Each party is encouraged to submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.22 of the Commission's rules; the deadline for filing is March 5, 1993. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the

provisions of § 207.24 of the Commission's rules. The deadline for filing posthearing briefs is March 19, 1993; witness testimony must be filed no later than three (3) days before the hearing. In addition, any person who has not entered at appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before March 19, 1993. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules.

Issued: January 8, 1993.

By order of the Commission.

Paul R. Bardos,

Acting Secretary

[FR Doc. 93–825 Filed 1–13–93; 8:45 am]

BILLING CODE 7020–02–M

[Investigation Nos. 731–TA–548, 550, and 551 (Final)]

Sulfur Dyes From China, India, and the United Kingdom; Commission Determination to Conduct a Portion of the Hearing in Camera

AGENCY: U.S. International Trade Commission.

ACTION: Closure of a portion of a Commission hearing to the public.

SUMMARY: Upon request of respondents in the above-captioned final investigation, the Commission has determined to conduct a portion of its hearing scheduled for January 13, 1992, *in Camera*. See Commission rules 207.23(a), 201.13, and 201.35 through 201.39 (19 CFR 207.23(a), 201.12, and 201.35 through 201.39). The remainder of the hearing will be open to the public. The Commission also has determined that the 10-day advance notice of the change to a meeting was not possible. See Commission rules 201.35(c)(1) and 201.37(b) (19 CFR 201.35(c)(1) and 201.37(b)).

FOR FURTHER INFORMATION CONTACT: Katherine M. Jones, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3097. Hearing impaired individuals are advised that information on this matter may be obtained by contacting the Commission's TTD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission believes that good cause exists in this investigation to hold a short portion of the hearing *in camera*. The *in camera* portion of the hearing will be for the purpose of addressing business proprietary information (BPI) as part of respondents' presentation in chief, and therefore properly the subject of an *in camera* hearing pursuant to Commission rule 201.36(b)(4) (19 CFR 201.36(d)(4)). In making this decision, the Commission nevertheless reaffirms its belief that wherever possible its business should be conducted in public.

The hearing will include public presentations by petitioner and respondents, with questions from the Commission. After respondents' public presentation, the Commission will hold an *in camera* session, during which time respondents will continue their presentation to the Commission and cover business proprietary information, followed by questioning by the Commissioners and time for rebuttal by petitioners regarding such information. For the *in camera* portion of the hearing, the room will be cleared of all persons except those who have been granted access to BPI under a Commission APO service list in this investigation. See Commission rule 201.35(b) (19 CFR 201.35(b)). All those planning to attend the *in camera* portion of the hearing would should be prepared to present proper identification.

Authority: The General Counsel has certified, pursuant to Commission Rule 201.39 (19 CFR 201.39), that in her opinion, a portion of the Commission's hearing in Sulfur Dyes from China, India, and the United Kingdom, Inv. Nos. 731–TA–548, 550 & 551 (Final), may be closed to the public to prevent disclosure of business proprietary information.

Issued: January 8, 1993.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 93–826 Filed 1–13–93; 8:45 am]

BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32226]

Central Vermont Railway, Inc.; Acquisition Exemption; Canadian National Railway Co.

Central Vermont Railway, Inc. (CV), a wholly owned subsidiary of the Canadian National Railway Company (CN), has filed a verified notice of exemption to acquire: (1) CN's Rouse Point Subdivision between mileport 1.2, at the U.S.—Canadian border, and milepost 0.0, at Rouse Point, NY, and related trackage used to interchange traffic with the Delaware and Hudson Railway Company; and (2) CN's Swanton Subdivision between milepost 15.6 at East Alburg, VT, and milepost 18.7 at Alburg Springs, VT, at the U.S.—Canadian border. The transaction was to be consummated on December 31, 1992.

This is a transaction within a corporate family of the type specifically exempted from the necessity of prior review and approval under 49 CFR 1180.2(d)(3). It will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.

As a condition to use of this exemption, any employees affected by the transaction will be protected by the conditions set forth in New York Dock Ry.—Control—Brooklyn Eastern Dist., 360 I.C.C. 60 (1979).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Robert P vom Eigen and Richard J. Arsenault, Hopkins and Sutter, 888 Sixteenth Street, NW., Suite 700, Washington, DC 20006.

Decided: January 8, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–879 Filed 1–13–93; 8:45 am]

BILLING CODE 7035–01–M

[Directed Service Order No. 1512]

Request for Directed Service—Authorizing the Great Western Railway Company d/b/a Platt Valley Railway To Operate Lines of Denver Railway, Inc.—Denver, Colorado—as Directed Carrier

AGENCY: Interstate Commerce Commission.

ACTION: Directed service order.

SUMMARY: Pursuant to 49 U.S.C. 11125(a), the Commission is authorizing The Great Western Railway Company (GWRC/PVR) d/b/a/ the Platt Valley Railway (PVR) to operate as a "Directed Rail Carrier" (DRC)—uncompensated and without Federal subsidy under 49 U.S.C. 11125(b)(5)—over the Denver Railway, Inc. (DRI) for a period of 60 days.

This unsubsidized and uncompensated directed service order is based on the representation by DRI that the railroad's cash position does not permit the acquisition of locomotive equipment at this time, and thereby its continued operation over its lines in order to relieve the present cessation of service. To assure continued service to shippers that are affected by the discontinuance of operations, the Commission is authorizing GWRC/PVR as DRC to provide directed service over DRI's two line segments in Denver, CO for 60 days. See 49 U.S.C. 11125(a) (1) and (3).

DATES: *Effective Date:* Directed Service Order No. 1512 shall become effective at 12:01 p.m., EST, January 8, 1993. GWRC/PVR shall notify DRI and the Commission of the date on which it commences operations under this authority.

Expiration Date: Unless otherwise modified by order of the Commission, Directed Service Order No. 1512 will expire at 11:59 a.m., March 9, 1993.

FOR FURTHER INFORMATION CONTACT: Bernard Gaillard (202) 927–5500 or Melvin F. Clemens, Jr. (202) 927–5538. [FAX (202) 927–5529] [TDD for hearing impaired: (202) 927–5721]

SUPPLEMENTARY INFORMATION: On December 9, and December 28, 1992, Rocky Mountain Pipe Company/Fagan Iron & Metal, Inc./Dry Wall Products of Denver, Inc./Christian Salvesen Inc./ Power Assist Co./Crystal Packaging, Inc./Firestone Building Products Company (shippers), filed requests with the Commission for directed service and in support of an authorization for GWRC/PVR to provide directed service over the lines of the Denver Railway, Inc. (DRI) in Denver, CO, due to an inability of DRI to serve shippers on its lines since November 1992, and an absence of regular service since April 1992.

DRI operates two line segments in an industrial area of Denver, CO, the Stockyards segment of 3.2 miles, which connects with the Burlington Northern Railroad Company (BN), and the Airlawn segment of 8.03 miles, which connects with the Denver and Rio Grande Western Railroad Company (DRGW). The two line segments do not connect, and, as operated by DRI, they must be operated with separate locomotives. However, in preparation for the directed service operation, GWRC/PVR has negotiated an agreement with DRGW for the replacement of a switch that will allow operation between the two line segments by a single locomotive and crew.

Pursuant to 49 U.S.C. 11125(a), the Commission may issue a directed service order for up to 60 days when it finds that a *rail carrier cannot transport traffic offered to it because —(1) its cash position makes its continuing operation impossible; (2) transportation has been discontinued under court order; or (3) it has discontinued transportation without obtaining a required certificate under 49 U.S.C. 10903,* (emphasis added). Any Commission order under these provisions requiring a carrier to provide directed service also requires Federal compensation to the DRC for those operations. However, this provision also allows the Commission to authorize a carrier to provide uncompensated directed service if the carrier is willing to accept that responsibility under those terms.

The Commission has determined, from shipper statements and statements by the DRI, and through its Office of Compliance and Consumer Assistance (OCCA), that the DRI's operations have been sporadic at best since last April 1992 due to the absence of suitable locomotive equipment with which to provide switching service to shippers. In April, DRI service was discontinued and then resumed temporarily on the basis of negotiations between DRI, the shippers, OCCA, and the Class I connections that resulted in the lease of locomotives to DRI by the Class I connections (BN & DRGW) for its operations. However, the leasing carriers have since terminated those leases and required the return of the leased locomotives, allegedly due to DRI's failure timely to compensate the carriers for the leased locomotives. Moreover, DRI has been unsuccessful in acquiring additional or replacement locomotive equipment from other sources, or in maintaining its owned equipment in acceptable condition to meet the Federal Railroad Administration's (FRA) requirements. As a result, OCCA was again notified on December 9, 1992, that service to DRI shippers had been terminated in early November 1992. As contemplated by the statute, this cessation of service without authority meets the requisite criteria for directed service. Moreover, the GWRC/PVR has indicated that, in response to DRI shippers, it is amenable to serving as DRC for an initial period of 60 days.

Under a directed service order, a DRC may voluntarily provide directed service without any subsidy or compensation from the Federal Government or the Commission. See *St. Louis S.W. Ry. Co.—Directed Service—Chicago,* 363 I.C.C. 1 (1980), and Directed Service Order No. 1504, *The New York, Susquehanna and Western Railway Corporation—Directed Service—The Delaware and Hudson Railway Company,* (not printed) served June 22, 1988.[1]

Considering DRI's inability to maintain sufficient equipment to provide continuous rail service, and its repeated cessation of operations without providing a suitable alternative, we find that DRI's current situation meets the statutory standards of 49 U.S.C. 11125(a) (1) and (3).

In view of the urgent need for continued rail service over lines of the DRI, this decision grants the shippers' request and authorizes GWRC/PVR to provide uncompensated directed service on the grounds that the cessation of service by DRI creates sufficient circumstances to meet the statutory requirements for such an order and serves the public interest.

The emergency nature of this situation compels us to conclude that advance public notice and hearings would be impractical and contrary to the immediate public interest in assuring the resumption of essential rail transportation services. Accordingly, we exercise our authority under 49 U.S.C. 11125(a) to waive advance public notice and hearings in the present circumstances.

Section 11125 allows the Commission to direct service for an initial period of not more than 60 days, with an option to extend the directed service period for an additional 180 days, if cause exists. We believe directed service authority to be necessary here at least for an initial 60 day period. During this 60 day period, any interested person may file comments seeking extension of this order for up to 180 days.

Terms and Conditions

Effective Date. Directed Service Order No. 1512 shall become effective at 12:01 p.m., January 8, 1993. GWRC/PVR shall be authorized to commence operations on this date and shall notify the

[1] Likewise, the Commission may authorize directed rail service without provision for compensation to the carrier over which service is directed. See *Kansas City Terminal Ry. Co.—Operate—Chicago R.I.& P.,* 360 I.C.C. 289 (1979).

Commission and DRI immediately that they have done so.

Expiration Date. Unless otherwise modified by the Commission, Directed Service Order No. 1512 will expire at 11:59 a.m., March 9, 1993.

Compensation. GWRC/PVR's authority under Directed Service Order No. 1512 is expressly conditioned upon its waiver of all compensation under 49 U.S.C. 11125(b)(5).

Track Safety. In accordance with 49 U.S.C. 11125(b)(2)(a), GWRC/PVR need not operate over any DRI line segment certified by the FRA as being unsafe or that it believes is unsafe for its operations.

Cars and operating equipment. In operating DRI's line, GWRC/PVR shall use its own cars and operating equipment unless otherwise authorized in subsequent orders of the Commission.

Employees. In providing service under this directed service order GWRC/PVR shall comply with the requirements of 49 U.S.C. 11125(b)(4) with respect to DRI operating employees.

Preservation of the DRI property. During the period of its operation of the DRI lines, GWRC/PVR shall be responsible for performing that degree of maintenance necessary to avoid further deterioration of the DRI lines and related facilities.

Rates. GWRC/PVR are authorized to act on behalf of DRI in all matters of transportation. Rates and charges applicable to the line shall be those in effect at the time GWRC/PVR commences operations over the respective segments. Inasmuch as the rates charged to DRI shippers are generally for switching services and are contained in the respective BN and DRGW tariffs, GWRC/PVR may not seek changes in those rates and charges except by application to the Commission under this authority. All revenues from such charges shall accrue to the account of GWRC/PVR, based on their respective operations during the effective period of this order, and shall not constitute assets of the DRI.

Liability for expenses. Any rehabilitation, operational, or other costs related to the respective operations is authorized shall be the sole responsibility and liability of GWRC/PVR. Any such costs or expenditures shall not in any way be deemed an obligation or liability of the United States Government. GWRC/PVR shall hold the United States Government harmless from any and all claims arising out of the authorized operations. However, GWRC/PVR shall not be liable for any payments, obligations, fines, fees, or other encumbrances or obligations assessed or assessable against DRI at the time directed service operations commence or during the period of directed service, nor shall GWRC/PVR be responsible to compensate the DRI or any other party of interest for the use of DRI lines during the directed service.

Operational difficulties. Any operational difficulties associated with the authorized operations of a specific DRI line segment shall be resolved by GWRC/PVR through negotiated agreement, or failing agreement, by the commission. Any resumption of operations by DRI during the effective period of this order may occur only after notice to the Commission and thirty (30) days notice to the DRC.

We find: 1. DRI has discontinued service over its lines without authority due to the unavailability of locomotive equipment, and has been given an opportunity to establish that it has the ability to restore full operations. DRI has failed to demonstrate why the Commission should not allow GWRC/PVR temporarily to provide continued rail service over those lines in its behalf, and as requested by its shippers, as a DRC.

2. In order to prevent further transportation and economic disruptions due to DRI's cessation of operations, it is necessary for the Commission to authorize GWRC/PVR to operate DRI's lines under 49 U.S.C. 11125 with a waiver of any compensation from the Federal Government.

3. Our action in this decision will not substantially impair the ability of GWRC/PVR to serve its own patrons adequately or to meet its outstanding common carrier obligations, and will insure continued rail service to affected shippers on the DRI. *See* 49 U.S.C. 11125(b)(2)(B).

This action will not significantly affect either the quality of the human environment or energy conservation.

It is ordered: 1. Based upon its agreement to do so without any form of compensation from the Federal Government, GWRC/PVR is authorized to enter upon and operate DRI's lines at Denver, CO pursuant to this voluntary directed service order under 49 U.S.C. 11125.

(a) Entry by GWRC/PVR may occur on the date this order is effective and may continue no later than the sixtieth day after the effective date of this decision.

(b) GWRC/PVR shall immediately notify the Commission and the parties to this proceeding, in writing, of the date on which it commences operations under this order.

(c) Operations under this order shall conform to the directions and conditions prescribed above and contained herein.

2. During this 60 day period, any interested person may file comments seeking extension of this order for up to 180 days.

3. All submissions filed in this proceeding should refer to DSO No. 1512 and should be sent to the Commission's headquarters at 12th Street and Constitution Avenue, NW., Washington, DC 20423. An original and 10 copies should be submitted.

4. The provisions of this decision shall apply to intrastate, interstate, and foreign commerce.

5. The Commission retains jurisdiction to modify, supplement, or reconsider this decision at any time.

6. Notice of this decision shall be given to the general public by publication in the **Federal Register.** This decision will also be served on the Federal Railroad Administration, the Association of American Railroads, the American Short Line Railroad Association, The Railway Labor Executives' Association, the DRI, and the GWRC/PVR.

7. This decision and order shall become effective at 12:01 p.m., January 8, 1993.

8. Unless otherwise modified by the Commission, this order will expire at 11:59 a.m., March 9, 1993.

Decided: January 8, 1993.

By the Commission, Chairman Philbin, Vice Chairman Simmons, Commissioners Phillips, McDonald, and Walden. Commissioner Walden did not participate in the disposition of this proceeding.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–876 Filed 1–13–93; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Shipyard Employment Standards Advisory Committee; Meeting

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the Shipyard Employment Standards Advisory Committee (SESAC), established under the provisions of the Federal Advisory Committee Act (FACA), as amended (5 U.S.C., App. I) and section 7(b) of the Occupational Safety and Health Act, 29 U.S.C. 656(b),

will convene on February 18, 1993, at 8:30 a.m., at the Sheraton Inner Harbor Hotel, 300 South Charles Street, Baltimore, Maryland, 21201. The meeting will adjourn on February 19, 1993, at approximately 12:30 p.m. The public is encouraged to attend.

The agenda is as follows:

I. Call to Order.
II. Review of transcripts of July 7–8, 1992 and September 2–3, 1992 meetings.
III. Discussion of the following standards:
  (a) 29 CFR part 1915, subpart F, General Working Conditions.
  (b) 29 CFR part 1915, subpart L, Electrical.
    (1). Temporary Services (Power/Wiring)
    (2). Scope and Application
  (c) 29 CFR part 1915, subpart U, Surface Preparation and Preservation.
IV. New Business. Discussion of the following standards, as time permits.
  (a) 29 CFR part 1915, subpart J, Ships Machinery and Piping Systems.
  (b) 29 CFR part 1915, subpart S, Compressed Gas and Compressed Air Equipment.
  (c) 29 CFR part 1915, subpart O, Occupational Health and Environmental Control.

Public Participation: Time permitting, the Committee will consider oral presentations relating to the agenda items. Persons wishing to address the Committee should submit a written request to Mr. Thomas Hall (address below) by the close of business, February 5, 1993. The request must include the name and address of the person wishing to appear, the capacity in which the appearance will be made, a short summary of the intended presentation, and an estimate of the amount of time needed. Disabled individuals wishing to attend should contact Mr. Thomas Hall at the address listed below to obtain appropriate accommodations. Individuals or organizations wishing to submit written statements should send 5 copies to the address below.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Hall, U.S. Department of Labor, Occupational Safety and Health Administration, Office of Information and Consumer Affairs, room N–3647, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 219–8617.

Signed at Washington, DC, this 8th day of January, 1993.

Dorothy L. Strunk,

Acting Assistant Secretary of Labor.

[FR Doc. 93–816 Filed 1–13–93; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL LABOR RELATIONS BOARD

Appointments of Individuals To Serve as Members of Performance Review Boards

5 U.S.C. 4314(c)(4) requires that the appointments of individuals to serve as members of performance review boards be published in the **Federal Register**. Therefore, in compliance with this requirement, notice is hereby given that the individuals whose names and position titles appear below have been appointed serve as members of performance review boards in the National Labor Relations Board for the rating year beginning October 1, 1991 and ending September 30, 1992.

Name and Title

Robert E. Allen—Associate General Counsel, Advice
Harold J. Datz—Chief Counsel to Board Member
Yvonne T. Dixon—Acting Deputy General Counsel
Frederick Freilicher—Chief Counsel to Board Member
John E. Higgins—Solicitor
Susan Holik—Chief Counsel to Board Member
Gloria Joseph—Director of Administration
Nicholas E. Karatinos—Acting Associate General Counsel, Enf. Lit.
Barry J. Kearney—Deputy Associate General Counsel, Advice
Joseph E. Moore—Deputy Executive Secretary
W. Garrett Stack—Associate General Counsel, Operations-Management
Elinor H. Stillman—Chief Counsel to the Chairman
Berton B. Subrin—Director, Office of Representation Appeals
John C. Truesdale—Executive Secretary
Melvin J. Welles—Chief Administrative Law Judge

John C. Truesdale,

Executive Secretary.

[FR Doc. 93–950 Filed 1–13–93; 8:45 am]

BILLING CODE 7545–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Materials Research; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Date and time: February 8–9, 1993; 8 a.m. to 4 p.m.

Place: Florida State University, Tallahassee, FL (February 8th) Los Alamos National Laboratory, Los Alamos, NM (February 9th).

Type of Meeting: Closed.

Contact Person: Dr. Adriaan M. de Graef, Deputy Division Director, Division of Materials Research, room 408, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–9794; FAX (202) 357–7959.

Purpose of Meeting: To provide advice and recommendations concerning the continued support for the National High Magnetic Field Laboratory (NHMFL) being established by Florida State University, the University of Florida, and Los Alamos National Laboratory.

Agenda: To review and evaluate the progress report and proposal for continued funding for the NHMFL.

Reason for Closing: The progress report being reviewed includes information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposal. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: January 11, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–847 Filed 1–13–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Networking and Communications Research and Infrastructure; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Networking and Communications Research and Infrastructure.

Date and Time: February 1–3, 1993; 8:30 a.m. to 5 p.m.

Place: Room 536, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. Aubrey Bush, Networking and Communications Research Program, National Science Foundation, room 416, Washington, DC 20550 (202 357–9717).

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Networking and Communications Research Program.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals.

These matters are exempt under 5 U.S.C. 552 b. (c) (4) and (6) of the Government in the Sunshine Act.

Dated: January 11, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–849 Filed 1–13–93; 8:45 am]

BILLING CODE 7555–01–M

Expert Panel of the Federal Coordinating Council for Science, Engineering and Technology (FCCSET); Committee on Education and Human Resources (CEHR); Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Dates and Times: February 15, 1993, 8:15 a.m. to 6 p.m., February 16, 1993, 8:15 a.m. to 3 p.m.

Place: Washington DC. Call contact person for location.

Type of the Meeting: Open

Contact Person: Mr. James S. Dietz, Program Analyst, the Division of Research, Evaluation and Dissemination, the Directorate of Human Resources, National Science Foundation, room 1249, 1800 G Street, NW., Washington, DC 20550. Telephone: (202) 357–7425.

Minutes: May be obtained from the contact person listed above.

Purpose of the Meeting: The National Science Foundation acting through the FCCSET/CEHR established an Expert Panel to review the status of Federal Science, Mathematics, Engineering, and Technology (SMET) programs of member agencies. The Expert Panel provides advice and recommendations to FCCSET/CEHR on the status of Federal SMET education programs.

Agenda: Mission Discussion.

Panel Discussion on Data Update Mission

Subpanels Discussion for K–12 Programs, Program Evaluation and Undergraduate Programs

Discussion on Reform in Science Education and the Federal Role

Subpanel Discussion on Graduate/Public Literacy Programs Roundtable Panelists Report on Program Topics Summary Discussions and Closure

Dated: January 11, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–848 Filed 1–13–93; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Availability of Staff Technical Position on Geologic Repository Operations Area Underground Facility Design—Thermal Loads

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The Nuclear Regulatory Commission is announcing the availability of NUREG–1466, "Staff Technical Position (STP) on Geologic Repository Operations Area Underground Facility Design—Thermal Loads.".

ADDRESSES: Copies of NUREG–1466, including the staff disposition of comments, can be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, D.C. 20013–7082. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy of NUREG–1466 is also available for public inspection and/or copying at the NRC Public Document Room, 2120 L Street (Lower Level), NW., Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Anne E. Garcia, Repository Licensing and Quality Assurance Project Directorate, Division of High-Level Waste Management, Office of Nuclear Material Safety and Safeguards, Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, MD 20852. Telephone 301/504–2438.

SUPPLEMENTARY INFORMATION: The purpose of this STP is to provide the U.S. Department of Energy (DOE) with a methodology acceptable to the NRC staff for demonstrating compliance with 10 CFR 60.133(i). The Nuclear Regulatory Commission staff's position is that DOE should develop and use a defensible methodology to demonstrate the acceptability of a geologic repository operations area (GROA) underground facility design. The staff anticipates that this methodology will include evaluation and development of appropriately coupled models, to account for the thermal, mechanical, hydrological, and chemical processes that are induced by repository-generated thermal loads. With respect to 10 CFR 60.133(i), the GROA underground facility design: (1) Should satisfy design goals/criteria initially selected, by considering the performance objectives; and (2) must satisfy the performance objectives 10 CFR 60.111, 60.112, and 60.113. The methodology in this STP suggests an iterative approach suitable for the underground facility design.

On August 2, 1991, the Nuclear Regulatory Commission published, in the **Federal Register**, the "Notice of Availability" for the draft STP and solicited public comments (see 56 *FR* 33478). Approximately 50 comments were received from two different parties. On March 17, 1992, the staff conducted a technical exchange with DOE, the State of Nevada, and DOE program participants to discuss the intent of the draft STP. Following the March 1992 technical exchange, and a review of the public comments, significant changes and clarifications were incorporated into the revised STP. Staff responses to the public comments were documented separately as appendix D to NUREG–1466.

On July 29, 1992, the NRC staff briefed the Advisory Committee on Nuclear Waste (ACNW) on the revised STP and, as a result, the staff received a number of comments. The staff's responses to the ACNW's comments are documented separately, as Appendix E to NUREG–1466.

Dated at Rockville, Maryland this 8th day of November, 1992.

For the Nuclear Regulatory Commission,

Robert M. Bernero,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 93–913 Filed 1–13–93; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–31697; File No. SR–CBOE–92–05]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to the Addition of New Strike Prices for Index Options

January 7, 1993.

I. Introduction

On February 7, 1992, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposal to enable the Exchange to list additional strike prices for Exchange-traded index options. Specifically, under the proposal the CBOE may add up to four strike prices above and below the current index price when a new options series is opened, up to five strike prices above and below the current index price when the current index price reaches an existing strike price, and up to six strike prices above and below the current index price wher unusual market conditions warrant.[3]

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1991).

[3] The CBOE originally proposed that the Exchange may add up to four strike prices when a new series is opened, up to six strike prices when the current index price reaches an existing strike price, and up to seven strike prices when unusual

Notice of the proposed rule change was published for comment and appeared in the **Federal Register** on May 12, 1992.[4] Three comments were received in connection with the proposal.[5] This order approves the proposal.

II. Description of the Proposal

Under existing Interpretation .01 to CBOE Rule 24.9, three situations permit the Exchange to add additional strike prices for index options: (1) When a new series of index option contracts with a new expiration month are opened; (2) when the value of the index underlying a class of index options reaches an existing strike price; and (3) when unusual market conditions exist.[6] Currently, two strike prices above and below the current index price may be added when a new expiration month is added, and up to three strike prices above and below the current index price may be added when the index price reaches an existing strike price. In addition, up to four strike prices above and below the current index price may be added in unusual market conditions.

The CBOE proposal would permit the Exchange to increase the number of strike prices available for Exchange-trade index options in the following manner:

(1) When a new series of index option contracts with a new expiration cycle month are opened for trading, four strike prices above and below the current index price may be added;

(2) When the value of the index underlying a class of index options reaches a strike price, the Exchange may add one or more additional strike prices such that there are up to five strike prices above and five strike prices below the strike price which has been reached; and

(3) In unusual market conditions, the Exchange may add additional series of index option contracts up to six strike prices above and six strike prices below the current index price.

As described above, the CBOE proposes to increase the number of strike prices available for trading, which, the Exchange argues, will enhance liquidity, market depth and open interest. The CBOE indicates that the additional strike prices are necessitated by current market conditions and customer demand. In addition, the Exchange believes that additional strike prices for its index option contracts will provide increased flexibility for market participants, thereby, permitting options positions to be more finely tailored to achieve their intended investment objectives.

III. Discussion

The Commission finds that the CBOE proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6. Specifically, the Commission believes that the proposal is consistent with section 6(b)(5) of the Act because, by offering investors more flexibility in the trading of index options, it will protect investors and further the public interest by allowing them to establish options positions that are better tailored to meet their investment objectives.

The Commission also believes that the CBOE proposal strikes a reasonable balance between the Exchange's needs to accommodate market participants by offering a wide array of investment opportunities and the need to avoid excessive proliferation of options series. The Commission notes that the CBOE proposal permits a relatively small increase in the absolute number of index options series that may be outstanding at any one time. Specifically, the proposal permits the introduction and continued listing of only two additional strikes or options series above those currently allowed under the CBOE's rules and policies. The proposal also sets the maximum permissible number of strike prices, with the Exchange retaining discretion to list fewer strikes than allowed. Finally, CBOE rules allow the Exchange to delist an options series with no open interest. Therefore, if the CBOE lists an option series in anticipation of a large market movement that does not materialize, the CBOE would be able to delist such series if it attracts no trading interest.

In addition, based on representations from the Options Price Reporting Authority ("OPRA"), the Commission believes that OPRA will have adequate computer processing capacity to accommodate the additional strike prices. Specifically, OPRA represented that "[t]he addition of four, six and seven OEX series as proposed in CBOE's rule filing SR-CBOE-92-05 will have no material impact on OPRA;s capacity."[7] The CBOE also represents that its current system capacity is sufficient to meet the expected demands of the additional strike prices.[8] Nevertheless, the Commission requests that the Exchange monitor the volume of additional options series listed as a result of this rule change and the effect of these additional series on the capacity of the CBOE's, OPRA's and vendors' automated systems.[9]

Lastly, as reflected in the comment letters received in connection with the proposal, there is evidence that sufficient demand exists for index options series that are four strike prices away from the market.[10] Accordingly, we do not anticipate that the new strike prices likely will diminish the liquidity in Exchange-traded OEX index options.[11] In addition, in light of the increased short-term volatility of stock indexes due to market conditions, the Commission believes the CBOE's proposal will help to ensure that strike

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market conditions warrant. The Exchange subsequently amended the proposal as noted above. See letter from Joanne Moffic-Silver, Associate General Counsel & Chief Enforcement Attorney, CBOE, to Sharon Lawson, Assistant Director, SEC, dated October 6, 1992 ("Amendment No. 1"). Because this amendment is minor in nature it has not been separately noticed for comment.

[4] See Securities Exchange Act Release No. 30668 (May 6, 1992), 57 FR 20308.

[5] Prior to submitting the proposal to the Commission, the CBOE received three comment letters on the need to increase strike prices. The commentators focused on the need of market participants to have additional strike prices available in OEX index options, and, therefore, these commentators support the CBOE's initiatives to enhance its ability to add additional strike prices. *See* letters from Richard L. Spraker, Senior Vice President, Investments, Bateman, Eichler, Hill & Richards, to Jack Callahan, Chairman, OEX Floor Procedure Committee, CBOE, dated August 9, 1991 and December 24, 1991; and letter from Louis Brisgel, Senior Vice President/Financial Consultant, Shearson Lehman Brothers, to Jack Callahan, Index Floor Procedures, CBOE, dated October 31, 1991.

[6] Interpretation .01 to CBOE Rule 24.9 provides that the strike price interval for OEX options with a strike price above 200 is $5.

[7] See Memorandum from Joseph P. Corrigan, Executive Director, OPRA, to Joanne Moffic-Silver, CBOE, dated August 20, 1992 which is enclosed in a letter from Joanne Moffic-Silver, Associate General Counsel & Chief Enforcement Attorney, CBOE, to Thomas Gira, Branch Chief, Division of Market Regulation, SEC, dated August 21, 1992 ("CBOE Letter").

[8] See Memorandum from Kruno Hultzingh, Executive Vice President, Systems Division, CBOE, to Joanne Moffic-Silver, Associate General Counsel & Chief Enforcement Attorney, CBOE, dated August 21, 1992 which is enclosed in the CBOE Letter, *supra* note 7.

[9] See note 11, *infra*.

[10] The level of the OEX Index has substantially increased from the date that the Commission originally approved the CBOE's strike price policy. See Securities Exchange Act Release No. 21794 (February 28, 1985), 50 FR 8691. In particular, the OEX Index was at 176.12 in March, 1985 and now stands at 395.75 (over a 50% increase). Accordingly, the increase in the OEX index value supports the potential listing of additional strikes by the Exchange.

[11] We note that the CBOE has stated that it may want the Commission to consider additional increases in allowable strikes. In this regard, the CBOE has stated that it will monitor the impact of the additional strikes over the next six months and will report to the Commission the results including any adverse consequences, and the impact on the orderliness of opening rotations. The report should also specifically include any adverse impact on the liquidity of outstanding strikes in OEX index options in addition to the effects on capacity as described above.

prices reasonably related to the market and attractive to investors are available. The ability of the CBOE to add additional strike prices as market conditions dictate will enhance the flexibility of the Exchange in response to varying economic and market events.

In sum, the Commission finds the CBOE proposal should not result in a substantial increase in the number of index options series outstanding, and should help to ensure the constant availability of various stock index option that are attractive to investors. For these reasons, the Commission finds that the benefits to be derived from this proposal in accommodating market participants' investment needs and objectives outweigh the possible adverse effects on market liquidity due to the dispersion of trading interest in more options series.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[12] that the proposed rule change (SR-CBOE-92-05), is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-831 Filed 1-13-93; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

Office of Defense Trade Controls

[Public Notice 1753]

Munitions Exports Involving Armour of America or Arthur G. Schreiber

AGENCY: Office of Defense Trade Controls, Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given that all existing licenses and other approvals, granted pursuant to section 38 of the Arms Export Control Act, that authorize the export or transfer by, for or to, Armour of America, Inc. and any of its subsidiaries or associated companies, and Arthur G. Schreiber, of defense articles or defense services are suspended. In addition, it shall be the policy of the Department of State to deny all export license applications and other requests for approval involving, directly or indirectly, the above cited entities. This action also precludes the use in connection with such entities of any exemptions from license or other approval included in the International Traffic in Arms Regulations (ITAR, 22 CFR parts 120–130).

EFFECTIVE DATE: December 31, 1992.

FOR FURTHER INFORMATION CONTACT: Clyde G. Bryant, Jr., Chief, Compliance Analysis Division, Office of Defense Trade Controls, Center for Defense Trade, Bureau of Politico-Military Affairs, Department of State (703:875–6650).

SUPPLEMENTARY INFORMATION: The Department of State has a reasonable basis to believe that Armor of America, Inc. and/or Arthur G. Schreiber, have violated section 38 of the Arms Export Control Act (AECA, 22 U.S.C. 2778) and its implementing regulations, the ITAR (22 CFR parts 120–130) by attempting to export from the United States defense articles without the requisite approval of the Department of State (22 CFR 127.1(a)) and/or by using an export control document containing a false statement or misrepresenting or omitting a material fact for the purpose of exporting defense articles (22 CFR 127.2(a)).

On December 31, 1992, the Department of State suspended all licenses and other written approvals (including manufacturing license and technical assistance agreements) concerning exports of defense articles and defense services to Armour of America, Inc., Los Angeles, California, and Arthur G. Schreiber, President and Chief Executive Office of Armour of America, Inc.

This action has been taken pursuant to sections 38 and 42 of the AECA (22 U.S.C. 2778 & 2791) and section 126.7(a)(2) of the ITAR (22 CFR 126.7(a)(2)). It will remain in force until rescinded.

Exceptions may be made to this policy on a case-by-case basis at the discretion of the Office of Defense Trade Controls. However, such an exception would be granted only after a full review of all circumstances, paying particular attention to the following factors: whether an exception is warranted by overriding foreign policy or national security interests; whether an exception would further law enforcement concerns; and whether other compelling circumstances exist which are not inconsistent with the foreign policy or national security interests of the United States, and which do not conflict with law enforcement concerns.

Dated: December 31, 1992.

William B. Robinson,

Director, Office of Defense Trade Controls, Bureau of Politico-Military Affairs, Department of State.

[FR Doc. 93-907 Filed 1-13-93; 8:45 am]

BILLING CODE 4710-25-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-93-3]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA) (DOT).

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before February 2, 1993.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

FOR FURTHER INFORMATION CONTACT: Mrs. Jeanne Trapani, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-7624.

[12] 15 U.S.C. 78s(b)(2) (1982).

[13] 17 CFR 200.30-3(a)(12) (1991).

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on January 6, 1993.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 26734.
Petitioner: Shannon Engineering, Inc.
Sections of the FAR Affected: 14 CFR 91.9(a) and 91.531(a)(1).
Description of Relief Sought: To extend the termination date of Exemption No. 5517, which expires September 30, 1994, and which allows a reduction in the 500 hours required as pilot in command or copilot of turbojet airplanes in exchange for turbo-powered flight time.

Dispositions of Petitions

Docket No.: 25351.
Petitioner: USAir.
Sections of the FAR Affected: 14 CFR 121.378 and 121.378(a).
Description of Relief Sought/ Disposition: To allow USAir to utilize certain foreign original equipment manufacturers and related repair facilities to perform maintenance, preventive maintenance, and alterations of the components, parts, and appliances that are produced by these foreign manufacturers and used on the British Airspace, BAC–111, BAE–146, Boeing B–737–300, B–737–400, B–757, B–767–200ER, Fokker F–28, and F–100 aircraft operated by USAir.

Grant, December 28, 1992, Exemption No. 5005C

Docket No.: 26961.
Petitioner: Regional Airline Association.
Sections of the FAR Affected: 14 CFR 91.205(b)(11).
Description of Relief Sought/ Disposition: To permit the operation of multi-engine turboprop airplanes without pyrotechnic signaling devices when operated over water beyond power-off gliding distance from shore.

Denial, December 24, 1992, Exemption No. 5581

[FR Doc. 93–804 Filed 1–13–93; 8:45 am]
BILLING CODE 4910–13–M

RTCA, Inc., Fifth Meeting of Special Committee 172; Future Air-Ground Communications in the VHF Aeronautical Band (118–137 MHZ); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., appendix I), notice is hereby given for Special Committee 172 meeting to be held January 26–29, 1993, at the RTCA conference room, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036 commencing at 9:30 a.m.

The agenda for this meeting is as follows:
(1) Chairman's Remarks;
(2) Approval of the fourth meeting's minutes;
(3) Working Groups Reports:
(a) VHF Communications System Recommendations Working Group (WG–1); and
(b) VHF Data Radio Signal-in Space MASPS Working Group (WG–2);
(4) Technical presentations;
(5) Working Group Sessions. Review Current Draft Material;
(6) Back in plenary:
(a) Review Working Group Progress; and
(b) Task Assignment;
(7) Other Business; and
(8) Date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on January 7, 1993.

Joyce J. Gillen,

Designated Officer.

[FR Doc. 93–808 Filed 1–13–93; 8:45 am]
BILLING CODE 4910–13–M

RTCA, Inc.; First Meeting of Special Committee 177, Testing Criteria and Guidance Relative to Portable Electronic Devices Carried on Board Aircraft; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix I), notice is hereby given for Special Committee 177 meeting to be held January 26, 1993, at the RTCA conference room, 1140 Connecticut Avenue, NW., suite 1020, Washington, DC 20036, commencing at 9:30 a.m.

The agenda for this meeting is as follows:
(1) Introductory Remarks;
(2) Develop proposed terms of reference. Review recommendation of ad hoc group;
(3) Develop initial work program and determine milestones;
(4) Nominate recommended Special Committee 177 Chairman;
(5) Assignment of tasks;
(6) Other business; and
(7) Date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RCTA Secretariat, 1140 Connecticut Avenue, NW., suite 1020, Washington, DC 20036; (202) 833–9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on January 7, 1993.

Joyce J. Gillen,

Designated Officer.

[FR Doc. 93–809 Filed 1–13–93; 8:45 am]
BILLING CODE 4910–13–M

Intent to Rule on Application to Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Chautauqua County/Jamestown Airport, Jamestown, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Chautauqua County/Jamestown Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before February 16, 1993.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Manager New York Airports District Office, 181 South Franklin Avenue, room 305, Valley Stream, New York, 11581. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Kenneth B. Brentley, Manager of Airports for the County of Chautauqua, New York, at the following address: County of Chautauqua, P.O. Box 51, Falconer, New York 14733.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the County of Chautauqua, New York under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Philip Brito, Manager New York Airports District Office, 181 South Franklin Avenue, room 305, Valley Stream, New York, 11581 (718–553–1882). The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Chautauqua County/Jamestown Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On November 18, 1992, the FAA determined that the application to impose and use the revenue from a PFC submitted by the County of Chautauqua was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than March 2, 1993.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: December 1, 1992.

Proposed charge expiration date: December 30, 1996.

Total estimated PFC revenue: $447,810.

Brief description of proposed projects: The PFC funds will be utilized to fund the local share of the following proposed AIP projects.

—Terminal Building expansion and reconstruction
—Overlay commuter ramp
—Extend taxiway D
—Snow Removal Equipment
—Rebuilt entry road
—Overlay runway 7/25
—Remove obstructions (impose only)

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: All air taxi/commercial operators filing form 1800–31. Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports office located at: Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York, 11430.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Chautauqua County/Jamestown Airport.

Issued in Jamaica, New York on December 29, 1992.

Peter A. Nelson,

Assistant Manager, Airports Division, Eastern Region.

[FR Doc. 93–807 Filed 1–13–93; 8:45 am]

BILLING CODE 4910–13–M

Federal Railroad Administration

Petition for Exemption or Waiver of Compliance; Michigan Shore Railroad et al.

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received requests for exemptions from or waivers of compliance with a requirement of its safety standards. The individual petitions are described below, including the party seeking relief, the regulatory provisions involved, and the nature of the relief being requested.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number RSGM–92–1) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Communications received before February 22, 1993 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) in room 8201, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

The individual petitions seeking an exemption or waiver of compliance are as follows:

Michigan Shore Railroad

[Waiver Petition Docket Number RSGM–92–1]

In early 1992 the Michigan Shore Railroad (MS) was granted a waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR part 223) for two locomotives under Docket Number RSGM–92–1. The MS states there have been no incidents involving glazing and have requested a waiver for one additional locomotive which is based at Muskegon, Michigan.

Mid Atlantic Railroad Company

[Waiver Petition Docket Number RSGM 92–21]

The Mid Atlantic Railroad Company (MRR) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR part 223) for one passenger car. The car, which was built in 1955/56, is to be used for excursions, special events and school field trips. The MRR operates 76.5 miles of track between Mullins, South Carolina and Whiteville, North Carolina and between Chadbourn, North Carolina and Conway, South Carolina. Speed does not exceed 25 mph.

Texas Parts and Wildlife Department

[Waiver Petition Docket Number RSGM–92–24]

The Texas Parks and Wildlife Department (TPWX) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR part 223) for three locomotives. The locomotives are used in road and yard service between Rusk and Palestine, Texas, a distance of approximately 25.5 miles. The railroad states that the area is sparsely populated and there has never been any vandalism. The locomotives are currently equipped with 1/4-inch shatterproof safety glass.

Pacific Rail Services

[Waiver Petition Docket Number RSGM–92–25]

Pacific Rail Services (PRSX) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR part 223) for two locomotives. The locomotives are used in switching service at the South Intermodal Yard in Tacoma, Washington. PRS crosses one intersection with the remainder of the tracks being on private property.

San Francisco Belt Railroad

[Waiver Petition Docket Number RSGM–92–26]

Kyle Railways, Inc., on behalf of their subsidiary San Francisco Belt Railroad (SFBR), seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR part 223) for two locomotives. The SFBR operates approximately 15 miles of track in an industrial area of San Francisco. Approximately 5 miles of the track is located in an interchange yard, 2 miles

in a storage yard and the remaining 8 miles are spur tracks running into three separate piers on San Francisco's southern waterfront. The railroad states there have been no incidents involving glazing and the expense of installing certified glazing would be an undue burden.

National Railroad Passenger Corporation

[Waiver Petition Docket Number H–92–8]

The National Railroad Passenger Corporation (Amtrak) seeks a one year test waiver of compliance from certain provisions of the Power Brake and Drawbars Regulations (49 CFR part 232). Amtrak is requesting that it be permitted to extend the clean, oil, test and stencil (COT&S) period from 36 months to 48 months on 73 Bi-Level passenger cars, 21 of which are "Cab Cars", owned by the Joint Powers Board's Peninsula Rail Commute Operation. The cars, which were built in the mid-1980's, are managed and maintained by Amtrak and operate in commuter service between San Francisco and San Jose, California.

The cars are equipped with 36–C type brake equipment and are in relatively light service. Each car travels about 40,000 miles per year at speeds up to 70 mph. The cars are captive to this service and are tested prior to each trip. Amtrak feels that the COT&S period of three years is too short for this service and proposes to extend the COT&S requirement to four years as long as the failure rate of any of the following air brake components does not exceed 5%: 26–C Service Portion; Emergency Portion; J–1 Relay Valve; No. 8 Vent Valve; E–3 Brake Application Valve; and B–3–B Conductors Valve.

Cab car equipment would continue to be maintained under 49 CFR part 229. Amtrak proposes that all records for the test cars would be maintained in San Francisco and be available for FRA review at any time.

Issued in Washington, DC, on January 8, 1993.

Phil Olekszyk,

Deputy Associate Administrator for Safety.

[FR Doc. 93–897 Filed 1–13–93; 8:45 am]

BILLING CODE 4910–06–M

Petition for Exemption or Waiver of Compliance; Parr Terminal Railroad et al.

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received requests for exemptions from or waivers of compliance with a requirement of its safety standards. The individual petitions are described below, including the party seeking relief, the regulatory provisions involved, and the nature of the relief being requested.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Wavier Petition Docket Number RSGM–89–11) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, SW., Washington, DC 20690. Communications received before February 22, 1993 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) in room 8201, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

The individual petitions seeking an exemption or waiver of compliance are as follows:

Parr Terminal Railroad

[Waiver Petition Docket Number RSGM–89–11]

In 1990 the Parr Terminal Railroad (PRT) was granted a waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR part 223) for locomotive PRT 1402 under Docket Number RSGM–89–11. The PRT states there have been no incidents involving glazing and has requested a waiver for two additional locomotives.

Mobil Mining and Minerals Company

[Waiver Petition Docket Number RSGM 92–5]

The Mobil Mining and Minerals Company (ZMMC) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR part 223) for one locomotive. The locomotive is used between their phosphate rock mine and processing facility at Nichols, Florida.

Wisconsin Trolley Museum

[Waiver Petition Docket Number RSGM–92–16]

The Wisconsin Trolley Museum (WTMX) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR part 223) for one locomotive. The electric locomotive is used to move 20 to 30 carloads of freight per year. The museum states their has been no vandalism in the 9 years they have been associated with the railroad.

Central of Tennessee Railway and Navigation Company

[Wavier Petition Docket Number RSGM–92–17]

The Central of Tennessee Railway and Navigation Company, Inc. (CTRN) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR part 223) for one locomotive. The CTRN operates approximately 28 miles of track between Nashville and Ashland City, Tennessee. The locomotive was built in 1955 and rebuilt in February, 1991. The railroad states there have been no incidents or vandalism related to glazing.

Utah Central Railway Company

[Waiver Petition Docket Number RSGM–92–18]

The Utah Central Railway Company (UCRY) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR part 223) for two locomotives. The locomotives operate in an industrial park at Ogden, Utah at a maximum speed of 10 mph. One locomotive is used five days per week and the other on an as needed basis. Round trip mileage each day is approximately 10 miles. The railroad reports there have been no incidents of vandalism relating to glazing.

PL&W Railroad, Inc.

[Waiver Petition Docket Number RSGM 92–19]

The PL&W Railroad, Inc. (PLWX) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR part 223) for one locomotive. The previous owner of the locomotive, Youngstown and Southern Railway Company, had been granted Waiver RSGM–89–17. The primary use for the locomotive will be for tourist excursions with occasional backup for freight operations. The locomotive will operate in rural and suburban areas of western Pennsylvania and eastern Ohio.

Nicolet Badger Northern Railroad

[Waiver Petition Docket Number RSGM 92–20]

The Nicolet Badger Northern Railroad, Inc. (NBNR) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR part 223) for four passenger cars which are owned by Golden State Ltd. and Great Lakes Central, Ltd. The cars will be operated in excursion service on the NBNR at a maximum speed of 30 mph. The railroad states there is potential to use the equipment on portions of the Wisconsin Central. The areas to be included are northern Wisconsin, upper Michigan and eastern Wisconsin.

St. Louis and Chain of Rocks Railroad

[Waiver Petition Docket Number RSGM–92–22]

The St. Louis and Chain of Rocks Railroad (SLCR) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR part 223) for two locomotives, two passenger cars and two cabooses. Free excursion trains are operated on the three mile museum railroad on one Sunday per month between April and October. Maximum speed is 5 mph through the city riverfront park.

Smoky Hill Railway and Historical Society

[Waiver Petition Docket Number PB–92–2]

The Smoky Hill Railway and Historical Society (SHRX) seeks a permanent waiver of compliance with certain provisions of the Railroad Power Brakes and Drawbars Regulations, 49 CFR part 232. The SHRS seeks relief from the present requirements for clean, oil, test and stencil (COT&S) of passenger car air brake equipment as covered in § 232.17(b)(2). The majority of their cars are equipped with U–12 valves which must be cleaned every 15 months at a minimum expense of $500 per car. There is only one known source for this repair work. Newer air brake valves can be cleaned locally at less expense. The equipment operates in captive service on a museum/tourist railroad at speeds less than 20 mph. The railroad states that an initial terminal air brake test and inspection is performed on the cars each day they are in use.

National Railroad Passenger Corporation

[Waiver Petition Docket Number PB–92–3]

The National Railroad Passenger Corporation (Amtrak) seeks a permanent waiver of compliance with certain provisions of the Power Brake and Drawbars Regulations (49 CFR part 232). Amtrak plans to extend Trains 1 and 2, which presently run from Los Angeles to New Orleans, to Miami, Florida. This extends the trip by 1040 miles to a total of 3073. 1000-mile inspections are currently performed at El Paso and San Antonio, Texas. The distance from Los Angeles to El Paso is 855 miles, from El Paso to San Antonio is 605 miles and San Antonio to New Orleans is 573 miles. When the trip is extended to Miami, a 1000-mile inspection will be performed at Mew Orleans. the distance from New Orleans to Miami is 1040 miles.

Amtrak is requesting a waiver of the 1000-mile inspection requirement (49 CFR 232.12(b)) for the New Orleans to Miami segment of the trip. This will exceed the requirement by 40 miles. Amtrak feels that the three inspections will be adequate. Service is expected to begin in early spring, 1993.

Issued in Washington, DC, on January 8, 1993.

Phil Olekszyk,

Deputy Associate Administrator for Safety.

[FR Doc. 93–899 Filed 1–13–93; 8:45 am]

BILLING CODE 4910–06–M

Petition for Waivers of Compliance; Wheeling and Lake Erie Railway Co.

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received a request for waivers of compliance with certain requirements of the Federal railroad safety laws and regulations. The individual petitions are described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested and the petitioner's argument in favor of relief.

Wheeling and Lake Erie Railway Company

[Waiver Petition Docket Numbers LI–92–6 and RSOP–92–1]

The Wheeling and Lake Erie Railway Company (W&LE) requests waivers of compliance with certain provisions of 49 CFR part 229, Locomotive Safety Standards, and 49 CFR part 218, Railroad Operating Practices. The W&LE is testing a number of prototype locomotives equipped with a remote control system manufactured by Vectron Corporation, called the VR 10 Radio Controls for Locomotives. The W&LE states that use of the VR 10 will result in reduced operating expenses without compromising the safety of the operation.

The VR 10 system contains several components, which includes a battery operated, portable transmitter, measuring 8 inches by 6 inches by 5.5 inches, weighing 6½ pounds, and is worn by the operator. The VR 10 system provides the following functions: Seven step throttle; Five step independent brake; Three speed automatic brake; Horn, bell, and sander controls; Headlight control; Tilt switch/Tilt bypass control; Electronic deadman; and other features available as options.

The system also contains two locomotive mounted electronic and pneumatic control panels, which can be installed in 8 to 10 days, according to the manufacturer. When the locomotive is being operated from the remote control transmitter, the operator may be at any location either on the train or on the ground. Positive visual conformation of the radio control commands is provided by a feedback system using two banks of four colored lights secured to the roof of the locomotive above the cab front windows. The W&LE Operator's Manual/Remote Control Locomotives fully describes the operational and feedback functions and signals of the VR 10 system.

The W&LE states that currently there are no Federal Railroad Administration regulations to govern operating locomotives from outside the [locomotive] cab. Section 229.5(b) defines "cab" as that portion of the [locomotive] superstructure designed to be occupied by the crew operating the locomotive. The railroad says that this definition is used in a number of regulations with the location within a "cab" of various controls, gauges, alarms, and cutoff devices. These requirements are complied with when the locomotive is being operated with the engineer occupying his normal position in the cab. When the locomotive is operated with a remote control from outside the "cab", the regulations are not being complied with.

It is because of this noncompliance when the VR 10 system is being used to remotely control a locomotive that the W&LE is petitioning the FRA for a waiver from the following Locomotive Safety Standards regulations:

Section 229.13 Control of locomotives.

Except when a locomotive is moved in accordance with § 229.9, whenever two or more locomotives are coupled in remote or multiple control, the propulsion system, the sanders, and the power brake system of each locomotive shall respond to control from the "cab" of the controlling locomotive. If a dynamic brake or regenerative brake system is in use, that portion of the

system in use shall respond to control from the "cab" of the controlling locomotive.

Section 229.53 Brake gauges.

All gauges used by the engineer for braking the train or locomotive shall be located so that they may be conveniently read from the engineer's usual position in the "cab". An air gauge may not be more than three pounds per square inch in error.

Section 229.93 Safety cut-off device.

The fuel line shall have a safety cut-off device that—

(a) Is located adjacent to the supply tank or in another safe location.

(b) Closes automatically when it trips and can be set without hazard; and

(c) Can be hand operated from clearly marked locations, one inside the "cab" and one on each exterior side of the locomotive.

Section 229.115 Slip/slide alarms.

(a) Except from MU locomotives, each locomotive in road service shall be equipped with a device that provides an audible or visual in the "cab" of either slipping or sliding wheels on powered axles under power. When two or more locomotives are coupled in multiple or remote control, the wheel slip/slide alarm of each locomotive shall be shown in the "cab" of the controlling locomotive.

(b) Except as provided in § 229.9, an equipped locomotive may not be dispatched in road service, or continue in road service following a daily inspection, unless the wheel ship/slide protective device of whatever type—

(1) Is functioning for each powered axle under power; and

(2) Would function on each powered axle if it were under power.

(c) Effective January 1, 1991, all new locomotives capable of being used in road service shall be equipped with a device that detects wheel slip/slide for each powered axle when it is under power. The device shall produce an audible alarm or visual alarm in the "cab".

The W&LE is also requesting a waiver, FRA Docket No. RSOP–92–1, with certain provisions of 49 CFR part 218, Railroad Operating Practices. Subpart B—Blue Signal Protection of Workmen, §§ 218.23, 218.25, 218.27, and 218.29 set forth the regulations pertaining to blue signal display. Basically the regulations require that when the rolling equipment to be protected includes one or more locomotives, a blue signal must be attached to the controlling locomotive where it is readily visible to the engineman or operator at the controls of that locomotive. The relevant portion of each of the sections for which the W&LE are seeking relief are as follows:

Section 218.25 Workmen on main track.

When workman are on, under, or between rolling equipment on a main track:

(b) If the rolling equipment to be protected includes one or more locomotives, a blue signal must be attached to the controlling locomotive at a location where it is readily visible to the engineman or operator at the controls of that locomotive.

Section 218.27 Workman on track other than main track.

When workman are on, under, or between rolling equipment on a main track:

(e) If the rolling equipment to be protected includes one or more locomotives, a blue signal must be attached to the controlling locomotive at a location where it is readily visible to the engineman or operator at the controls of that locomotive.

Section 218.29 Alternate methods of protection.

Instead of providing blue signal protection for workman in accordance with § 218.27, the following methods for blue flag protection may be used:

(a)(3) A blue signal must be attached to each controlling locomotive at a location where it is readily visible to the engineman or operator at the controls of that locomotive.

(d) When emergency repair work is to be done on, under or between a locomotive or one or more cars coupled to a locomotive, and blue signals are not available, the engineman or operator at the controls of that locomotive must be notified and effective measures must be taken to protect the workmen making the repairs.

A waiver would permit the operation of a remote controlled locomotive from outside the cab by an engineer, who then would not be at the controls to observe a readily visible blue signal.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number LI–92–6) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Communications received before February 22, 1993 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m. to 5 p.m.) in room 8201, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

Issued in Washington, DC, on January 8, 1993.

Phil Olekszyk,

Deputy Associate Administrator for Safety.

[FR Doc. 93–896 Filed 1–13–93; 8:45 am]

BILLING CODE 4910–06–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

January 8, 1993.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0807.

Regulation ID Number: TD 7533 and 7896 Final Regulations (LR 2013).

Type of Review: Extension.

Title: Time for Filing Returns of Corporations.

Description: Section 6072(b), (c), (d) and (e) of the Internal Revenue Code (IRC) deals with the filing dates of certain corporate returns. Regulation section 1.6072–2 provides additional information concerning these filing dates. The information is used to insure timely filing of corporate income tax returns.

Respondents: Businesses or other for-profit, non-profit institutions, small businesses or organizations.

Estimated Number of Respondents: 1.
Estimated Burden Hours Per Respondent: 1 hour.
Frequency of Response: On occasion and annually.
Estimated Total Reporting Burden: 1 hour.
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 93–892 Filed 1–13–93; 8:45 am]

BILLING CODE 4830–01–M

Public Information Collection Requirements Submitted to OMB for Review

January 8, 1993.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515–0087.
Form Number: CF 255.
Type of Review: Extension.
Title: Declaration for Unaccompanied Articles.
Description: Customs Form 255 is completed by each arriving person for each parcel or container which is to be sent from an insular possession at a later date. It is used for claim of benefit purposes to determined a traveler's allowable exemption.
Respondents: Individuals or households, Businesses or other for-profit.
Estimated Number of Respondents: 7,500.
Estimated Burden Hours Per Respondent: 5 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 1,250 hours.
Clearance Officer: Ralph Meyer (202) 927–1552, U.S. Customs Service, Paperwork Management Branch, room 6316, 1301 Constitution Avenue, NW., Washington, DC 20229.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 93–893 Filed 1–13–93; 8:45 am]

BILLING CODE 4820–02–M

UNITED STATES INFORMATION AGENCY

Recruitment for and Management of Central and Eastern European EFL Fellow Program and Russia and Ukraine Fellows

AGENCY: United States Information Agency.
ACTION: Notice—request for proposals.

SUMMARY: The U.S. Information Agency (USIA) solicits interest from U.S. not-for-profit institutions/organizations in conducting the recruitment, placement, and administration of up to 50 English as a Foreign Language (EFL) Fellows and English for Specific Purposes (EFL/ESP) Fellows for a special Eastern European EFL Fellow program to provide EFL teacher trainers for teachers of English and ESP teachers in Albania, Poland, Hungary, the Czech Republic, Slovakia, Romania, Bulgaria, Slovenia, Estonia, Latvia, Lithuania, Croatia, and Macedonia. This program is subject to the availability of funds from Support for Eastern European Democracy IV (SEED IV) funding for Fiscal Year 1993. In addition, the organization will recruit and place up to ten Fellows in Russia and Ukraine and supervise the administration of their grants. The Fellows recruited for Russia and Ukraine will be supported by special USIA funding for Newly Independent States (NIS)/Central and Eastern European (CEE) Initiatives.

DATES: Deadline for proposals: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on Friday, February 12, 1993. Faxed documents will not be accepted, nor will documents postmarked on Friday, February 12, 1993 but received at a later date. It is the responsibility of each grant applicant to ensure that proposals are received by the above deadline. The grant should begin on or about 15 March 1993.

ADDRESSES: The original and 10 copies of the completed application, including required forms, should be submitted by the deadline to: U.S. Information Agency, Ref.: Recruitment for and Management of Central and Eastern European EFL Fellow Program, Office of Grant Management, E/XE, room 336, 301 4th St., SW, Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Interested organizations/institutions should contact Richard A. Murphy at U.S. Information Agency, 301 4th St., SW, Office of Cultural Centers and Resources, English Language Programs Division, E/CE, room 304, Washington, DC 20547, Telephone (202) 619–5869 to request detailed application packets, which include award criteria additional to this announcement, all necessary forms, and guidelines for preparing proposals, including specific budget preparation information.

SUPPLEMENTARY INFORMATION: Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social and cultural life.

Overview

The U.S. Information Agency (USIA) is soliciting proposals, from U.S. professional, not-for-profit institutions/organizations to recruit and place up to 50 EFL Fellows and to supervise attendant administration, including travel arrangements and payment of stipends, for a special Eastern European EFL Fellow program. The program is meant to provide teacher trainers and ESP teachers for Albania, Poland, Hungary, the Czech Republic, Slovakia, Romania, Bulgaria, Slovenia, Estonia, Latvia, Luthania, Croatia, and Macedonia. Additionally, the grantee organization will recruit, place and administer up to 10 EFL Fellows for Russia and Ukraine. Recruitment will be conducted to fill positions in accordance with the basic objective of USIA's EFL Fellow program for Central and Eastern Europe and the Baltic States, which is to promote the teaching of English as a vehicle to develop democracies throughout the region. The Eastern European EFL Fellow Program, initiated in 1991 and continued in 19i92, was a response to the dramatic increase in the demand for English caused by the political changes in Eastern Europe and the shift in intellectual input from East to West. The 1993 program, while continuing the effort to promote English teaching in Central and Eastern Europe, extends it to the former Soviet Republics of Russia and Ukraine.

As in the first two years of the Eastern European EFL Fellow Program, USIA proposes to focus its resources on two areas:

(a) in-service teacher training;
(b) English for specific purposes (ESP)

EFL Fellows will coordinate and implement the teacher training program as well as teach individual language courses in ESP.

Guidelines

Among the responsibilities of the institution/organization receiving the assistance award will be:

1. *Recruiting and placing Fellows.* This will include the following:

—Disseminate information through domestic and international mailings and other means concerning the Eastern European Fellow program.
—Place a public announcement in various professional journals, including the Chronicle of Higher Education, the Commerce Business Daily, and the TESOL Placement Bulletin.
—Respond to CVs and letters of inquiry with an "applicant package" of application materials, designed in consultation with USIA.
—Conduct all correspondence necessary to complete professional dossiers of each FEL Fellow candidate to be interviewed.
—Receive and process applications from candidates, screening for acceptable qualifications set forth above.
—Enter data from applications/CVs into an EFL applicant database, using Paradox 3.5 or higher software, sorting for degree, experience, language, and area preference.
—Arrange for and carry out interviews of all candidates having acceptable qualifications at, but not limited to, the annual TESOL convention in Atlanta, Georgia April 13–17, 1993 in collaboration with USIA's English Language Programs Division. (At least two TEFL/TESL qualified interviewers should be assigned to this task.)
—Establish and define duties expected of each EFL Fellow at the institution assigned, through correspondence with that institution in the particular country and in consultation with USIA's English Language Programs Division.
—Select up to 50 EFL Fellows for teacher training and English for Special Purposes in Eastern Europe, including up to eight coordinators. Additionally, select up to ten Fellows, including one coordinator for Russia and Ukraine. Each Fellow will receive a grant from USIA for one year—with the possibility of renewal. The recruiting/management organization will be provided with the exact mix of Fellow type after the grant is awarded. Coordinators, when selected for a country, will develop a country-wide program for the Fellows and oversee administrative matters connected with the program.
—Contact candidates in a timely fashion in priority order for acceptances based on best aggregate qualifications.
—Print and mail Terms and Conditions of the individual EFL Fellow grant.
—Provide letter of appointment, tax information, health insurance information and certificate to the nominee.
—Provide candidates with background information on visas and monitor their securing of visas.
—Secure the signed terms and conditions and the health certificate.

2. *Finances and Payments.*

—Make all financial arrangements, and process the EFL Fellow payments, distributing the first stipend check to the fellows before the Washington orientation session and the remaining checks during the course of their grant.
—Maintain detailed accounting records using IBM compatible software.

3. *Book Allowance for Fellows.*

—Process and ship EFL books ordered by Fellows from American publishers up to a total value of $700 plus shipping for each Fellow.

4. *Travel.*

—Make all travel arrangements for the Fellows to include travel from their residence to Washington for orientation, to place of assignment and return to residence, including finalizing their itineraries, booking, and mailing tickets and orientation letter to them. Oversee their departure to post.

5. *Orientation.*

—In consultation with USIA's English Language Programs Division, arrange for and implement a four-day orientation program for Fellows in Washington, D.C., utilizing both outside experts and USIA officers.
—Finalize the agenda; design, type, and print handouts; type insurance cards for Fellows.

6. *Review.*

Prepare and submit an evaluation report to USIA at mid-point and at the conclusion of the project.

Note: Proposal should include allowance for a representative from the recipient institution/organization to visit assignment sites proposed for the Fellows in order to become familiar with conditions at the host institutions.

Qualifications Required of the Responding Organization: To carry out the above tasks the institution/organization must be a not-for-profit or educational organization. It must have four years of international experience and possess a proven ability to network that provides and allows for the greatest dissemination of information to and among the profession of Teachers of English as a Second or Foreign Language. It must be able to provide knowledgeable, TEFL-qualified, experienced staff capable of interviewing candidates and evaluating their qualifications for teaching, developing materials, or conducting teacher-training in the context of English as a foreign language.

Proposed Budget

The grantee organization will be required to submit two comprehensive line item budgets: One for up to 50 Fellows for Eastern Europe and one for up to 10 Fellows for Russia and Ukraine. Specific details for these budgets are available in the application packet. Proposals requesting more than 20% of USIA funds for administrative costs will not be accepted.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines established herein and in the application packet. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the appropriate geographic area office, and the budget and contracts offices. Proposals may also be reviewed by the Agency's Office of General Counsel. Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with USIA's contracting officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the following criteria:

1. *Quality of program idea:* Proposals should exhibit originality, substance, rigor, and relevance to Agency mission.

2. *Program planning:* Detailed agenda and relevant work plan should demonstrate substantive rigor and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.

3. *Ability to achieve program objectives:* Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

4. *Multiplier effect/impact:* Proposed program should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

5. *Institutional Capacity:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals. Proposal should present clear evidence of the ability to efficiently recruit and place suitable grantees for the Eastern European Fellow Program. This includes demonstrated ability to gain access to and network with EFL/ESL professionals and programs. The proposal should include evidence of strong administrative and managerial capabilities and project management experience. At least two persons should be assigned to the recruiting and placement of the Fellows at the 1993 TESOL convention in Atlanta, GA and afterwards.

6. *Institution's Track Record/Ability:* Proposals should demonstrate a track record of successful programs, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts (M/KG). The Agency will consider the past performance of prior grantees and the demonstrated potential of new applicants.

7. *Follow-on Activities:* Proposal should provide a plan for continued follow-on activity (without USIA support) which insures that USIA supported programs are not isolated events.

8. *Evaluation Plan:* Proposals should provide for a quarterly formative evaluation by the grantee institution and a summative evaluation at the conclusion of the project.

9. *Cost-effectiveness:* The overhead and administrative components of grants, as well as salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Administrative costs exceeding 20% of USIA funds will not be accepted.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. Final award cannot be made until funds have been fully appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about March 12, 1993. Awarded grants will be subject to periodic reporting and evaluation requirements. The successful organization may be awarded renewal grants for up to three years, depending on program performance and evaluations conducted by USIA.

Dated: January 8, 1993.

Barry Fulton,

Acting Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 93–817 Filed 1–13–93; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 9
Thursday, January 14, 1993

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).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 58 FR 375, January 5, 1993.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 11:00 a.m., Monday, January 11, 1993.

CHANGES IN THE MEETING: Addition of the following closed item(s) to the meeting:

Federal Reserve Bank and Branch director appointments.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: January 11, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–1017 Filed 1–12–93; 9:06 am]

BILLING CODE 6210–01–M

Corrections

Federal Register
Vol. 58, No. 9
Thursday, January 14, 1993

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Office of the Assistant Secretary for Health; Statement of Organization, Functions and Delegations of Authority

Correction

In notice document 92–31894 appearing on page 107 in the issue of Monday, January 4, 1993, in the third column, in the first full paragraph, in the first line, "*Office of Women's Health (HAW)*" should read "*Office on Women's Health (HAW)*".

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 34

[Docket No. 92–27]

FEDERAL RESERVE SYSTEM

12 CFR Part 208

[Regulation H; Docket No. R–0765]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 365

RIN 3064–AB05

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 545 and 563

[Docket No. 92–484]
RIN 1550–AA56

Real Estate Lending Standards

Correction

In rule document 92–31481 beginning on page 62890 in the issue of Thursday, December 31, 1992, make the following corrections:

1. On page 62897, in the second column, the **LOAN ADMINISTRATION** section should read as follows:

LOAN ADMINISTRATION

The institution should also establish loan administration procedures for its real estate portfolio that address:

- Documentation, including:
  Type and frequency of financial statements, including requirements for verification of information provided by the borrower;
  Type and frequency of collateral evaluations (appraisals and other estimates of value).
- Loan closing and disbursement.
- Payment processing.
- Escrow administration.
- Collateral administration.
- Loan payoffs.
- Collections and foreclosure, including:
  Delinquency follow-up procedures;
  Foreclosure timing;
  Extensions and other forms of forbearance;
  Acceptance of deeds in lieu of foreclosure.
- Claims processing (*e.g.*, seeking recovery on a defaulted loan covered by a government guaranty or insurance program).
- Servicing and participation agreements.

2. On page 62898, in the first column, under **EXCLUDED TRANSACTIONS**, in the fifth paragraph, in the second line, "within" should read "without".

3. On the same page, in the same column, under **EXCLUDED TRANSACTIONS**, in the ninth paragraph, in the third line, before "extension" insert "the".

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 205

RIN 1510–AA19

Rules and Procedures for Funds Transfers

Correction

In rule document 92–30757 beginning on page 60676 in the issue of Monday, December 21, 1992, make the following correction:

§ 205.18 [Corrected]

On page 60683, in the first column, in § 205.18(b)(2), in the first line, "20 days" should read "30 days".

BILLING CODE 1505–01–D

federal register

Thursday
January 14, 1993

Part II

Department of Labor

Occupational Safety and Health Administration

29 CFR Parts 1910

Permit-Required Confined Spaces for General Industry; Final Rule

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. S–019]

RIN 1218–AA51

Permit-Required Confined Spaces

AGENCY: Occupational Safety and Health Administration (OSHA), U.S. Department of Labor.

ACTION: Final rule.

SUMMARY: The Occupational Safety and Health Administration (OSHA) hereby promulgates safety requirements, including a permit system, for entry into those confined spaces, designated as permit-required confined spaces (permit spaces), which pose special dangers for entrants because their configurations hamper efforts to protect entrants from serious hazards, such as toxic, explosive or asphyxiating atmospheres. The new standard provides a comprehensive regulatory framework within which employers can effectively protect employees who work in permit spaces.

Few OSHA standards specifically address permit space hazards. These standards, in turn, provide only limited protection. OSHA has determined, based on its review of the rulemaking record, that the existing standards do not adequately protect workers in confined spaces from atmospheric, mechanical and other hazards. The Agency has also determined that the ongoing need for monitoring, testing and communication at workplaces which contain entry permit confined spaces can be satisfied only through the implementation of a comprehensive confined space entry program. OSHA anticipates that compliance with the provisions of this standard will effectively protect employees who work in permit- required confined spaces from injury or death.

EFFECTIVE DATE: This final rule will become effective on April 15, 1993.

ADDRESSES: In compliance with 28 U.S.C. 2112(a), the Agency designates for receipt of petitions for review of the standard, the Associate Solicitor for Occupational Safety and Health, Office of the Solicitor, Room S–4004, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, U.S. Department of Labor, Occupational Safety and Health Administration, Office of Information and Consumer Affairs, Room N3647, Washington, DC 20210, (202) 523–8151.

SUPPLEMENTARY INFORMATION:

I. Background

Many workplaces contain spaces which are considered "confined" because their configurations hinder the activities of any employees who must enter, work in, and exit them. For example, employees who work in process vessels generally must squeeze in and out through narrow openings and perform their tasks while cramped or contorted. For the purposes of this rulemaking, OSHA is using the term "confined space" to describe such spaces. In addition, there are many instances where employees who work in confined spaces face increased risk of exposure to serious hazards. In some cases, confinement itself poses entrapment hazards. In other cases, confined space work keeps employees closer to hazards, such as asphyxiating atmospheres or the moving parts of a mixer, than they would be otherwise. For the purposes of this rulemaking, OSHA is using the term "permit-required confined space" (permit space) to describe those spaces which both meet the definition of "confined space" and pose health or safety hazards.

In its June 5, 1989 NPRM (54 FR 24080), OSHA determined, based on its review of accident data, that asphyxiation is the leading cause of death in confined spaces. The asphyxiations that have occurred in permit spaces have generally resulted from oxygen deficiency or from exposure to toxic atmospheres. In addition, there have been cases where employees who were working in water towers and bulk material hoppers slipped or fell into narrow, tapering, discharge pipes and died of asphyxiation due to compression of the torso. Also, employees working in silos have been asphyxiated as the result of engulfment in finely divided particulate matter (such as sawdust) that blocks the breathing passages.

The Agency has, in addition, documented confined space incidents in which victims were burned, ground-up by auger type conveyors, or crushed or battered by rotating or moving parts inside mixers. Failure to deenergize equipment inside the space prior to employee entry was a factor in many of those accidents. OSHA notes that the NPRM (54 FR 24080–24085) discussed the hazards which confront employees who enter permit spaces and the inadequacy of existing regulation in greater detail. Additionally, Section II of this preamble, *Hazards*, presents a detailed discussion of the hazards to which permit-space entrants have been exposed, demonstrating that this final rule is reasonably necessary to protect affected employees from significant risks.

OSHA has determined, based on its review of the rulemaking record, including investigation reports covering "permit space" fatalities (Exhibits (Ex.) 10 through 13 and 16), that many employers have not appreciated the degree to which the conditions of permit space work can compound the risks of exposure to atmospheric or other serious hazards. Further, the elements of confinement, limited access, and restricted air flow, can result in hazardous conditions which would not arise in an open workplace. For example, vapors which might otherwise be released into the open air can generate a highly toxic or otherwise harmful atmosphere within a confined space. Unfortunately, in many cases, employees have died because employers improvised or followed "traditional methods" rather than following existing OSHA standards, recognized safe industry practice, or common sense. The Agency notes that, as documented in the NPRM, many of the employees who died in permit space incidents were would-be rescuers who were not properly trained or equipped.

In addition, OSHA believes that, as noted in the NPRM (54 FR 24098), the failure to take proper precautions for permit space entry operations has resulted in fatalities, as opposed to injuries, more frequently than would be predicted using the applicable Bureau of Labor Statistics models. The Agency notes that, by their very nature and configuration, many permit spaces contain atmospheres which, unless adequate precautions are taken, are immediately dangerous to life and health (IDLH). For example, many confined spaces are poorly ventilated—a condition that is favorable to the creation of an oxygen deficient atmosphere and to the accumulation of toxic gases. Furthermore, by definition, a confined space is not designed for continuous employee occupancy; hence little consideration has been given to the preservation of human life within the confined space when employees need to enter it.

Accordingly, the Agency has determined that it is necessary to promulgate a comprehensive standard to require employers to take appropriate measures for the protection of any employee assigned to enter a permit space. OSHA believes this new standard will help eliminate confusion and misunderstanding by clearly stating employer responsibilities.

The record and determinations that are discussed in this final rule

culminate a series of efforts by OSHA, the National Institute for Occupational Safety and Health (NIOSH), the American National Standards Institute (ANSI) Z117 Committee, and others to address permit space hazards. The chronology of those efforts is set forth in the following paragraphs.

On July 24, 1975, OSHA issued an Advance Notice of Proposed Rulemaking (ANPR), "Standard for Work in Confined Spaces," for the purpose of obtaining data and information to be used in developing a confined spaces standard (40 FR 30980). This ANPR sought comments on 14 issues, including problems with existing regulations, factors involved in confined space injuries and deaths, and the steps necessary for the control of hazards in confined spaces.

On August 26, 1977, ANSI adopted ANSI Z117.1–1977, "Safety Requirements for Working in Tanks and Other Confined Spaces" (Ex. 13–5). That standard set "minimum requirements for safe entry, continued work in, and exit from tanks and other confined spaces at normal atmospheric pressure." The ANSI standard defined confined spaces as enclosures with limited means of access and egress, such as storage tanks, open-topped spaces more that four feet in depth with poor natural ventilation, and sewers. Explanatory information accompanying the standard stated that the standard addressed atmospheric hazards, physical hazards, the possibility of liquids, gases, or solids entering a space (e.g., drowning or engulfment hazard) and isolation of entrants in case of need (e.g., hazard of entrapment due to configuration). The ANSI standard set: (1) general precautions (such as testing, evaluation, ventilation and lockout) to be followed before entry, (2) procedures to be followed when confronting particular environmental hazards (such as oxygen-deficient, flammable and toxic atmospheres, noise, and radiation exposure), (3) entry procedures (including the use of permit to authorize entry and illumination of the space), and (4) special procedures for hot work (e.g., welding) or removal or application of preservative coatings or linings performed in confined spaces.

Citing both "the complexity of the issues and the period of time since the previous Advance Notice," OSHA issued another ANPR, "Entry and Work in Confined Spaces" (44 FR 60334), on October 19, 1979. The 24 questions raised in the 1979 ANPR were similar to, but more detailed than, the 14 issues raised in the 1975 ANPR.

The 1979 ANPR again requested suggestions for a definition of "confined space," as well as information regarding the appropriate procedures for addressing confined space hazards, and the cost of those procedures. OSHA received 68 comments in response to the 1979 ANPR. These comments, while similar to those received in response to the 1975 ANPR, broadened the informational base which supported OSHA regulatory action to address confined spaces hazards.

Most commenters suggested that OSHA develop a performance- oriented standard similar to OSHA's "fire protection standard" (29 CFR Part 1910, Subparts E, H, and L), which was then being revised and which was subsequently published as a final rule on September 12, 1980 (45 FR 60704). Also, many commenters suggested that defining the hazards confronted in confined spaces was more important than defining the term "confined space."

In December 1979, NIOSH issued a criteria document, "Working in Confined Spaces" (Ex. 13–9), which recommended procedures for protecting employees from the hazards of entering, working in, or exiting confined spaces. NIOSH defined the term "confined space" to mean "a space which by design has limited openings for entry and exit, unfavorable natural ventilation which could contain or produce dangerous air contaminants, and which is not intended for continuous employee occupancy." The criteria document states: "The standard is designed not only to make the confined space safe for the worker, but also to make the worker cognizant of the hazards associated with this work area and the safe work practices necessary to deal with these hazards."

The NIOSH recommended standard included provisions for permit to authorize entry, testing and monitoring, precautions (such as ventilation, purging and lockout), medical surveillance, training, labeling and posting of confined spaces, entry procedures (such as planning for entry, standby person, communications, and rescue), personal protective equipment, rescue equipment and recordkeeping. NIOSH would require employers whose confined spaces were immediately dangerous to life or health (categorized as "Class A") or dangerous (categorized as "Class B") to implement all of these measures, except that employers with Class B confined spaces would have a qualified person determine if it was necessary to conduct monitoring. Employers with confined spaces "in which the potential hazard would not require any special modification of the work procedure" (categorized as "Class C") would be required to implement a permit system, atmospheric testing, training, labeling and posting, entry procedures (except for stationing of standby person), and recordkeeping and to provide rescue equipment. Other measures would be taken if a qualified person determined that they were necessary.

On March 25, 1980, OSHA issued an ANPR (Construction ANPR) "Entry and Work in Confined Spaces" (45 FR 19266), to obtain information which could be used "to revise its existing standards in order to effectively cover hazards connected with these (confined space) activities in construction." The Agency stated its belief that "the hazards of work in confined spaces are also significant in the construction industry." The Construction ANPR posed 31 questions, similar to those presented in the 1979 General Industry ANPR, regarding the appropriate precautions and procedures for controlling confined space hazards which construction workers may confront. The Agency received 75 comments, most of which restated general industry-related concerns that were raised in response to the 1979 ANPR.

On April 4, 1980, OSHA scheduled public meetings (45 FR 22978) where interested parties could make oral presentations regarding confined space hazards in general industry and in construction. Those meetings were held during May 1980 in Houston, Texas, in Denver, Colorado, and in Washington, D.C. There were approximately 30 participants at these meetings.

In January 1986, NIOSH published an "Alert" titled "Request for Assistance in Preventing Occupational Fatalities in Confined Spaces" (Ex. 13–16). The Alert described the circumstances under which 16 workers died (14 of them due to atmospheric hazards) in confined space incidents. NIOSH focused on problems employers have in three areas: (1) recognizing confined spaces; (2) testing, evaluating, and monitoring confined space atmospheres; and (3) developing and implementing rescue procedures. It was noted, for example, that "[m]ore than 60% of confined space fatalities occur among would-be rescuers." The Alert recommended that employers protect employees who enter confined spaces by implementing measures similar to those presented in the 1979 Criteria Document.

In July 1987, NIOSH published "A Guide to Safety in Confined Space" (Ex. 14–145). The Guide addressed identification of confined spaces, measures to take when a confined space presents atmospheric hazards, and

incidents where "[l]ack of hazard awareness and unplanned rescue attempts led to [employee] deaths." NIOSH also described other potential confined space hazards (temperature extremes, engulfment, noise, slick or wet surfaces, and falling objects) and provided a checklist for employers to follow in evaluating confined spaces and in planning entry operations.

In addition, NIOSH's Fatal Accident Circumstances and Epidemiology (FACE) project focused much of its effort on confined space-related fatalities from 1984 to 1988 (Ex. 14–145). Personnel from NIOSH's Division of Safety Research evaluated numerous incidents and prepared reports which contained recommendations for improved employee protection. Those reports, which constituted the primary data base for the 1986 "Alert" and the 1987 "Guide", contributed significantly to OSHA's understanding of the broad range of hazards posed by confined spaces.

In May 1988, the ANSI Z117.1 Committee withdrew ANSI Z117.1–1977 because the committee had not completed action to renew or revise the standard within the 5-year period required by ANSI procedures for such action.

On June 5, 1989, OSHA issued a notice of proposed rulemaking (NPRM) (54 FR 24080) to set requirements for the protection of employees who work in or near permit-required confined spaces (permit spaces). In brief, the proposal required employers to identify any permit spaces in their workplaces, prevent unauthorized entry into such spaces, and protect authorized entrants from permit space hazards through a permit space program. As proposed, the permit space program, in turn, required employers to control hazards; properly inform, train and equip affected employees; document compliance with the program and authorize any entry operations through written permits; station an attendant to monitor entry operations; take the appropriate precautions for rescuing entrants from permit spaces; and assist any contractors hired for entry operations in complying with the program requirements by informing them of the hazards identified and any procedures developed for dealing with them. In addition, the NPRM presented 18 issues regarding which OSHA solicited comments and information. Detailed discussion of the proposed rule and issues raised during the rulemaking may be found in Section III, *Summary and Explanation of the Standard*, later in this preamble.

The NPRM set a comment period which ended on August 4, 1989. On July 21, 1989, in response to several requests, OSHA published a notice (54 FR 30557) which extended the time in which written comments and requests for hearing could be submitted through October 4, 1989.

On September 1, 1989, (54 FR 36644) the Agency promulgated a standard for "The control of hazardous energy (lockout/tagout)", 29 CFR 1910.147, to address "the *unexpected* energization or start up of machines or equipment, or release of stored energy [that] could cause injury to employees." OSHA anticipates that compliance with the lockout/tagout standard, in conjunction with the permit-space standard, will effectively protect employees who work in permit spaces from mechanical and other energy hazards. (See the discussion of issue 7 under *NPRM Issues*, later in this preamble, for further information on the relationship between the two standards.)

On October 5, 1989, the ANSI Z117 Committee approved ANSI Z117.1–1989, "Safety Requirements for Confined Spaces." The 1989 edition differs from the 1977 edition in two major respects: First, it distinguishes between confined spaces based on their potential to pose hazards. Under ANSI Z117.1–1989, employers would not need written permits to authorize work or attendants for spaces which fit the definition of permit-required confined space but have low potential to pose hazards. Second, it provides more specific guidance regarding the identification and evaluation of confined spaces, the training of personnel, and the appropriate procedures for having contractors work in confined spaces and for providing rescue and emergency services.

On October 10, 1989, OSHA issued a notice of informal public hearing (54 FR 41461), which announced that hearings would be held in Washington, D.C. and in Houston, Texas. The notice set out 15 issues regarding which the Agency solicited testimony, with supporting information. The testimony and other information received regarding those issues are discussed in Section III, *Summary and Explanation of the Standard*, later in this preamble. In addition, OSHA extended the written comment period through November 1, 1989.

On November 14, 1989, OSHA issued a notice of additional hearing site (54 FR 47498), which announced that the Agency would hold a hearing in Chicago, Illinois to facilitate participation by interested parties in the Chicago area.

On November 14–15, 1989, OSHA convened public hearings on the NPRM, with Administrative Law Judge Aaron Silverman presiding. Hearings were also held in Houston, Texas (December 5–6, 1989) and in Chicago, Illinois (January 30–February 2, 1990).

At the conclusion of the hearings, Judge Silverman set a post- hearing period for the submission of additional data (ending on April 18, 1990) and for the submission of additional briefs, arguments and summations (ending on May 3, 1990). On April 11, 1990, in response to requests from several parties, Judge Silverman extended the post-hearing comment periods, so that hearing participants had until May 18, 1990 to submit additional data and until June 4, 1990 to submit briefs, arguments or summations. On November 9, 1990, Judge Silverman closed and certified the hearing record for the rulemaking. The rulemaking record contains 137 exhibits and 2,279 pages of hearing transcript. OSHA received 227 comments on the proposal and 51 post-hearing comments.

In the course of drafting the final standard, OSHA has carefully reviewed the record for this rulemaking. In addition to comments and testimony at the public hearings, the Agency has also studied confined space regulations generated by states and other countries; materials generated by NIOSH; both editions of ANSI Z117.1; and the guidelines developed by other organizations (such as the American Petroleum Institute (Ex. 13–14) and the UAW-GM Human Resource Center (Ex. 64, 65, 66, 67)).

While the Agency has gained many valuable insights from the documents reviewed, OSHA believes that some standard-setting groups have not focused sufficiently on non-atmospheric hazards and have concentrated largely on air contaminants and oxygen-deficient atmospheres. For example, both the 1979 NIOSH Criteria Document and ANSI Z117.1–1989 require atmospheric testing before entry into a "confined space", even though those standards also recognize that some such spaces will pose mechanical and physical hazards rather than atmospheric hazards. Consequently, the OSHA permit-required confined space standard diverges from the approaches taken in the ANSI and NIOSH documents as necessary to indicate clearly that the OSHA standard is intended to protect employees from exposure to all permit space hazards.

Section 6(b)(8) of the Occupational Safety and Health Act of 1970 (the OSH Act) requires OSHA to explain "why a rule promulgated by the Secretary differs substantially from an existing

national consensus standard," by publishing " a statement of the reasons why the rule as adopted will better effectuate the purposes of the Act than the national consensus standard." In compliance with that requirement, the Agency has reviewed the standards proposed through this rulemaking with reference to the pertinent consensus standards. OSHA discusses the relationship between individual regulatory provisions and the corresponding consensus standards in Section III, *Summary and Explanation of the Standard*, later in this preamble.

The materials upon which OSHA has relied in drafting this final rule are available for review and copying in the OSHA Docket Office. Those materials include, among others, transcripts of the 1989 and 1990 informal public hearings, documents received by OSHA at the hearings and during the post- hearing comment periods, public comments on the NPRM, accident reports, existing regulatory language, responses to the 1975 and 1979 ANPRs, transcripts of the 1980 public meetings and the sources listed in the "References" sections of both the NPRM and this final rule.

II. Hazards

OSHA has determined, based upon the information presented in this section and upon the complete record developed as a result of this rulemaking, that working in permit-required confined spaces involves significant risks for employees and that this standard is necessary to alleviate or control such risks.

Incident Data and Confined Space Hazards Analysis.

The 1979 NIOSH Criteria document, "Working in Confined Spaces", cites a study by the Safety Sciences Division of WSA, Inc., San Diego, California, which was titled "Search of Fatality and Injury Records for Cases Related to Confined Spaces". The Safety Sciences study reviewed approximately 20,000 reports covering industrial accidents nationally for the period 1974– 1977. Even with this limited sample, 276 confined space accidents which resulted in 234 deaths and 193 injuries were identified. Safety Sciences conducted its study to determine if regulatory action was needed to control confined space hazards, not to identify the exact causes of death and injury. OSHA, in turn, has been unable to connect the 234 fatalities and 193 injuries to specific industry segments or work activities.

More recently, OSHA examined its records of accident investigations for fatal confined space incidents. In particular, OSHA sought to identify the specific hazards and work activities involved. OSHA concluded during this review that, where multiple deaths occurred, the majority of the victims in each event died trying to rescue the original entrant from a confined space. This determination is consistent with the finding by NIOSH in its 1986 "Alert" that "rescuers" accounted for more than 60 percent of confined space fatalities. This evidence indicates that untrained or poorly trained rescuers constitute an especially important "group at risk." This group is protected from permit space hazards under the terms of this final rule.

OSHA has also gathered incident data from a number of other sources, such as the Fatal Accidents Circumstances and Epidemiol- ogy (FACE) reports produced by NIOSH and reports produced by the states. That information has been very useful to OSHA, even though in some cases there was not enough detail for OSHA to evaluate the circumstances of the incidents.

The OSHA-investigated cases which OSHA analyzed to determine the cause of death in confined spaces have been compiled in four reports prepared by OSHA's Office of Statistical Studies and Analyses. These are: "Selected Occupational Fatalities Related to Fire and/or Explosion in Confined Work Spaces as Found in Reports of OSHA Fatality/Catastrophe Investigations" (Ex. 13–10), "Selected Occupational Fatalities Related to Lockout/Tagout Problems as Found in Reports of OSHA Fatality/Catastrophe Investigations" (Ex. 13–11), "Selected Occupational Fatalities Related to Grain Handling as Found in Reports of OSHA Fatality/ Catastrophe Investigations" (Ex. 13–12), and "Selected Occupational Fatalities Related to Toxic and Asphyxiating Atmospheres in Confined Work Spaces As Found in Reports of OSHA Fatality/ Catastrophe Investigations" (Ex. 13–15).

These four reports focused on fatalities because OSHA found that the reporting of injuries from permit space incidents was frequently incomplete. OSHA observes that injuries are most likely to be reported when they occur as part of an incident where fatalities do occur. The Agency anticipates that this rulemaking will lead to improved data collection regarding injuries because employers and employees are being clearly alerted to OSHA's concern about permit space hazards.

OSHA analyzed the studies to determine the underlying causes of the conditions which existed when confined space related accidents occurred. From this information, OSHA has developed measures that would have prevented virtually all of the accidents in the studies and has used those measures as the basis for both the proposed standard and the final rule. OSHA notes that many of the reports did not fully document the circumstances of the accidents covered. The Agency has determined, however, that the available accident data, despite its limitations, provides the necessary basis for characterizing permit space hazards and for requiring protective measures. OSHA has continued to collect accident data during the course of this rulemaking.

OSHA has determined that a variety of confined space hazards have caused deaths and injuries. The following discussion describes the hazards identified by OSHA. Where the Agency has obtained incident data subsequent to the publication of the NPRM, the circumstances of some of those incidents are summarized as "examples". The discussion also references the portions of the NPRM where pertinent incidents were described.

1. *Atmospheric Hazards.*

OSHA's review of accident data indicates that most confined space deaths and injuries are caused by atmospheric hazards. OSHA has classified those hazards into three categories: toxic; asphyxiating; and flammable or explosive atmospheres, in order to account for their differing effects.

Some chemical substances present multiple atmospheric hazards, depending on their concentration. Methane, for example, is an odorless substance that is nontoxic and is harmless at some concentrations. Methane, however, can displace all or part of the atmosphere in a confined space;[1] and the hazards presented by such displacement can vary greatly, depending on the degree of displacement. With only 10 percent displacement, methane produces an atmosphere which, while adequate for respiration, can explode violently. By contrast, with 90 percent displacement, methane will not burn or explode, but it will asphyxiate an unprotected worker within about 5 minutes.

OSHA is concerned that employees may be exposed to atmospheric hazards because the employer has not properly

[1] Methane is lighter than air when both are at the same temperature (the normal case), and the configuration of some confined spaces can trap accumulating methane at "ceiling" level. On the other hand, in the unlikely event that liquified methane is released into the atmosphere of a confined space, the methane released would be heavier than air and would displace the air from the "ground" level up.

evaluated the work operations or the conditions within the permit space. Problems can arise, for example, where an employer has not selected the necessary atmospheric test instruments or has not ensured their proper use. Problems have arisen because most of the instruments used to test the flammability of a permit space atmosphere do not identify oxygen deficient atmospheres. In fact, because some of these instruments rely on the presence of oxygen, their readings can be inaccurate in oxygen-depleted atmospheres.

For example, instruments of the hot-platinum-filament type are designed to measure flammable gases and vapors in air. The depend on oxidation for their operation, and normal quantities of oxygen in the air are necessary for their correct operation. Any reduction in oxidation caused by lack of oxygen will result in a lower flammability reading. Such test instruments would indicate the absence of an explosion hazard simply because the atmosphere did not contain sufficient oxygen for combustion but would not indicate the oxygen deficiency that posed an asphyxiation risk.

On the other hand, a test performed only to determine the oxygen level might indicate that conditions are acceptable for entry without respiratory protection, despite the presence of 10 percent methane, an explosive level, in the atmosphere. Therefore, in the final rule, OSHA is requiring that employers test and monitor their entry spaces with instruments which will detect all aspects of hazardous atmospheres that may be encountered in the spaces.

OSHA presents the following examples regarding atmospheric hazards to illustrate how a relatively uncomplicated series of events can lead to workplace deaths and injuries. In each case, OSHA believes that death and injury would have been prevented if the procedures and safeguards required in this rule had been used. OSHA notes that the hazards confronted could only have been controlled effectively through the use of mechanical ventilation. OSHA recognizes that many confined space workplaces present situations which are more complex than those described in the following discussion.

a. *Fatalities in asphyxiating atmospheres.* In its analysis of these confined space incidents, OSHA uses the term "asphyxiating atmosphere" when referring to an atmosphere which contains less than 19.5 percent oxygen. Oxygen levels under 19.5 percent are inadequate for an entrant's respiratory needs when performing physical work, even if the space contains no toxic materials.

There are many potential causes of asphyxiating atmospheres. For example, the oxygen in a space may have been absorbed by materials, such as activated charcoal, or consumed by chemical reaction, such as the rusting of a vessel or container. In another situation, the original atmosphere in the space may intentionally have been wholly or partly inerted using such gases as helium, nitrogen, argon, or carbon dioxide. Victims of asphyxiation often are unaware of their predicament until they are incapable of saving themselves or even calling for help.

Three incidents involving fatalities in asphyxiating atmospheres were discussed in the preamble of the NPRM (54 FR 24083). In addition, OSHA has received information during the rulemaking (Ex. 14–159) that further documents the hazards of exposure to asphyxiating atmospheres in permit-required confined spaces.

Example #1. A worker at a Texas steel mill was assigned the task of clearing a blockage at The No. 2 degasser vessel dust collector. He entered the vessel through an access manhole and proceeded to clear the obstruction. A coworker, assigned to assist, left the area to locate an electrical receptacle. About 10 or 15 minutes later, the coworker returned and found the worker who had entered the vessel unconscious. The coworker was able to remove the unconscious man and called for assistance. Unfortunately, the worker died. An oxygen test showed a level of 10% oxygen in the vessel. (The coworker was not injured.)

Example #2. A steel worker was asphyxiated when he entered a tank in the reagent storage building. There were no witnesses to the incident, but, since the tank had been used for the transport of nitrogen, it was assumed that the atmosphere within the tank was oxygen deficient.

b. *Fatalities in toxic atmospheres.* The term "toxic atmospheres" refers to atmospheres containing gases, vapors or fumes known to have poisonous physiological effects. The toxic effect is independent of the oxygen concentration. The most commonly encountered toxic gases are carbon monoxide and hydrogen sulfide.

Some toxic atmospheres may have severe harmful effects which may not manifest until years after exposure, while others may kill quickly. Some can produce both immediate and delayed effects. For example, while carbon disulfide at low concentrations may exhibit no immediate sign of exposure, it can cause permanent and cumulative brain damage as a result of repeated "harmless" exposures. At higher concentrations, it can kill quickly.

Two incidents involving fatalities in toxic atmospheres were discussed in the preamble of the NPRM (54 FR 24083, 24084). In addition, OSHA has received information during the rulemaking (Ex. 14–63, 14–159) that further documents the hazards of exposure to toxic atmospheres in permit-required confined spaces.

Example #1. A worker in Maryland entered a 6500 gallon tank trailer to finish cleaning the inside. He had with him a bucket containing about a gallon of a cleaning solvent (identified in the accident abstract only as "Niagara Trex 1900 Presol"). In only five to seven minutes the employee passed out and fell to the tank bottom. There was no ventilation, respirator or safety harness with lifeline provided. The outside "standby man" only checked the employee periodically (every three to five minutes). When the outside man discovered the unconscious employee, he attempted a rescue (without benefit of any protective equipment for himself) but was unsuccessful. He left the tank and called emergency personnel. The unconscious employee was rescued by emergency personnel and immediately transported to a hospital, where he was declared dead.

Example #2. An employee of a zinc refinery was working in a zinc dust condenser when he collapsed. Another employee donned a self-contained breathing apparatus (SCBA) and attempted to enter the condenser to rescue the downed employee. He was not able to fit through the portal wearing the SCBA, so he removed it, handed it to another employee and then entered the condenser. He planned to have the other employee hand the SCBA to him through the portal, re-don it and then continue with the rescue. He collapsed and fell into the condenser before he could re-don the SCBA. The first employee was declared dead at the scene; the would-be rescuer died two days later. The toxic air contaminant was later determined to be carbon monoxide.

c. *Fatalities due to flammable or explosive atmospheres.* OSHA considers an atmosphere to pose a serious fire or explosion hazard if a flammable gas or vapor is present at a concentration greater than 10 percent of its lower flammable limit or if a combustible dust is present at a concentration greater than or equal to its lower flammable limit. (See the definition of "hazardous atmosphere" in §1910.146(b) and the discussion of the definition of "hazardous atmosphere", which

appears in Section III, *Summary and Explanation of the Standard*, later in this preamble.) This category of hazardous atmospheres includes atmospheres containing gases such as methane or acetylene; vapors of solvents or fuel such as carbon disulfide, gasoline, kerosene, or toluene; or combustible dusts, such as coal or grain dusts.

An incident involving five fatalities in flammable or explosive atmospheres was discussed in the preamble of the NPRM (54 FR 24084). In addition, OSHA has received information during the rulemaking (Ex. 14–145) that further documents the hazards of exposures to flammable or explosive atmospheres in permit-required confined spaces.

Example. An employee of a trailer service company entered a 8500 gallon cargo tank to weld a leak on the interior wall of the tanker. Despite the presence of strong fumes of lacquer- thinner (the material previously carried in the tanker) the welder decided to proceed with the repairs even though the written company safety policy required the use of an explosion meter at that point. When he began welding, an explosion occurred. The employee was removed from the tank and taken to a nearby hospital, where he was declared dead by the attending physician.

2. *Other Hazards.*

Fatalities from engulfment. "Engulfment" refers to situations where a confined space entrant is trapped or enveloped, usually by dry bulk materials. The engulfed entrant is in danger of asphyxiation, either through filling of the victim's respiratory system as the engulfing material is inhaled, or through compression of the torso by the engulfing material. In some cases, the engulfing materials may be so hot or corrosive that the victims sustain fatal chemical or thermal burns, but are never buried to the extent that they cannot breathe.

Two incidents involving fatalities from engulfment were discussed in the preamble of the NPRM (54 FR 24084). In addition, OSHA has received information during the rulemaking (Ex. 14–159) that further documents the hazards of engulfment in permit-required confined spaces.

Example. Two Ohio foundry employees entered a sand bin to clear a jam. While they were working, sand which had adhered to the sides of the bin began to break loose and fall on them. One employee quickly became buried up to his chest, just below his armpits. The other employee left the bin to obtain a rope, intending to use it to pull his coworker out of the sand. He returned to the bin, tied the rope around the partially buried employee and tried to pull him free. He was unsuccessful. During his attempted rescue, additional sand fell, completely covering and suffocating the employee who had been only partially buried.

Fatalities due to mechanical hazards. OSHA has determined that accidents have resulted in confined spaces when employers failed to isolate equipment within the space from sources of mechanical or electric energy or when the equipment was improperly guarded. In each case reviewed, death resulted from mechanical force injury, such as the crushing of the victim. OSHA has determined from its review of accidents involving mechanical hazards that the correct preventive action would have been to secure the machinery or equipment so that it would not have been inadvertently activated while employees were exposed to it. This procedure is commonly called "lockout".

When servicing or maintenance work is being performed on machinery or equipment located in a confined space, OSHA's standard on the control of hazardous energy sources (lockout/tagout), §1910.147, also applies. When work inside a permit space does not involve servicing or maintenance of machinery or equipment in the permit space, OSHA's standards on machine guarding, in Subpart O of Part 1910, require the equipment to be guarded to protect employees from any mechanical hazards posed by the machine. In any event, this final rule on permit-required confined spaces, §1910.146, requires employers to evaluate any mechanical hazards found in permit spaces and to take all steps necessary to protect entrants.

An incident involving a fatality due to a mechanical hazard is discussed in the preamble of the NPRM (54 FR 24085).

Fatalities due to untrained rescuers. As noted previously, OSHA has determined that a high percentage of confined space accident victims have been untrained rescuers. Indeed, in some cases, the unsuccessful rescuers have died while the initial entrants have recovered. The likelihood that good intentions and poor preparation will lead to tragedy has led the Agency to establish criteria for rescue which will protect co-workers or volunteers from accidental injury or death.

Two incidents involving untrained rescuers were discussed in the preamble to the NPRM (54 FR 24085). In addition, OSHA has obtained information (Ex. 14–145) during the rulemaking that further documents the hazards of allowing untrained rescuers to enter permit spaces.

Example. A maintenance worker entered a sewer manhole to repair a pipe and collapsed at the bottom. A coworker, who had been observing the initial entrant, entered the manhole, lost consciousness, and fell to the bottom. A supervisor looked in the manhole, saw the would-be rescuer, and entered to attempt rescue. The supervisor became dizzy, climbed from the manhole, and passed out. When he regained consciousness, the supervisor summoned rescue and emergency services. Both the initial entrant and the first would-be rescuer died of hydrogen sulfide poisoning.

Conclusion. OSHA has determined, based upon the information presented in this section of the preamble and upon the complete record developed as a result of this rulemaking, that working in permit-required confined spaces involves significant risks for employees and that this standard is necessary to alleviate or control such risks. This conclusion is further supported in the next section of this preamble, *Summary and Explanation of the Standard.*

III. Summary and Explanation of the Standard

The following discussion, which tracks the final rule paragraph by paragraph, summarizes the significant substantive differences between this final rule and the proposed rule and explains how OSHA determined what the final rule would require. This section covers the comments, testimony, and information received regarding the proposed standard, the 18 issues raised in the NPRM, and the 15 issues raised in the hearing notice. Each issue is addressed under the appropriate provision of the final rule or, if the issue does not relate to a particular provision of the standard, in a separate discussion at the end of this section of the preamble. References in parentheses are to exhibits and transcript pages[2] in the rulemaking record. These references are not meant to be exhaustive but are examples of sources that support statements made in the preamble discussion.

As noted in Section I, *Background*, earlier in this preamble, section 6(b)(8) of the OSH Act requires OSHA to explain why a rule which deviates

[2] Chicago Tr.—Transcript pages from the hearing held in Chicago, IL, on January 30 to February 2, 1990.

Houston Tr.—Transcript pages from the hearing held in Houston, TX, on December 5–6, 1989.

Washington Tr.—Transcript pages from the hearing held in Washington, DC, on November 14–15, 1989.

substantially from a pertinent consensus standard better effectuates the purposes of the Act. In a case where the Agency has determined that ANSI language should be adopted, the Summary and Explanation so indicates. In addition, this section of the preamble addresses any case where the Agency has determined that adoption of the pertinent ANSI language would not provide appropriate requirements for employee safety.

Paragraph (a), Scope and Application.

Paragraph (a) states that §1910.146 contains requirements for practices and procedures to protect employees from the hazards of entry into permit-required confined spaces. This paragraph explicitly excludes agriculture, construction, and shipyard employment from the scope of the standard. This language simplifies and clarifies the proposed provision. The proposed rule stated that the section set requirements for permit-required confined spaces (PRCSs) in General Industry that could "be identified by an employer exercising reasonable care." Proposed paragraph (a) also would have excluded electric power generation and transmission, grain handling facilities, and onshore operations of the maritime industry from the scope of proposed §1910.146, to the extent that PRCSs in those industries were "regulated by a more specific confined space entry standard."

As discussed in the preamble of the NPRM (54 FR 24089), OSHA considered proposed §1910.146 to be a generic standard. Therefore, the proposed rule was intended to apply except where superseded, in whole or in part, by industry-specific regulations. The text of proposed paragraph (a) reflected the Agency's understanding of the relationship between proposed §1910.146 and the other OSHA standards. OSHA solicited comments on the scope of the standard in Issue 8 of the NPRM and in Issues 1 and 2 of the hearing notice.

Some rulemaking participants (Ex. 14–38, 14–41, 14–44, 14–54, 14–57, 14–61, 14–63, 14–94, 14–127, 14–148, 14–151, 14–163, 14–173, 14–208, 14–213, 14–216; Chicago Tr. 220–222) stated that OSHA should expand the proposed scope. These commenters asserted that all employees who work in "permit spaces" should be afforded the protection provided by compliance with proposed §1910.146, regardless of the classification of the industry in which they work. One commenter (Ex. 14–61) stated:

> OSHA's contention that the excluded industries are adequately covered by existing standards is wishful thinking at best. The very same hazards that are faced by general industry are found in the agriculture, construction and maritime sectors.... There are [repeated] references in the news media about confined space accidents in all three exempted industries.

Agreeing with this point of view, another commenter (Ex. 14–54) said:

> With the numerous confined spaces in agriculture, construction, maritime, electric generation and transmission industries, and grain handling facilities and the number of fatalities that occur in these areas, they should not be exempt!

Still another commenter (Ex. 14–163), bolstering his arguments with OSHA statistics, stated:

> I find it a grave error not to include construction in the proposed rulemaking. As your statistics succinctly point out, between 1974 and 1977, 276 confined space accidents claimed 234 lives and injured an additional 193 individuals. Electrical, Gas and Sanitary Services recorded the highest average annual fatalities of all industries listed in the Average Annual Fatality Table in this proposed rule making. The majority of the tasks that this industry performs falls into the construction field. Based upon these figures, why would you want to exclude construction?

Other rulemaking participants (Ex. 14–35, 14–43, 14–53, 14–101, 14–110, 14–153, 14–165, 14–180, 14–226; Washington Tr. 173, 176, 178–180, 182, 199, 209–210) stated that the proposed scope should be narrowed. These commenters believed that proposed paragraph (a) did not sufficiently take into account other OSHA standards that already adequately protected employees in certain industries from confined space hazards. For example, some suggested that OSHA exempt all maritime operations because there was already adequate regulation for that industry (Ex. 14–42, 14–58, 14–62, 14–198, 14–212, 14–220). Supporting this view, the National Fire Protection Association (NFPA, Ex. 14–212) stated:

> The NFPA feels that the present maritime industry standard addressing entry and work in confined and enclosed spaces exceeds the provisions of the generic standard and has years of practical application evidence to support this claim.

Representatives of the telecommunications industry (Ex. 14–39, 14–53, 14–104, 14–106, 14–110; Washington Tr. 146–148, 174–183, 196–199) formed a large portion of the group of commenters supporting a narrowing of the scope of §1910.146. This group insisted that confined space hazards found in telecommunications work are already adequately and properly addressed in §1910.268(o), covering work in manholes and unvented underground vaults. For example, Mr Donald Espach, testifying on behalf of GTE Service Corporation (Washington Tr. 175–182), made the case for this industry's view. He noted that GTE is a multi-national corporation that is made up of three core businesses: telecommunications, lighting products, and precision materials. He maintained that this diversity provided a unique perspective on OSHA's proposed permit-required confined space standard. With respect to the proposal's application to general industry, he stated:

> Based on our experience in Towanda and other manufacturing sites in GTE, GTE believes that procedures similar to the OSHA proposals are appropriate to the general industry. The OSHA proposal will ensure that facilities without comprehensive confined space entry program will develop it. Compliance with such programs will save lives.

He argued that applying the proposed rule to telecommunications manhole entry operations was not appropriate, as follows:

> But there are huge differences in confined spaces in chemical and manufacturing plants in telecommunication manholes. First and foremost, the inherent hazard of telecommunications manholes is significantly less. Telecommunication manholes are not designed to contain any kind of chemical or hazardous substance. They do not contain a residual hazardous atmosphere. Telecommunication manholes exist to provide access to underground telephone cables and conduits during splicing, testing, maintenance and air pressurization operations. In most cases, the atmosphere in telecommunication manholes is the same as that outside the manhole.
>
> Secondly, telecommunications manholes are located in and around public roads and rights-of-way all over the United States. GTE alone has over 70,000 telecommunications manholes and the entire industry probably has about 1,000,000. GTE has about 8,700 employees who will enter telecommunications manholes approximately 320,000 times a year.
>
> While there is no question as to the need for special procedures to protect employees who enter telecommunications manholes, to be effective in saving lives, these procedures must reflect the difficulties inherent in having such a large, widely-scattered workforce. Telecommunications manhole entries are routine, performed on a daily basis and, based on data in OSHA's current record, done safely.
>
> The third major difference is that entry into telecommunications manholes is already regulated by OSHA. Entry into telecommunications manholes and unvented cable vaults is currently regulated by Section 1910.268(o)(2). This regulation requires that telecommunications manholes and unvented cable vaults be tested for combustible gas and provided with continuous forced ventilation to assure an adequate oxygen supply and

remove any contaminants which may be present. It is an industry-specific regulation, which assures the safety of the employees of this industry.

Mr. Espach further stated that, based on GTE's experience with manhole operations, which included 4.5 million entries with no deaths or serious injuries, §1910.268(o)(2) provided adequate protection to telecommunications employees. He contended that applying §1910.146 to telecommunications manhole work would be unnecessary.

A third group of commenters (Ex. 14–42, 14–55, 14–58, 14–62, 14–198, 14–212, 14–220), mainly from the construction and maritime industries, stated that OSHA should promulgate the scope of §1910.146 as proposed, asserting that the proposed exclusions were justified by differences between the included and excluded industries. One commenter (Ex. 14–206) from the grain handling industry explained:

> We concur with the scope and application in the proposal which exempts confined spaces in grain handling facilities. OSHA has already addressed the significant confined space entry hazards in grain handling facilities through 29 CFR 1910.272(g) which has been in effect since March 30, 1988. Since employers in the grain industry are already subject to an industry-specific standard, they should not be required to implement the permit system set out in the proposed generic standard.

As noted earlier, proposed paragraph (a) stated "...this section [does not] apply to confined spaces in electric generation and transmission industries, grain handling facilities, or onshore operations of the maritime industries wherever these confined spaces are regulated by a more specific confined space entry standard." Some of those commenting on the scope of the proposal mistakenly assumed that the proposed language would exempt all confined spaces within the listed industries and no others. For example, the Tennessee Valley Authority (Ex. 14–36) indicated that it understood the language of proposed paragraph (a) to be an unqualified exclusion of electric generation and transmission from the scope of proposed §1910.146. On the other hand, the comments from the telecommunications industry clearly indicate that they believe their manhole and underground vault work would have been covered under proposed §1910.146, since a specific exclusion was not given.

The language proposed in paragraph (a) clearly indicated that the exclusion of the pertinent industries is conditioned upon the promulgation of standards which specifically address any permit spaces found in those industries. In particular, OSHA notes that the Notice of Proposed Rulemaking for Electric Power Generation, Transmission, and Distribution (54 FR 5023) stated that proposed §1910.269 addressed "enclosed spaces", which are defined to be spaces that contain no atmospheric hazards under normal conditions, rather than "permit spaces".[3] In addition, the preamble to proposed §1910.269 explicitly stated (54 FR 4984) that any spaces at electric generation or transmission facilities that met the definition of "permit space" would be regulated under proposed §1910.146.

Unfortunately, in spite of the language of the two proposals (§§1910.146 and 1910.269), a few commenters appeared to be confused by the extent of the exclusionary language in proposed §1910.146(a). Therefore, the Agency believes the best approach is not to carry forward the proposed scope language that appeared to exclude all permit spaces in industries that are or are to be covered by other sections of Part 1910. OSHA notes that §1910.5(c), *Applicability of standards*, already provides necessary guidance in the application of generic standards. In particular, existing §1910.5(c)(1), which provides for a specific standard to supersede a generic standard, states, in part:

> If a particular standard is specifically applicable to a condition, practice, means, method, operation, or process, it shall prevail over any different general standard which might otherwise be applicable to the same condition, practice, means, method, operation , or process.

In addition, existing §1910.5(c)(2), which provides for application of a generic standard, states, in part:

> On the other hand, any standard shall apply according to its terms to any employment and place of employment in any industry, even though particular standards are also prescribed for the industry, as in subpart B and subpart R of this part, to the extent that none of such particular standards applies.

Under current OSHA practice, as outlined in §1910.5(c), confined spaces that are presently regulated in other sections of Part 1910 will continue to be regulated under those sections, to the extent that permit spaces are already regulated under those sections. For example, telecommunications work in manholes and underground vaults is normally covered under §1910.268(o). Such work will continue to be covered under the telecommunications standard, and the provisions of §1910.146 would not apply as long as the provisions of §1910.268(o) protect against the hazards within the manhole.[4] Confined spaces that are not covered by any other OSHA rule will fall under §1910.146. Thus, confined spaces other than manholes and underground vaults (such as boilers and tanks) being entered by telecommunications employees would be covered by §1910.146.

Accordingly, based on the rulemaking record and on the language of existing §1910.5(c), OSHA has determined that the detailed exclusionary language in proposed §1910.146(a) is unnecessary and potentially confusing. Therefore, paragraph (a) of the final rule contains no references to industry-specific regulations in Part 1910.

With respect to the agriculture, construction, and shipyard employment industries, on the other hand, OSHA is retaining the proposed language exempting these industries from §1910.146, except for editorial changes. OSHA is aware that confined space accidents occur in agriculture, construction, and maritime and that employees in those industries do face a significant risk of death and serious injury from these accidents. (See Table 1 for a breakdown of the number of confined space accidents in the relevant industries.) However, the Agency believes that sufficient differences exist between these industries and general industry to warrant separate rulemaking activities. For example, Part 1926, OSHA's Construction Standards, contains requirements dealing with confined space hazards in underground construction and in underground electric transmission and distribution work (Subpart S and §1926.956, respectively). In fact, the data presented in Table 1 are based on accidents occurring well before the recent revision of Subpart S of Part 1926. OSHA believes that more current data would show a decline in the number of permit space injuries and deaths in the construction industry.

The Agency also believes that agriculture, construction, and shipyard

[3] The question of whether or not all confined spaces found in electric power generation, transmission, and distribution work should be addressed in a separate standard was an issue in the rulemaking on proposed §1910.269 (54 FR 4974, January 28, 1989). The resolution of this issue will be discussed as part of the preamble to the final §1910.269.

[4] Taking the telecommunications examples further, the Agency can envision manholes that may be more appropriately covered by §1910.146. Although it is rare, manholes can become overwhelmingly contaminated with toxins or other hazardous chemicals (Washington Tr. 159, 165). If the work area could not be made safe before entry, as required by §1910.268(o)(2)(i)(B), entry would have to be performed under the provisions of §1910.146.

work are likely to pose permit-space working conditions that are unique to these industries. OSHA has a statutory mandate to consult the Advisory Committee on Construction Safety and Health and uses the Shipyard Employment Standards Advisory Committee to obtain recommendations on rules for industries within their purview. These advisory committees frequently identify working conditions that are unique and need separate treatment in the OSHA standards. Except as discussed in the following paragraphs, the Agency has not yet submitted the generic permit space standard to these committees for their review. A review of the data in this rulemaking record can enable these committees to recommend whatever action is necessary, be it rulemaking, enforcement of existing standards, or a combination of the two. Therefore, OSHA believes that confined space standards for agriculture, construction, and shipyard work should be addressed separately so that the Agency can focus on aspects of permit space safety that are specifically appropriate for these areas. Accordingly, §1910.146(a), as promulgated, retains the proposed language exempting these industries from the requirements of the generic permit space standard.

Table 1—Confined Space Accidents in Ariculture, Construction, and Maritime

	Source		
	Safety Sciences[1]	OSHA[2]	OSHA[3]
Agriculture	10		
Construction.	95	13	40
Maritime	23	20	8

[1] "Search of Fatality and Injury Records For Cases Related to Confined Spaces" prepared by Safety Sciences, San Diego, CA, for NIOSH, February 1978, as recorded in Ex. 14–82.

[2] "Selcted Occupational Fatalities Related to Fire and/or Explosion in Confined Work Spaces as Found in Reports of OSHA Fatality/Catastrophe Investigations" prepared by OSHA Office of Statistical Studies and Analyses, Washington, D.C., April 1982, as recorded in Ex. 13–10.

[3] "Selcted Occupational Fatalities Related to Toxic and Asphyxiating Atmospheres in Confined Work Spaces as Found in Reports of OSHA Fatality/Catastrophe Investigations" prepared by OSHA Office of Data Analysis, Washington, D.C., July 1985, as recorded in Ex. 13–15.

Questions have also arisen regarding the proper manner in which to regulate land-based shipyard permit spaces. OSHA published proposed Subpart B of Part 1915 (53 FR 48092, November 29, 1988), Explosive and Other Dangerous Atmospheres in Vessels and Vessel Sections, to revise the requirements for safe entry and work in confined spaces on vessels. In particular, proposed Subpart B addressed atmospheric hazards (oxygen deficiency, toxic contamination, fire and explosion) that may arise in those spaces. Therefore, that proposal did not cover non-atmospheric hazards in vessels or vessel sections. In addition, that proposal did not cover any confined space hazards in land-based shipyard confined spaces.

At the time OSHA was drafting the proposed general industry permit space standard, the Agency had not yet decided how it would address the shipyard confined spaces that were not covered by proposed Subpart B. Therefore, proposed paragraph (a) explicitly excluded the workplaces covered by proposed Subpart B from the scope of proposed §1910.146 but provided that onshore shipyard "permit spaces" would be excluded from the scope only insofar as those spaces were regulated by a more specific standard. This left open the prospect that, if no action were taken to extend the coverage of proposed Subpart B to the entire shipyard, the final rule for general industry permit spaces would apply to the shipyard permit spaces not covered by proposed Subpart B. As noted earlier, some rulemaking participants supported total exclusion of shipyards from §1910.146, while others supported their coverage under that proposed rule.

On June 24, 1992, OSHA published a notice (57 FR 28152) reopening the rulemaking record for proposed Subpart B to receive the recommendations of the Shipyard Employment Standards Advisory Committee regarding shipyard confined spaces and to solicit comments regarding the appropriateness of expanding the scope of Subpart B of Part 1915 to cover the entire shipyard and of incorporating certain provisions of proposed §1910.146 into Subpart B. The comment period is scheduled to end on September 22, 1992. Once the record has been closed again, the Agency will review the rulemaking record and, based on that review, proceed to draft a final rule for Subpart B.

OSHA notes that, under the terms of proposed paragraph (a) of the general industry standard and §1910.5, the promulgation of §1910.146 before the promulgation of revised Subpart B would have resulted in the regulation of land-based shipyard permit spaces and shipyard permit spaces with non-atmospheric hazards under the general industry standard. However, given the Agency's general policy in favor of setting vertical standards for the shipyard industry and the recent efforts (for example, the reopening of the Subpart B record) to develop a basis for a Subpart B standard that could cover all shipyard confined spaces, OSHA believes that it would be inappropriate for the general industry standard to regulate any shipyard confined spaces at present.

Furthermore, the Agency believes that imposing the general industry standard on some shipyard spaces for the period OSHA needs to complete action on proposed Subpart B would generate confusion regarding what shipyard employers are required to do. The Agency also notes that it would be unreasonable to impose the costs of attaining compliance with the general industry standard on the shipyard industry when OSHA has not yet determined how closely the final rule for Subpart B will resemble §1910.146.

Therefore, OSHA is exempting shipyard confined spaces from compliance with final §1910.146. The Agency will continue its efforts to promulgate the revision of Subpart B and will determine what further action should be taken regarding the application of §1910.146 to shipyard confined spaces under the Subpart B rulemaking. To make this clear in the final rule, OSHA is specifying that §1910.146 does not apply to the "shipyard employment" industry, rather than "purely maritime" industry, as proposed. Additionally, the Agency has listed the standards, by Part number, that apply to the exempt industries.

Pending the resolution of this issue, OSHA will continue to protect employees who are exposed to "permit space" hazards in land-based shipyard confined spaces or who are exposed to non-atmospheric "permit space" hazards in any shipyard confined spaces by using the general duty clause (§5(a)(1)) of the OSH Act. The Agency believes that most shipyard employers comply with Subpart B of Part 1915 throughout the shipyard, not only in vessels and vessel sections. Also, OSHA does not consider it reasonable for these employers to enforce two different permit space standards. Therefore, in applying the general duty clause, OSHA will use the terms of Subpart B as guidelines for land-based permit spaces found in shipyard work.

Also, OSHA has not carried forward the language "which can be identified by an employer exercising reasonable care" from proposed paragraph (a), because the Agency has determined that this text, which addresses how OSHA would assess an employer's compliance with the standard, is not appropriate regulatory language. This standard indicates clearly that employers are responsible for identifying their permit spaces and for protecting their employees from the hazards of any such

spaces. Therefore, while an employer's "reasonable care" might be directly relevant to an enforcement proceeding, it is inappropriate to include "reasonable care" as a criteria in the standard itself.

Paragraph (b), Definitions.

Paragraph (b) sets forth the major terms, with definitions, used in the final rule. Where appropriate, proposed terms and definitions have been revised or deleted, and new terms and definitions have been added, for the sake of clarity and to reflect the rulemaking record. OSHA has revised the format for the proposed paragraph, by not numbering the definitions, because the Agency determined that presenting the terms in alphabetical order both provided adequate guidance and was consistent with acceptable Federal Register format and with OSHA's approach to definitions in other standards.

The term "acceptable entry conditions" means:

> ... the conditions that must exist in a permit space to allow entry and to ensure that employees involved with a permit-required confined space entry can safely enter into and work within the space.

The proposed standard defined the term "acceptable environmental conditions." That definition focused on the absence of "uncontrolled hazardous atmospheres." OSHA has determined that the term "acceptable entry conditions" should replace the proposed term so the final rule clearly indicates that no unreasonable permit space hazards of any kind may be present when entry is authorized. In addition, the Agency has revised the proposed definition, omitting the discussion of "uncontrolled hazardous atmospheres", so it is clear that air contaminants are not the only hazards addressed.

The term "attendant" means an individual who is stationed outside one or more permit spaces, who monitors the authorized entrants, and who performs all duties assigned to the attendant by the employer's permit program. While this definition is substantially the same as that contained in the proposed standard, it has been simplified by eliminating proposed language pertaining to training and the number of spaces and entrants to be monitored, because those substantive provisions are more properly covered in the regulatory text of the final standard.

The term "authorized entrant" means an employee who is authorized by the employer to enter a permit space. This definition, which is substantially the same as that presented in the proposed standard, has been simplified by the elimination of language that more properly appears in the standard's regulatory text.

The term "blanking or blinding" means:

> ... the absolute closure of a pipe, line, or duct by the fastening of a solid plate (such as a spectacle blind or a skillet blind) that completely covers the bore and that is capable of withstanding the maximum pressure of the pipe, line, or duct with no leakage beyond the plate.

The proposed definition of this term differed in that it specified "a solid plate ... which extends at least to the outer edge of the flange". The proposed definition was based on OSHA's belief that it was necessary to completely occlude the bore, and that it was necessary to have the edge of the occluding plate extend beyond the flange. The Agency expected that this approach would provide appropriate protection that could be verified without difficulty.

Testimony and comments (Ex. 14–88, 14–118, 14–170, 14–188; Houston Tr. 727–728, 772–773; Chicago Tr. 91) indicated that blanking or blinding, as defined in the proposal, would be unnecessarily costly and difficult to accomplish or verify. The rulemaking participants demonstrated that the use of skillet blinds or spectacle blinds would provide equivalent protection without imposing the costs and difficulties of the proposed definition. Additionally, the American Petroleum Institute (API) testified (Houston Tr. 727):

> The definition of blanking or blinding in paragraph (b)(4) requires this device to extend to the outer edge of the flange. The standard blind used in our industry extends to the outer edge of the gasket surface and not to the outer edge of the flange. The bolts that hold the blind in place are inserted through bolt holes in the flange so that the blind must necessarily be smaller in diameter than the inner diameter of the bolt circle. Given the nature of this device, it is not possible for it to extend to the outer edge of the flange.
>
> Currently, a typical refinery has hundreds of such blinds which would become obsolete if this provision remains and would have to be replaced. Our experience has been that this device is safe and effective so there is no valid reason to mandate a change. We hope that the proposed definition of blind was only an inadvertent technical error.

The Agency notes that blanking and blinding were not specifically required by the proposal (nor are they absolutely required by the final rule). This was just one recognized method of achieving the isolation of a permit space. In fact, the only place this term is used is in the definition of isolation. However, OSHA agrees that the use of skillet blinds and spectacle blinds will adequately protect employees and that the proposed definition was unnecessarily restrictive. Therefore, the Agency has changed the definition of "blanking or blinding" by removing the "requirement" that the solid plate extend at least to the outer edge of the flange. Additionally, spectacle blinds and skillet blinds are listed as examples of solid plates which will provide adequate blanking or blinding.

The term "confined space" means a space that:

1) Has adequate size and configuration for employee entry; and

2) Has limited means of access or egress; and

3) Is not designed for continuous employee occupancy.

In the NPRM, OSHA only defined a "permit required confined space"; "confined space" was not defined. The final rule contains definitions for "confined space", "permit-required confined space", and "non-permit confined space". The final rule's definition of "confined space" has been taken directly from the portion of the proposal's definition of "permit required confined space" that dealt with the confinement properties of the space (§1910.146(b)(23)(i) through (iii)). The remainder of the proposal's definition of "permit required confined space" addressed the other hazards that may be present within the space and has been retained in the final definition of that term. (See the discussions of the definitions of "non-permit confined space" and "permit-required confined space" later in this preamble. Issues and comments relating to proposed §1910.146(b)(23)(i) through (iii) are addressed under the discussion of the definition of "permit-required confined space.") OSHA believes that the addition of this definition will assist employers in understanding the relationship between the three types of spaces and in making a determination of what spaces, if any, in their workplaces are covered by the standard (that is, are "permit- required" spaces).

The term "double block and bleed" means the closure of a line, duct, or pipe by closing and locking or tagging two in-line valves and by opening and locking or tagging a drain or vent valve in the line between the two closed valves. The proposed definition was essentially identical, except for provision that a drain or vent valve would be "open to the atmosphere", rather than simply "open" as provided in the final rule. This change was made in response to concerns expressed by the Texas Chemical Council (Ex. 14–86), the Department of Defense (Ex. 14–219)

and the National Association of Manufacturers (Chicago Tr. 91) who pointed out that the definition as proposed could require employers to violate EPA emission standards by preventing the use of scavenger systems. OSHA's sole concern is to prevent the passage of toxic material into the permit space during occupancy. The Agency recognizes that the original wording could have been construed to prevent the use of scavenger systems. Additionally, OSHA notes that the use of scavenger systems would probably contribute to control of permit space atmospheric hazards. Therefore, OSHA has revised the proposed definition.

The definition of the term "emergency" in the final rule has been taken without substantive change from the corresponding definition in the proposed standard.

The term "engulfment" means the surrounding and effective capture of a person by a finely divided (flowable) solid substance that can be aspirated to cause death by filling or plugging the respiratory system or that exerts enough force on the body to cause death by strangulation, constriction, or crushing. The proposed definition was similar, except that it provided less information regarding what constitutes engulfment.

Some hearing witnesses (Chicago Tr. 365–366, 458–460; Houston Tr. 1060, 1088–1090) expressed concern that the proposed definition did not recognize all types of engulfment by a solid substance. For example, Mr. Richard Monczka, representing the United Automobile and Agricultural Implement Workers of America, testified that the solids covered by the definition should cover any material capable of flowing into and filling the space.

In response to these comments, OSHA has revised the language of the proposal so that the definition in the final rule reads as follows:

> Engulfment means the surrounding and effective capture of a person by a liquid or finely divided (flowable) solid substance that can be aspirated to cause death by filling or plugging the respiratory system or that can exert enough force on the body to cause death by strangulation, constriction, or crushing.

OSHA believes that this definition clearly indicates that any solid or liquid that can flow into a confined space and that can drown or suffocate an employee can be the engulfing medium.

The term "entry" refers to the act by which a person passes through an opening into a permit space and to the work performed in that space. Entry is considered to have occurred as soon as any part of the entrant's body breaks the plane of an opening into the space.

The proposed definition of this term was similar to the one in the final rule, except that it provided that entry began when the entrant's face broke the plane of a permit space opening and that it addressed only "intentional" entry. Testimony and comments (Ex. 14–62, 14–71, 14–76, 14–80; Houston Tr. 827) indicated that, under this definition, an entrant would not be considered inside a space, if he entered feet first, until the last part of his body, his face, broke the plane of the opening. Under that concept an employee could clearly be within a confined space but not have "entered", because his face had not yet entered the space. Voicing these arguments, Mr. Terry Krug of the Atchison, Topeka and Santa Fe Rail System (Houston Tr. 827) testified:

> So the entrant could get almost all the way into the space, [for] example, arms, legs, torso, and potentially come into contact with rotating parts, bare electrical wiring, fluids, corrosives, skin absorbing toxicants, spiders, snakes, biological, radiation, et cetera and by your present definition would not even have entered the space.
>
> So I would propose to change that particular wording to "any part of the person's body which breaks the plane of the space".

A commenter (Ex. 14–173) stated:

> In our opinion, this definition will limit protection of worker health and safety by defining entry too narrowly. Entry should occur when *any* part of the body breaks the plane of the opening. Reference to the face recognizes the respiratory hazards, but ignores physical and chemical hazards to other body systems. [Emphasis supplied in original.]

OSHA believes that the proposed definition, while adequate for permit spaces that present atmospheric hazards, did not take into account non-atmospheric hazards. OSHA agrees that exposure to permit space hazards such as caustic chemicals and dangerous mechanical devices can begin as soon as any part of an entrant's body breaks the plane of the entry portal and has revised the language contained in the proposed definition accordingly.

Other commenters (Ex. 14–116, 14–160) maintained that the definition of entry should include unintentional entry because the proposal should also address the hazards of accidental entry.

OSHA also agrees with these comments. Paragraphs (c)(3) and (d)(1) require the employer to take steps to prevent unauthorized entry into permit-required confined spaces. These steps are intended to include measures, such as guarding and barricading, necessary to protect employees from accidentally entering a permit space. In order to ensure that employees are adequately protected against falling into or otherwise inadvertently entering a permit space, the Agency has revised the language in the proposed definition to include unintentional as well as intentional entry.

The Agency notes that "entry" under final §1910.146 does not include entry into any confined space that does not pose a hazard to employees. Only entries into confined spaces that are permit-required confined spaces are covered.

The definition of an "entry permit" in the final rule has been changed slightly to read as follows:

> *Entry permit* (permit) means the written or printed document that is provided by the employer to allow and control entry into a permit space and that contains the information specified in paragraph (f) of this section.

Although the definition is essentially the same as proposed, it has been shortened and simplified by eliminating the list of items contained on the permit and replacing that list with a reference to paragraph (f), where the items contained on a permit are specified.

The term "entry supervisor" has been added and is defined as:

> ... the person (such as the employer, foreman, or crew chief) responsible for determining if acceptable entry conditions are present at a permit space where entry is planned, for authorizing entry and overseeing entry operations, and for terminating entry as required by this section.

The proposed rule contained no definition of the entry supervisor. However, the AFL-CIO, in its post-hearing comment (Ex. 142), requested that such a definition be added. The AFL-CIO correctly pointed out that the proposed rule outlined the duties of the entrant, the attendant, and the entry supervisor. They further noted that, of these three groups, only the entry supervisor (individual authorizing or in charge of entry) was undefined.

OSHA agrees that a definition of the entry supervisor is needed. Under the final rule, the entry supervisor:

(1) evaluates the conditions in and around any permit space that is to be entered;

(2) oversees entry operations, as necessary, to determine if the conditions are acceptable for entry;

(3) where acceptable entry conditions are present, either authorizes entry to begin or allows entry operations that are already underway to continue; and

(4) takes the necessary measures to protect personnel from permit space hazards.

Where acceptable entry conditions are not present, the entry supervisor either

prohibits entry or, if entry is already underway, orders the authorized entrants out of the permit space and cancels the entry permit.

OSHA has determined that adding the definition of "entry supervisor" will more clearly indicate the responsibilities imposed by paragraphs (e) and (j) (proposed as paragraphs (d) and (g)). In conjunction with this action, OSHA is relocating the language of proposed (g)(1)(vi), which allowed entry authorizers to serve as attendants or authorized entrants, to a parenthetical note in the new definition. The language of that proposed paragraph was informational rather than regulatory or definitional in nature, in that it simply describes something an entry supervisor is permitted to do. The Agency anticipates that there will be many entry situations, especially if an employer has only a few employees, where the entry supervisor will serve either as the attendant or as an authorized entrant. The language of the note indicates that this is acceptable as long as the entry supervisor is trained and equipped for each role he or she fills. All pertinent requirements relating to the duties of attendants and authorized entrants would still apply to the entry supervisor who serves as an attendant or an authorized entrant. The Agency notes that the responsibilities of the entry supervisor, as revised, are set out in paragraph (j) of the final rule.

OSHA recognizes that there are circumstances, such as when the entry permit's stated duration exceeds one workshift, under which more than one person may serve as entry supervisor for a particular entry operation. The final rule does not require the employer to repeat the entry authorization process when an entry supervisor is replaced, if there is continuous direct responsibility for the entry, with direct transfer from one entry supervisor to next, and if the successor has the necessary training and performs the required duties.

The term "hazardous atmosphere" means an atmosphere that may expose employees to the risk of death, incapacitation, impairment of ability to self-rescue, serious injury or acute illness due to:

(1) flammable gas, vapor, or mist in excess of 10 percent of the lower flammable limit (LFL),

(2) airborne combustible dust at a concentration that exceeds its LFL,

(3) atmospheric oxygen concentration that is less than 19.5 percent or greater than 23.5 percent,

(4) atmospheric concentration of any substance for which a dose or a permissible exposure limit is published in Subpart G or Subpart Z of Part 1910 and that could result in employee exposure above the pertinent dose limit or permissible exposure limit, and

(5) any other atmospheric condition recognized as immediately dangerous to life or health.

This definition, which is very similar to the proposed definition, reflects the wide range of atmospheric conditions that can pose permit space hazards. The language from the proposed definition has been modified in three respects. First, the phrase "impairment of ability to self-rescue (that is, escape unaided from a permit space)" has been added to the definition's introductory text, so that that text now reads:

> ... an atmosphere that may expose employees to the risk of death, incapacitation, impairment of ability to self-rescue (that is, escape unaided from a permit space), injury, or acute illness from one or more of the following causes:

The intent of this addition is to provide consistency between the "immediately dangerous to life or health" definition, which includes the phrase "interfere with an individual's ability to escape from a hazardous atmosphere", and the definition of "hazardous atmosphere" itself.

Subheading (1) of the definition, dealing with lower flammable limits, is identical to the equivalent proposed provision.

Some commenters (Ex. 14–134, 14–172) objected to OSHA's adoption of the 10 percent of LFL level proposed in paragraph (b)(11)(i). They argued that a 20 percent level was more appropriate. One of them (Ex. 14–134) maintained that existing "combustible gas meters are calibrated at 20% [of the lower flammable limit]".

OSHA does not agree with these comments. The 10 percent level is widely recognized as being the threshold value for a hazardous atmosphere. This value is used in ANSI Z117.1–1977 (Ex. 13–5), in the NIOSH criteria document for "Working in Confined Spaces" (Ex. 13–9), and in other OSHA standards (for example, §1926.800(j)(1)(viii)). The Agency believes that these national guidelines provide much stronger support for the 10 percent limit than existing company practice provides for those who have adopted a higher limit. Additionally, the fact that combustible gas meters are calibrated at 20 percent of the LFL is irrelevant. Meter calibration procedures are usually recommended by the manufacturer. The fact that certain meters are calibrated at 20 percent of the LFL means only that they are the most accurate at that level; it does not mean that these meters are significantly inaccurate at 10 percent of the LFL.

The second change is in subheading (2), addressing airborne combustible dusts, which, as proposed, included the phrase "[a concentration] that obscures vision at a distance of five feet (1.52 m) or less". This provision has been changed in the final rule to read:

> Airborne combustible dust at a concentration that meets or exceeds its LFL;

The reference to visibility in the proposal was meant as an aide to employers and employees in approximating the LFL of the dust. OSHA believed that the proposed language would provide the best possible guidance, given that there was no reliable equipment available to provide on-site combustible dust concentration measurements. However, some commenters (Ex. 14–143, 14–161; Chicago Tr. 31) stated that the proposed language would be unsafe, as there are some dusts which are combustible at concentrations that would not obscure vision at 5 feet or less. OSHA agrees that this portion of the proposed definition was deficient and could have allowed a hazard to arise. OSHA has corrected this deficiency by changing the concentration of combustible dust to one that meets or exceeds the lower flammable limit. The "rule of thumb" criteria of obscured vision at a distance of 5 feet or less has been retained, for informational purposes only, in an explanatory note.

The 10 percent limitation applied to flammable gases, vapors, and mists has not been applied to combustible dust. This is because the Agency believes that the difficulty in measuring combustible dust concentrations make such a limit infeasible. Also, there is no evidence in the record to support lowering OSHA's proposed limit, which was equivalent to the lower flammable limit itself. The Agency believes that, because air- borne dust concentrations do not change rapidly and because the flammability hazard posed by air-borne dust can usually be judged visually, employees will be adequately protected. [5]

The third change is in subheading (3), addressing atmospheric oxygen concentration. The proposed provision (paragraph (b)(11)(iii)) stated that an atmospheric concentration of oxygen

[5] A level of 100 percent of the lower flammable limit for dusts as the lower limit of what is considered to be a hazardous atmosphere with respect to combustible dust may still appear to be high. Unfortunately, the rulemaking record does not include any information that the Agency could use to set a lower limit. The final rule, by requiring employers to take measures to control hazards, will force the employer to use procedures that ensure that the levels of combustible dust do not reach the lower flammable limit or that otherwise protect employees from the hazards of fire and explosion.

above 22 percent was hazardous. OSHA was concerned that an atmosphere with an oxygen concentration greater than 22 percent would be "oxygen enriched" and, therefore, would pose a hazard of fire and explosion. This is because excess oxygen can extend the flammable range of gases and vapors and make combustible materials ignite easily and burn rapidly.

Some of the rulemaking participants (Ex. 14–46, 14–47, 14–86, 14–103, 14–179; Washington Tr. 452–453, 577) expressed the view that the 22 percent threshold for oxygen enrichment was too low and that it excessively restricted the range of acceptable oxygen concentrations. A few of the commenters suggested values of 25 or 26 percent for the oxygen enriched atmosphere limit. For example, CECOS International (Ex. 14–46) stated:

> In proposed 29 CFR 1910.146(b)(11), the definition of a hazardous atmosphere would include an atmospheric oxygen concentration above 22 percent. This limit, which is only 0.5% above the normal ambient concentration presents a likelihood that a hazardous atmosphere might be falsely identified when normal conditions exist. CECOS suggests that an oxygen-enriched atmosphere be defined as one containing greater than 25% oxygen.

In support of this view, the NIOSH Criteria Document (Ex. 13–9) set 25 percent as the concentration at which an atmosphere was considered oxygen enriched. NIOSH reaffirmed that position in its hearing testimony (Washington Tr. 131).

Other comments (Ex. 14–57, 14–179, 14–187) received suggested that 23 or 23.5 percent would be a more appropriate number. The Motor Vehicle Manufacturers Association (Ex. 14–179) explained:

> The definition for "hazardous atmosphere" ... identifies an oxygen concentration above 22 percent as unacceptable. We recommend the unacceptable level be designated as more than 23.5 percent oxygen by volume. This is consistent with other OSHA regulations, such as 29 CFR 1910.134. If there is some other scientific or policy rationale for this deviation, OSHA should explain it and allow opportunity for comment.

Some rulemaking participants (Ex. 14–47, 14–179; Washington Tr. 452–453, 577) argued that the OSHA standard should be consistent with the 1989 ANSI standard (Z117.1) and other standards addressing safe upper limits on oxygen concentration. In particular, one commenter (Ex. 14–61) observed that the proposed 22 percent level was well within the acceptable range set by ANSI (19.5 to 23.5 percent) and stated "[oxygen sensors] could easily experience false alarm signals of oxygen enrichment due to possible combined effects of humidity, temperature or barometric pressure interference due to this small differential from the oxygen level of normal air."

OSHA agrees that the proposed threshold for oxygen enrichment was too close to the normal range of oxygen concentration. The Agency has determined, based on the rulemaking record, that setting the threshold for oxygen enrichment at 23.5 percent is appropriate to control fire and explosion hazards. OSHA has relied heavily on the expertise of the ANSI Z117 Committee in making this determination. Although a 25 percent level was recommended by NIOSH, the 23.5% figure in the ANSI standard appears to be more widely accepted. Therefore, the definition of "hazardous atmosphere" in final §1910.146(b), in conjunction with the definition of "oxygen deficient atmosphere" and "oxygen enriched atmosphere", sets the acceptable concentration of oxygen at 19.5 to 23.5 percent.

Subheading (4) has not been substantively changed from proposed paragraph (b)(11)(iv), except that a reference to Subpart G, *Occupational Health and Environmental Control*, of Part 1910 has been added because that subpart contains dose exposure limits that are pertinent to protection of employees who enter permit spaces. The proposed parenthetical text dealing with the situation in which OSHA has not determined a dose or permissible exposure limit has been titled as a "note" in the final standard to indicate clearly that the pertinent language is not part of the regulatory text. The note, which has been placed after subheading (5), gives other sources of information that can be used to determine appropriate exposure limits for substances not addressed in Subparts G and Z of the OSHA General Industry Standards. While the Agency will not be enforcing the note as it appears in the final rule, OSHA will use these other sources to assess an employer's compliance with subheading (5) of the definition of "hazardous atmosphere". Possession of Material Safety Data Sheets as required by §1910.1200 will put employers on notice of the potential for IDLH atmospheres under subheading (5), which OSHA will enforce.

OSHA has included a note after this subheading in the definition of hazardous atmosphere to clarify that an atmospheric concentration of any substance that is not capable of causing death, incapacitation, impairment of ability to self-rescue, injury, or acute illness due to its health effects is not covered by this provision. In other words, an atmosphere that contains a substance at a concentration exceeding a permissible exposure limit intended solely to prevent long-term adverse health effects is not considered to be a hazardous atmosphere on that basis alone.

Subheading (5) of the final rule's "hazardous atmosphere" definition, dealing with any atmospheric condition immediately dangerous to life or health not listed in subheadings (1) through (4), is identical to the proposed provision (paragraph (b)(11)(v)). There was no substantive objection to this provision of the proposal.

The term "hot work permit" means:

> ... the employer's written authorization to perform operations (for example, riveting, welding, cutting, burning, and heating) capable of providing a source of ignition.

The definition has not been changed substantively from that contained in the proposed standard. (It has only been reworded slightly to provide added clarity.) No significant comments were received on this provision in the proposal.

The term "immediately dangerous to life or health (IDLH)" means:

> ... any condition that poses an immediate or delayed threat to life or that would cause irreversible adverse health effects or that would interfere with an individual's ability to escape unaided from a permit space.

The final definition differs from the proposed one in that it explicitly includes delayed as well as immediate threats to life and omits any reference to eye damage or irritation. Several rulemaking participants (Ex. 14–45, 138; Chicago Tr. 93, 177; Houston Tr. 775, 814) stated that, since a definition of IDLH has already been promulgated in paragraph (b) of §1910.120 (OSHA's standard on hazardous waste operations and emergency response), the definition in the confined space final rule should be consistent with that in §1910.120 and should include delayed as well as immediate adverse health effects.

OSHA has accepted these comments and has adopted a definition of "immediately dangerous to life or health" that is consistent with §1910.120. OSHA notes that the proposed definition of "immediate severe health effects", a term used in the proposed definition of IDLH, covered exposure-related reactions manifested within 72 hours after exposure to a permit space hazard. For the sake of consistency with the standard on hazardous waste operations and emergency response, the Agency is not carrying forward the proposed definition of "immediate severe health effect" and is incorporating the concept

of delayed effects directly into the definition of IDLH. OSHA has also included a note that provides an example of a delayed health effect.

The reference to eye damage or irritation in the proposed standard was included to indicate conditions that could interfere with an individual's ability to escape from a hazardous atmosphere. Because the use of these examples seemed to cause some confusion (Ex. 14–45; Houston Tr. 774), OSHA has eliminated them from the definition. In their place, the definition explicitly includes any condition that "would interfere with an individual's ability to escape unaided from a permit space" as a criterion for the determination of whether a hazard is IDLH. This change also make the IDLH definitions in the OSHA confined space and hazardous waste standards more consistent.

The proposed term "immediate-severe health effects" has not been carried forward into the final rule, as discussed earlier in relation to the definition of "immediately dangerous to life or health".

The term "inerting" means:

> ... the displacement of the atmosphere in a permit space by a noncombustible gas (such as nitrogen) to such an extent that the resulting atmosphere is noncombustible.

The definition in the final rule replaces the proposed phrase "non-flammable, non-explosive or otherwise chemically non-reactive" with "noncombustible" and lists nitrogen as an example of a non- combustible gas. The Agency believes that these changes simplify and clarify the definition. The term "chemically non-reactive" could have been interpreted in absolute terms, rather than as OSHA intended with respect to the hazards of fire and explosion.

Some commenters (Ex. 14–94, 14–118, 14–161) suggested that the final rule note the hazards presented by inerting a space. They pointed out that, while inerting a space reduces the risk of fire and explosion, it creates an IDLH atmosphere, which must be eliminated or controlled before permit entry is allowed.

OSHA has accepted this suggestion and has incorporated their warning into a note following the definition of "inerting".

The final rule does not contain the proposed term "in-plant rescue team". In its place OSHA is using the term "rescue service", which covers both rescuers who are employees of the employer whose workplace contains the permit spaces and those who are employees of another employer. The use of this term, its definition, and issues related to rescue services are addressed under the summary and explanation of paragraph (k) of the final rule.

The term "isolation" means:

> ... the process by which a permit space is removed from service and completely protected against the release of energy and material into the space by such means as: blanking or blinding; misaligning or removing sections of lines, pipes, or ducts; a double block and bleed system; lockout or tagout of all sources of energy; or blocking or disconnecting all mechanical linkages.

The proposed definition of this term, on which no substantive comments were received, included language relating to the types of hazards for which isolation would be required ("which could be a serious hazard to permit space entrants"). The definition in the final rule does not carry forward that language, focusing instead on describing what "isolation" is.

The final rule's definition of "line breaking" is identical to that contained in the proposed rule. OSHA received no substantive comments on this definition.

The proposed term "low hazard permit space" has not been carried forward, since it is not used in this final rule. Many comments (Ex. 14–47, 14–76, 14–86, 14–118) indicated that the term only generated confusion and might lead to a false sense of security for employees entering a confined space designated as a "low hazard permit space". They argued that the term gave a misleading impression of the dangers that could be faced on entry into permit spaces. Based on its review of the rulemaking record, OSHA agrees with these comments and has carried forward neither the proposed definition nor proposed paragraph (i) into the final rule. A detailed discussion of the "low hazard" issue is contained later in the summary and explanation of paragraph (c)(5) of the final rule.

A definition for the new term "non-permit confined space" has been included in the final standard. It is defined as:

> ... a confined space that does not contain or, with respect to atmospheric hazards, have the potential to contain any hazard capable of causing death or serious physical harm.

Some commenters (Ex. 14–94, 14–150, 14–168, 14–219, 14–225) felt that the proposed definition of a permit-required confined space was not entirely clear and that misinterpretations were possible. They suggested that modifications be made to that definition. To solve this problem, OSHA has decided to define a "confined space" and "non-permit confined space", as well as a "permit-required confined space". (See the related discussions of the definitions of "confined space" and "permit-required confined space" elsewhere in this preamble.) The definition of a "non-permit confined space" makes it clear that a space must contain or, with respect to atmospheric hazards, must have the potential to contain a hazard capable of causing death or serious physical harm, in addition to having the configuration of a confined space, to be considered a permit-required confined space.

Examples of non-permit confined spaces include vented vaults, motor control cabinets, and dropped ceilings. Although they are "confined spaces", these spaces have either natural or permanent mechanical ventilation to prevent the accumulation of a hazardous atmosphere, and they do not present engulfment or other serious hazards.

The term "oxygen deficient atmosphere" in the final rule is identical to that contained in the proposal.

OSHA received one comment on this definition (Ex. 14–103). The commenter, the ANSI Z88 committee for respiratory protection, stated that the 19.5 percent concentration for oxygen deficiency should be changed to 12.5 percent. Their reasoning was based on the work of the ANSI Z88.2 subcommittee, which found that no respiratory protection was needed at 16 percent oxygen concentration, and that 12.5 percent oxygen concentration was the level that should be considered immediately dangerous to life and health (IDLH).

Rebutting the ANSI comment at the Washington hearing (Washington Tr.132–133), Mr. Theodore Pettit and Mr. Laurence Reed of the National Institute of Occupational Safety and Health (NIOSH), stated:

> MR. PETTIT: ANSI hasn't resolved the 12.5 that they are throwing around or the 16 percent, but I served on the ANSI committee on confined spaces. The 117.1 revision is coming out 19.5, which is the consensus industry and labor [standard], so 19.5 is still the standard as far as we are concerned. And 19.5 is also the safeguard, but with the 12.5 you have absolutely no safeguard.
>
> MR. REED: In the development of its [Respirator Decision Logic], the literature which I believe at that time was published in 1986 and we determined that 19.5 percent was the cut-off for oxygen sufficiency.

In Issue 15 of the NPRM (54 FR 24087), OSHA requested information on the extent to which employees would work in permit spaces which have oxygen-deficient atmospheres. OSHA also sought information on actual

oxygen levels encountered in oxygen-deficient permit spaces and on the effects on employees of entering oxygen-deficient atmospheres.

Several commenters (Ex. 14–4, 14–27, 14–57, 14–61, 14–62, 14–71, 14–94, 14–219) addressed Issue 15. None of them provided information on the number of employees who work in oxygen-deficient atmospheres. However, results of oxygen deficiency that were reported (Ex. 14–4, 14–57, 14–61, 14–94, 14–219) included dizziness, tiredness, difficulty in breathing, confusion, unconsciousness, and death. The U.S. Air Force (Ex. 14–219) sent a copy of a report addressing exposure to atmospheres containing 13 to 21 percent oxygen for long periods of time (not in confined spaces).

In Issue 16 of the NPRM (54 FR 24087), OSHA requested information, based on actual recorded atmospheric measurements, on any physical or physiological effects caused by rapid transition from breathing normal air (21% oxygen content) to breathing atmospheres with less than normal oxygen content. Only the U.S. Air Force (Ex. 14–219) commented on this issue. Their view was that, in general, the suddenness of the reduction of the oxygen level was not nearly as important as the physiological effect of the final oxygen level.

OSHA has not accepted the ANSI Z88 recommended change. The 19.5 percent oxygen level is widely recognized as being the minimum level needed to ensure an adequate supply of oxygen. The NIOSH Respirator Decision Logic (Ex. 14–145) utilizes 19.5 percent oxygen concentration as the decision level for use of a respirator, and the ANSI Z117.1 standard itself recognizes this concentration as a minimum. Considering the possible consequences of exposure to atmospheres containing too little oxygen as described in the record, the Agency believes, in the absence of compelling evidence to the contrary, that the proposed level is necessary to ensure an adequate oxygen supply for entrants. Therefore, OSHA has not changed the definition of oxygen deficient atmosphere.

The term "oxygen enriched atmosphere" means:

> ... an atmosphere containing more than 23.5 percent oxygen by volume.

As noted earlier in reference to the definition of "hazardous atmosphere", the final rule has adopted a safe upper limit on oxygen content of 23.5 percent rather than the proposal's 22 percent level. The comments received on the definition of "oxygen enriched atmosphere" have been addressed under the discussion of that term.

The term "permit-required confined space (permit space)" means a confined space that presents or has a potential to present one or more of the following:

(1) an atmospheric hazard;
(2) an engulfment hazard;
(3) a configuration hazard; or
(4) any other recognized serious hazard.

As noted in Section I, *Background*, earlier in this preamble, OSHA has determined that a clear definition for "permit-required confined space (permit space)" will provide the necessary guidance for employers to determine when they are subject to the permit space standard. The Agency has determined that there are three circumstances (mobility-limiting size and configuration, limited means of access and egress, and unsuitability for continuous employee occupancy) that are common to all confined spaces. As noted earlier, those are the elements that OSHA has included in the definition of "confined space". OSHA recognizes that the hazard element that differentiates permit spaces from confined spaces may vary in its nature, so the Agency has set out several ways in which a confined space could qualify as a permit space. Thus, a permit space is a confined space that has certain characteristics that make it hazardous for employees to enter without taking special precautions.

Section II, *Hazards* earlier in this preamble, discusses most of these characteristics. That discussion documents confined space accidents that were caused by atmospheric, engulfment, and other serious (such as mechanical) hazards.[6] Atmospheric hazards (such as oxygen deficiency, toxic atmospheres, and flammable atmospheres) are the most common cause of confined space accidents. Engulfment hazards, though not as widely recognized, also cause the deaths of many confined space entrants by suffocating or drowning the victims. Confined spaces that can wedge or otherwise pin an employee and cause his or her suffocation have also caused at least one of the deaths[7] described in the record (Ex. 14–145). These are the hazard characteristics specifically enumerated in the definition of "permit-required confined space". However, as noted earlier, the types of confined spaces posing serious hazards to employees are wide ranging. Therefore, the definition of PRCS also requires confined spaces that pose other unspecified serious hazards to be considered permit spaces, as well.

The definition proposed in §1910.146(b)(23) was similar to the definition promulgated in the final rule. OSHA has made some changes for the sake of clarity. As noted earlier, provisions corresponding to the first three subheadings under the proposed definition (paragraphs (b)(23)(i) through (iii)) have been put under the generic definition of "confined space", so that there is no need to repeat them in the definition of PRCS. Other editorial changes have also been made to the language of proposed §1910.146(b)(23)(iv), which has been incorporated into the definition of "permit-required confined space" in the final rule.

In Issue 3 of the NPRM, OSHA requested comments regarding the adequacy of the proposed definition of permit-required confined space and solicited suggestions for additional or alternative language.

Over 50 commenters responded to this issue. Most of the commenters suggested that OSHA revise the proposed definition. Several commenters (Ex. 14–61, 14–86, 14–145, 14–168, 14–219) stated that poor natural ventilation should be a component of the definition.

Poor natural ventilation is not a necessary condition for a confined space to be a permit space. (It should be noted that the presence or absence of natural ventilation is not relevant to whether a space is confined; it can only be relevant to whether a confined space is considered a permit-required confined space.) OSHA believes that the definition of hazardous atmosphere adequately addresses the safety of the atmosphere within the space without regard to whether or not the space is poorly ventilated. While natural ventilation can sometimes prevent the accumulation of a hazardous atmosphere, the Agency considers the most important distinguishing characteristic, with respect to atmospheric hazards, that can make a confined space a permit space to be the content of the air itself. Even with good ventilation in a confined space, certain areas within the space may be able to accumulate a hazardous atmosphere.

[6] Section II of the preamble also discusses accidents related to the lack of training for rescuers. The actual hazard present within the permit space in these accidents was actually an atmospheric one.

[7] Although very few of the accident descriptions in the record illustrate the hazard posed by spaces that can entrap and cause the asphyxiation of a worker, OSHA believes that it is important to specifically spell out the hazard in the definition. It is something that may easily be overlooked in the evaluation of a confined space; and, by highlighting the entrapment hazard, the final rule will best protect employees.

Another commenter (Ex. 14–191) was concerned that proposed paragraph (b)(23) was unclear with respect to which subparagraphs ((i), (ii), (iii), and (iv)) a space had to meet in order to qualify as a permit space. They recommended that a space be required to satisfy all the criteria set forth in proposed paragraphs (b)(23)(i) through (iii) plus any one of the additional criteria set forth in paragraph (b)(23)(iv) in order to be considered a confined space.

OSHA intended that, in order to qualify as a permit space, a space have all three of the first three characteristics (paragraphs (b)(23)(i) through (iii)) and at least one of the characteristics listed under paragraph (b)(23)(iv) of the NPRM's definition. In the final rule, OSHA has clarified this intent in two ways.

First, the final rule separates the PRCS definition into two components: "confined space" and "permit-required confined space". The characteristics common to all confined spaces (proposed paragraphs (b)(23)(i) through (iii)) are now contained in the definition of "confined space", which clearly indicates that all three criteria must be met in order for a space to be considered "confined". A permit space is now defined to be a "confined space" meeting one of four criteria corresponding to those listed in proposed paragraph (b)(23)(iv).

Second, OSHA has adopted language clarifying the intent of these two definitions. The word "and" has been inserted between the first and second criteria and between the second and third criteria of the definition of a "confined space" to indicate clearly that all three criteria must be met. The introductory text of the definition of "permit-required confined space" states that "one or more of the [listed] characteristics" (corresponding to those given in proposed paragraph (b)(23)(iv)) must be met before a confined space is considered a permit space.

The Agency believes that the final rule clearly states the criteria for determining what spaces qualify as permit-required confined spaces.

Proposed paragraph (b)(23)(i) stated, as the first criterion, that a space had to be "large enough and so configured that an employee can bodily enter and perform assigned work" in order to be considered a permit-required confined space. Several commenters (Ex. 14–4, 14–42, 14–94, 14–99, 14–143) stated that it was confusing for proposed paragraph (b)(23)(i) to provide that a permit space was sized and configured for bodily entry when the definition of "entry" provided that entry began when the employee's face broke the plane of the opening into the space. Some of the commenters (Ex. 14–42, 14–94) noted that the proposed definition excluded spaces which contained hazardous atmospheres and into which employees were able to insert only their heads and shoulders. For example, Mr. Martin Finkel, a Certified Marine Chemist with Marine & Environmental Testing, Inc. (Ex. 14–4) stated:

> The definition of Permit Required Confined Space, as stated, does not allow for small space[s] which permit entry of a worker[']s head, but not his/her whole body. Such a space may prove just as hazardous if it contains an IDLH atmosphere which the worker breathes. I recall seeing photos of a [fatality] on a barge where only the worker's head was in the tank—his body remained sprawled on deck—yet the worker was just as dead as if he had entered bodily. Therefore, I suggest removing [paragraph (b)](23)(i) entirely from the definition of Permit Required Confined Space.

The Agency has not adopted this suggestion. While OSHA is concerned that spaces that are too small for complete bodily entry may pose hazards for employees, the Agency did not intend to cover such spaces under the permit space standard. OSHA believes that the NPRM preamble discussion of permit space incidents and of proposed provisions clearly indicates that the proposed rule was intended to cover only spaces that were large enough for the entire body of an employee to enter. As commenters have correctly noted, the proposed definition of "permit required confined space" did not cover the "small" spaces. Such spaces do not meet the definition of "confined space", nor do they pose hazards comparable to those associated with confined spaces. Since an employee cannot totally enter such spaces, he or she should not have difficulty withdrawing from the space. In order for a space to be considered a permit-required confined space, it must first be a confined space. A space that cannot be entered is not confined; therefore, it does not pose hazards related to the difficulty of exiting the space.

OSHA realizes that an employee may still be injured or killed as a result of some atmospheric hazard within such an enclosed area; however, this standard is not intended to address all locations that pose atmospheric hazards. The Agency believes that the procedures necessary to protect workers from atmospheric hazards alone are not those required by this standard, but are required by other OSHA standards, such as Subpart Z of the General Industry Standards. The exposed employee must also have difficulty exiting the space for many the requirements of §1910.147 to apply. For example, the need for an attendant to be present is doubtful. Spaces that cannot be entered are small enough to be readily ventilated,[8] and in many cases a reaccumulation of a hazardous atmosphere is highly unlikely. Because the requirements set forth in final §1910.146 are not appropriate for application to spaces into which an employee cannot completely enter, OSHA has retained the language proposed in paragraph (b)(23)(i), which appears under the definition of "confined space" in the final rule.

OSHA notes that, as discussed previously in the preamble, "entry" as defined in the final rule begins when any part of the entrant's body breaks the plane of the entry portal. This language indicates the Agency's concern that exposure to a permit space hazard can occur before the entire body of the entrant is inside the space. The definition of "entry" is not intended to indicate that a space large enough to accommodate only part of an employee's body constitutes a permit space. Therefore, OSHA has determined that the definitions of "entry" and "permit-required confined space" are consistent.

Proposed paragraph (b)(23)(ii) stated, as the second criterion, that a space had to have "limited or restricted means for entry or exit" in order to be considered a permit-required confined space. The proposed paragraph listed tanks, vessels, silos, storage bins, hoppers, vaults, pits, and diked areas as examples of spaces with this characteristic. Some commenters (Ex. 14–69) felt that it was appropriate for the definition to cover open top spaces, such as dikes and excavations, while others (Ex. 14–185) stated that those same spaces should not be included.

OSHA listed these spaces as examples of limited or restricted entry or exit, not as examples of permit spaces, as some rulemaking participants believed. The final rule, under the definition of "confined space", adopts a slightly revised version of the language enumerating the examples to state this intent more clearly. As indicated in the preamble to the proposal (54 FR 24089), OSHA notes that doorways and other portals through which a person can

[8] Subpart Z of part 1910 would require the employer to use feasible engineering controls to maintain atmospheric contaminants below permissible exposure limits. Normally, ventilation would be used to meet the Subpart Z requirements, and the accident information contained in the rulemaking record does not indicate a need for additional regulation of spaces that cannot be entered completely.

walk are not considered to be limited means for entry or exit.

Proposed paragraph (b)(23)(iii) stated, as the third criterion, that a space had to be "not designed for continuous employee occupancy" in order to be considered a permit-required confined space. Some commenters expressed concern regarding the use of the phrase "continuous occupancy" in this proposed paragraph. Some of them (Ex. 14–94, 14–143, 14–163) argued that many spaces are not designed for continuous employee occupancy but should not be considered as confined spaces. They suggested rewording the proposed definition to "an enclosure with a primary function other than human occupancy." (The suggested language is essentially identical to language in the ANSI Z117.1–1989 definition of "confined space".)

OSHA notes that the criterion "not designed for continuous human occupancy" is but one of the necessary three criteria required for a space to be designated a confined space. Thus, there may be any number of spaces that are not designed for continuous human occupancy, but that cannot be considered to be confined spaces (or, subsequently, "permit-required confined spaces") under OSHA's definitions because they do not meet both of the other two criteria set forth in the "confined space" definition.

The Agency has determined that the suggested language from the ANSI standard is not appropriate. The ANSI language focuses on what the primary function of the space is, whereas OSHA's definition focuses on what the space is designed for. If the space is truly designed for human occupancy, then the primary function of the space is irrelevant. For example, a vented telecommunications vault is typically designed for continuous human occupancy—the ventilation for the vault ensures the presence of a normal atmosphere for an occupant to breathe, and the working dimensions of the space are large enough to allow an adult to work and move around while erect. It could be argued, however, that the primary function of the vault is to house telecommunications equipment. Although the distinction between the "primary function" and the "design" of a space may seem inconsequential, OSHA believes that the final rule's definition properly places the focus on the design of the space, which is the key to whether a human can occupy the space under normal operating conditions.

Another commenter (Ex. 14–144) stated that OSHA should eliminate "continuous" from the definition because its "Manholes and vaults—to the extent they are covered—are designed for employee entry and occupancy in order to service telephone cables."

OSHA has not accepted this recommendation. One of the characteristics of a confined space is that it is not designed for humans to enter and work for prolonged periods without any additional consideration for safety and health. With respect to manholes and unvented vaults, the Agency notes that atmospheric testing and portable mechanical ventilation are among the recognized procedures that must be undertaken (as required by §1910.268(o)) before employees can safely enter these spaces.[9] Therefore, the final rule's definition of confined space retains the proposed phrase "continuous human occupancy".

OSHA notes that the meaning of proposed paragraph (b)(23)(iii) has been a factor in general duty clause (section 5(a)(1)) enforcement actions brought by the Agency. For example, General Dynamics Land Systems Division (General Dynamics) contested a citation for a willful violation of section 5(a)(1) for failure to protect employees from confined space hazards. The employer referenced the proposed language to contend that an M-1 tank is not a (permit-required) confined space because the assembled tank is "intended" for continuous employee occupancy. The Occupational Safety and Health Review Commission (OSHRC) held in *General Dynamics Land Systems Div.* (15 OSHRC 1275, September 11, 1991) that the classification of a space would be based on its condition at the time employees would enter, not on the ultimate use of the space. The OSHRC determined that assembled tanks posed a recognized hazard (freon exposure) and that it was feasible to abate the hazard. Therefore, the OSHRC held that OSHA properly cited General Dynamics for failure to implement a permit space program when employees were assigned to enter assembled M-1 tanks in which freon was being used.

Additionally, the Agency notes that the preamble of the NPRM (54 FR at 24097) stated "Some products are considered permit spaces while they are being built, and entries by workers are required as part of the manufacturing process." This language reflects OSHA's recognition that there are spaces (such as assembled M-1 tanks) that may be permit spaces during fabrication, because hazards might be introduced at that time and because they are not designed for continuous occupancy until their manufacture has been completed. However, after they are completed and put to use, the hazards created by the manufacturing process are not present, and they are then designed and intended for continuous occupancy. Thus, they would not be permit spaces in actual use.

Proposed paragraph (b)(23)(iv) stated, as the fourth criterion, that a space had to contain one or more of a list of four specified hazards in order to be considered a permit- required confined space. The four listed hazards were:

(1) Atmospheric hazards (proposed paragraph (b)(23)(iv)(A)),

(2) Engulfment hazards (proposed paragraph (b)(23)(iv)(B)),

(3) Entrapment hazards that also pose the hazard of asphyxiation (proposed paragraph (b)(23)(iv)(C)), and

(4) Any other recognized serious safety or health hazard (proposed paragraph (b)(23)(iv)(D)).

The first three hazard characteristics provoked no controversy or substantive comment. However, some commenters (Ex. 14–84, 14–160, 14–171, 14–179) objected to proposed paragraph (b)(23)(iv)(D) arguing that the criterion set out therein was so broad and vague that its application could result in some spaces being inappropriately designated as permit spaces. For example, The National Solid Waste Management Association (Ex. 14–84) felt that:

> The definition contained in [proposed] §1910.146(b)(23)(iv) is too vague as currently written to be workable, specifically the provision in subparagraph (D).

Another commenter (Ex. 14–62) suggested that OSHA delete the proposed criterion because "Regulation of these hazards is best left to other specific OSHA standards for these hazards." Still another commenter (Ex. 14–63) stated that OSHA should require employers to document their determinations regarding this criterion "to assure that this [criteria] is properly considered in assessing the space."

OSHA does not agree with the comments regarding proposed paragraph (b)(23)(iv)(D). In particular, the Agency has determined that the provision needs to be worded in the broadest possible terms so that employers are required to protect affected employees from any serious hazards which may be confronted in a

[9] Telecommunications manholes and unvented vaults do pose confined space hazards (though they are not regulated under §1910.146). The necessary precautions for protecting employees entering these spaces from confined space hazards are prescribed by §1910.268(o). As noted earlier, work in such manholes or vaults need not comply with §1910.146 unless they contain hazards not fully addressed by §1910.268(o).

permit space. Examples of "other" serious hazards are radiation, noise, electricity, and moving parts of machinery. OSHA also believes that it is unnecessary to specify that employers document their compliance with this provision. The Agency will be able to determine, based on an inspection of a confined space, whether or not the conditions found pose hazards serious enough to warrant designating the space as a permit-required confined space. In making this determination, OSHA will use the same sources of information any knowledgeable person would: national consensus standards and government and industry guidelines.

OSHA is promulgating the definitions of "confined space", "non-permit confined space", and "permit-required confined space" as previously described. The Agency believes, based on the rulemaking record considered as a whole, that the final rule's definitions of these terms properly describe the spaces being regulated here, that these provisions will provide guidance to employees and employers for complying with §1910.146, and that this will result in the best protection for employees exposed to permit space hazards.

The term "permit-required confined space program (permit space program)" means:

> ... the employer's overall program for controlling, and, where appropriate, for protecting employees from, permit space hazards and for regulating employee entry into permit spaces.

Paragraph (c)(4) of final §1910.146 requires employers whose employees enter a permit space to develop and implement a written "permit-required confined space program". In promulgating this requirement, OSHA has used this term to stress the importance of taking a systematic approach to permit space operations. Except for editorial changes, the definition in the final rule is very similar to the proposed definition of this term. OSHA has replaced the proposed language addressing the prevention of unauthorized employee entry with language that more accurately indicates the general purpose of a permit space program, that is, "regulating employee entry into permit spaces".

The term "permit system" in this final rule replaces the proposed term "entry permit system". "Permit system" is defined as:

> ... the employer's written procedure for preparing and issuing permits for entry and for returning the permit space to service following termination of entry.

The final rule's definition is essentially the same as the proposed definition except that the language specifying that the permit system designates, by name or title, the individuals who may authorize entry has been removed. That provision is regulatory in nature rather than definitional.

The term "prohibited condition" in the final rule replaces the proposed term "not-permitted condition". "Prohibited condition" is defined as:

> ... any condition in a permit space that is not allowed by the permit during the period when entry is authorized.

"Prohibited condition" is the term used in the final standard's regulatory text. Although no substantive comments were received on the proposed term, the Agency is using "prohibited", because the term "not-permitted" is stilted. The new term certainly conveys the same meaning and improves the readability of the standard. The definition itself has been clarified to state specifically that the term "prohibited condition" applies only to the period during which entry into the permit space is authorized. OSHA notes that there is no reason for a condition, or set of conditions, to be prohibited in a permit space until employee entry is authorized. While this meaning was intended in the proposed definition, it was not stated clearly.

The term "rescue service" means:

> ... the personnel designated to rescue employees from permit spaces.

The definition of this term has been taken from the proposed definition of "in-plant rescue team". This is the term that has been adopted to apply to both in-plant as well as outside rescue services. The use of this term in place of the proposed term and the rationale behind the definition are explained under the discussion of paragraph (k) later in this preamble.

The final rule substitutes the term "retrieval system" for the proposed term "retrieval line" and defines a "retrieval system" as:

> ... the equipment (including a retrieval line, chest or full-body harness, wristlets, if appropriate, and a lifting device or anchor) used for non-entry rescue of persons from permit spaces.

The proposed definition was similar, except that it recognized the use of wristlets as an acceptable alternative to the use of a chest or body harness. A representative of the Chevron Corporation (Houston Tr. 862) has stated:

> We believe that wristlet devices interfere with effective work and expose the employee to additional injury in the [event] of a rescue.

OSHA agrees with this comment and has therefore changed the definition of "retrieval system" to make it clear that wristlets are not ordinarily acceptable for use by themselves. Wristlets may be used only in conjunction with a chest or body harness, unless the employer can demonstrate that the use of a chest or full body harness is infeasible or creates a greater hazard and that the use of wristlets is the safest and most effective alternative. (See the summary and explanation of paragraph (k)(3)(i) of the final rule.) Furthermore, OSHA will permit the use of wristlets only if such use will not interfere with the work (for example, by entangling entrants) and will not expose the employee to additional injury in case of a rescue.

The Chevron representative further stated (Houston Tr. 862):

> We also believe that continuously attached retrieval lines present entanglement problems. Therefore, we recommend that the definition read "Means a line or rope secured at one end to the worker by a chest, waist or full-body harness of the type that suspends a person in the upright position and with its other end secured to a lifting device or to an anchor point outside the entry."

Chevron had also suggested (Ex. 14–174) that the proposed definition be revised to state: "The retrieval line may be disengaged at the worker during those periods of activity that the employer identifies as creating hazards of entanglement."

While OSHA recognizes that entanglement can pose difficulties for entries performed using retrieval systems, the Agency has not made the suggested changes. First, the Agency believes that adding the suggested language "of the type that suspends a person in the upright position" would not address concerns regarding potential entanglement hazards. OSHA also believes that compliance with the requirements of paragraphs (d) and (k) of the final rule (regarding rescue equipment and procedures) will minimize entanglement hazards. Therefore, the Agency believes that concerns regarding entanglement can be addressed without revising the proposed definition. Second, OSHA believes that, considering the suddenness with which permit space hazards often manifest themselves, entrants who have disengaged from their retrieval lines are not adequately protected from permit space hazards. Therefore, the Agency expects that employers who have a reasonable basis for determining that the use of retrieval systems will pose excessive risk of entanglement will implement other rescue equipment and procedures.

Also, a hearing participant testified (Chicago Tr. 96):

> In [§1910.]146(b)(25), we do, however, recommend some different wording for retrieval line in that it appears in this section that a retrieval line is required in each and every confined space entry situation. There are situations where retrieval lines are ineffective, or inappropriate, or simply not required.

In particular, the hearing participant stated that retrieval lines are not needed for work inside the mud drum of a steam boiler because entrant's feet never enter the permit space and that "the configuration of the interior of a distillation column or more complex vessel will make a retrieval line inappropriate." OSHA notes that the proposed definition was provided simply for the guidance of those employers who choose to comply with the proposed requirement for rescue capability (proposed §1910.146(c)(8)) through the use of retrieval lines. OSHA recognizes that the use of retrieval systems is not always feasible for permit space entry. Therefore, as discussed further under the summary and explanation of paragraph (k)(3) of the final rule, the Agency is requiring the use of retrieval systems unless the system would increase the risk to authorized entrants or the system would not contribute to rescue. OSHA believes employers should have rescue personnel perform their duties from outside the permit space wherever possible, so that rescuers are not exposed to permit space hazards.

In addition, OSHA has clarified the proposed definition by specifying the means by which the retrieval system is attached to the authorized entrant and the means by which the authorized entrant is lifted from the permit space. The definition, as revised, also clearly indicates that retrieval systems are to be used only for non-entry rescues.

The term "testing" means:

> ... the process by which the hazards that may confront entrants of a permit space are identified and evaluated. Testing includes specifying the tests that are to be performed in the permit space.

This definition, which did not appear in the NPRM, was added to indicate clearly what the term "testing" means. The final rule, like the NPRM, sets testing requirements (in §1910.146(d)(2) and (d)(5), for example). The final rule also contains non-mandatory Appendix B, which contains guidance for employers who perform atmospheric testing. OSHA intends the term to cover the evaluation of permit space conditions both at the time an employer initially identifies the hazards and devises control measures and at the time entry would actually take place. Additionally, the Agency has determined that it is appropriate to specify that the testing process includes specifying the tests to be performed, so that OSHA can determine if the tests performed correspond to the identified permit space hazards. A note has been included to indicate the purpose of testing.

Paragraph (c), General Requirements.

Paragraph (c) sets forth general requirements for employers whose operations are within the scope of §1910.146. This paragraph reflects the Agency's determination, discussed earlier in this preamble, that it is necessary to establish a comprehensive regulatory framework under which employers are explicitly required to identify any permit spaces at their workplaces and to take the appropriate measures for the protection of affected employees.

Proposed paragraph (c) contained general requirements for the identification of permit spaces and for the protection of affected employees from the hazards posed by any permit spaces identified. The introductory text of proposed paragraph (c) would have required employers to identify any permit spaces in their workplaces, to determine if their employees would enter any such spaces, and to take the appropriate action (closing off the permit space, retaining a contractor, or instituting a permit space program) based on that determination. The balance of the paragraph (proposed paragraphs (c)(1) through (c)(10)) specified the elements of the permit space program to have been followed by employers who had employees (either their own or those of contractors) enter permit spaces.

The permit space program requirements from proposed paragraph (c) have, in general, been placed in paragraph (d) of final §1910.146. (For a cross-reference of the destinations of the provisions of the proposal, see the Distribution Table.) A discussion of these paragraphs can be found in the summary and explanation of paragraph (d) later in this preamble.

Redesignation Table to §1910.146

Proposed paragraph	*Final paragraph*
(a)	(a)
(b)	(b)
(c) intro text first sentence.	(c)(1)
second sentence	(c)(6)
third sentence	(c)(3)
fourth sentence	(c)(4)

Redesignation Table to §1910.146 Continued

Proposed paragraph	*Final paragraph*
(c)(1)	(d)(2)
(c)(2)	(d)(3)
(c)(3)	(d)(10)
(c)(4)	(c)(2)
(c)(5)	(d)(1)
(c)(6)	(g)
(c)(7)	(d)(4)
(c)(8)	(d)(4)(viii), (d)(9)
(c)(9)	(d)(3)(iv), (d)(4)(vi)
(c)(10)	(c)(8)
(d)(1)	(e)(1)
(d)(2)(i)	(f)(7)
(d)(2)(ii)	(f)(8)
(d)(2)(iii)	(f)(8)
(d)(2)(iv)	(f)(9)
(d)(2)(v)	(f)(13)
(d)(2)(vi)	(f)(11)
(d)(2)(vii)	(f)(13)
(d)(2)(viii)	(f)(12), (f)(13)
(d)(2)(ix)	(f)(13)
(d)(2)(x)	(f)(14)
(d)(3) intro text	Removed
(d)(3)(i)	(f)(1)
(d)(3)(ii)	(f)(2)
(d)(3)(iii)	(f)(3)
(d)(3)(iv)	(f)(4)
(d)(3)(v)	(f)(5)
(d)(3)(vi)	(f)(6)
(d)(3)(vii)	(f)(6)
(d)(4)	(f)(15)
(d)(5)	(e)(2)
(d)(6)	(e)(5)
(e) intro text	(g)
(e)(1)	(h)(1)
(e)(2)(i)	(h)(3)
(e)(2)(ii)	(h)(4)
(e)(3)	(h)(2)
(e)(4)	(h)(5)
(f) intro text	(g), (i)(4)
(f)(1)	(i)(3)
(f)(2)	(i)(1), (i)(6)
(f)(3)(i)	(i)(5)
(f)(3)(ii)	(i)(6)
(f)(3)(iii)	(i)(7)
(f)(3)(iv)	(i)(8)
(f)(4)	(i)(9)
(g) intro text	(g)
(g)(1)(i)	(j)(2)
(g)(1)(ii)	(j)(2)
(g)(1)(iii)	(j)(6)
(g)(1)(iv)	(j)(3)
(g)(1)(v)	(j)(3)
(g)(1)(vi)	Removed
(g)(2)	(j)(5)
(h) intro text	(k) intro text
(h)(1)(i)	(k)(1)(i)
(h)(1)(ii)	(k)(1)(ii)
(h)(1)(iii)	(k)(1)(iii)
(h)(1)(iv)	(k)(1)(iv)
(h)(2)	(k)(2)
(i)	(c)(5)

Paragraph (c), titled "General requirements" in this final rule, corresponds generally to the introductory text of paragraph (c) in combination with paragraphs (c)(4), (5) and (10) of the proposed rule. The introductory text of the proposed paragraph (c) (titled *Permit required confined space program (entry permit*

program)) did not pertain directly to the establishment of a permit program, but contained information and requirements leading up to the development of a permit program. OSHA has decided that the inclusion of these requirements in a separate paragraph, preceding the paragraph pertaining to the permit entry program, is logical and adds clarity to the final rule. Therefore, paragraph (c), titled *General requirements*, has been added to the final rule.

Paragraph (c)(1) of the final rule requires employers to evaluate their workplaces and to determine if they contain permit-required confined spaces. This provision corresponds to, and is essentially the same as, the first sentence of the introductory text of proposed paragraph (c). OSHA has included a note referencing Appendix A, the decision flowchart, to facilitate compliance with the final rule.

A few rulemaking participants (Ex. 14–116, 14–170, 138) stated that it was inappropriate to require an initial survey of workplaces to identify permit spaces. For example, the Chemical Manufacturers Association (CMA), in its post-hearing comment (Ex. 138), objected to proposed paragraphs (c) and (c)(1). CMA interpreted the proposal to require a "grand survey" of the workplace to identify permit-required confined spaces, followed by an analysis of the severity of the associated hazards in those spaces. Another commenter, the Monsanto Company (Ex. 14–170), stated:

> Paragraph (c)(1) could be interpreted to require an initial survey to identify all confined spaces and to assess the severity of the hazards that would be encountered by those who may enter these confined spaces at any future time. Monsanto *agrees* with the concept of identifying confined spaces and their hazards but strongly *disagrees* that an initial survey, should that be OSHA's intent, is necessary. In fact, it could be counterproductive to good hazard control. Not only do confined spaces change, as OSHA acknowledges, but the hazards involved in the confined spaces often change. The hazards could be different for the same confined space depending on the work that is planned to be done inside the space. For all of these reasons, Monsanto believes that, and has demonstrated that, employees can identify confined spaces and the hazards thereof by 1) training them to recognize confined spaces, 2) to identify the hazards and assess their severity, and 3) select and implement their protective measures just prior to executing the entry and as a part of the preparation of the entry permit. We would strongly recommend that OSHA not require an initial identification of all spaces and their severities. [Emphasis supplied in original.]

NIOSH testified (Washington Tr. 110) in favor of the proposed requirement stating: "In 37 of the 44 incidents [investigated as part of the FACE project through December 1988] failures to recognize the operations as involving a confined space was a contributing factor."

OSHA has determined that workspaces that meet the definition of permit space need to be identified at the time the final rule goes into effect rather than when the employer decides that certain workspaces will be entered. The Agency believes that the initial workplace survey is essential because, at the very least, it alerts the employer to the need for measures to prevent unauthorized entry. Also, delays in efforts to identify permit spaces could compromise the safety of entry operations undertaken to deal with emergencies or other unforeseen circumstances. If an employer has not evaluated the workplace, he or she would not even be able to provide the necessary training to employees so that they can indeed readily identify permit spaces. In any event, relying on employees as the primary source of information for identifying and controlling permit-required confined spaces would improperly place the principal burden for worker safety on the employee rather than on the employer, who is in the better position to identify hazards present in his or her own workplace.

OSHA has also determined, based on the incident data in the rulemaking record (Ex. 13–10, 13–15, 13–16, 14–159), that the failure to identify permit spaces properly has resulted in many fatalities and injuries. The Agency believes that the initial survey will facilitate employers' efforts to develop and implement appropriate measures so that a protective permit space program is in place when entry operations are initiated.

OSHA notes that the comments opposing this provision in its proposed form were more concerned that the Agency would require a detailed hazard analysis for each space identified as a possible permit-required confined space. Final §1910.146(c)(1) requires only the identification of permit spaces. The detailed evaluation and classification of hazards found within the space is addressed by paragraph (d)(2), which is discussed later in this preamble. OSHA further notes that any entry into a confined space performed in order to determine whether or not that space is a permit space must be performed as if the space were known to be a permit space.

Paragraph (c)(2), which corresponds to proposed paragraph (c)(4), addresses the employer's responsibility to inform their employees of the presence of permit-required confined spaces. This paragraph in the final rule requires employers who find permit spaces in their workplaces to inform exposed employees of the existence and location of those permit spaces.

Proposed paragraph (c)(4) would have required all permit spaces to be posted with signs indicating what hazards were present and that only authorized entrants could enter. Some respondents to the NPRM (Ex. 14–76, 14–77) objected to this paragraph of the proposal, basing their objections on the opinion that such a requirement would be prohibitively expensive and an invitation to unauthorized entries, particularly by teenagers, and to vandalism. In Issue 14 of the hearing notice (54 FR 41463), OSHA asked for further information on the proposed requirement for the posting of informational signs near permit spaces. OSHA asked, in its hearing notice, how such spaces should be identified to protect employees. The Agency also requested actual and projected costs of informing employees that a workplace contains permit spaces.

The Agency received extensive written comments addressing paragraph (c)(4) (Ex. 14–9, 14–30, 14–45, 14–52, 14–57, 14–59, 14–68, 14–76, 14–78, 14–80, 14–86, 14–88, 14–91, 14–94, 14–101, 14–111, 14–133, 14–143, 14–150, 14–153, 14–157, 14–163, 14–188, 14–170, 14–173, 14–174, 14–176, 14–178, 14–179, 14–184, 14–189, 14–191, 14–214, 14–222). There also was discussion of the issue during the public hearings (Houston Tr. 779–780, 940–942; Chicago Tr. 272–274, 447–448).

One commenter offered support for the proposed requirement to require signs at all confined spaces. The Quaker Oats Company (Ex. 14–173) stated:

> We recommend that all permit spaces be posted, notifying employees that hazards may be present and only authorized entrants [may] enter. These signs would be appropriate postings during non-entry times and during the permitted entry. All employees should be instructed as to restricted areas, and confined spaces should be secured whenever feasible with positive barriers such as locks.

An overwhelming majority of commenters, however, objected to the proposed requirement for posting signs identifying all permit-required confined spaces and the hazards contained within the spaces (Ex. 14–9, 14–76, 14–78, 14–80, 14–88, 14–94, 14–111, 14–143, 14–153, 14–170, 14–176, 14–189, 14–222, 138). The commenters who objected to the proposed requirement identified several burdens related to the proposed rule.

Some objections cited the great expense and total impracticality of posting a sign at the entrance to every confined space in the workplace. For example, S.C. Johnson & Son, Inc. (Ex.14–222) stated:

The problem with this provision is that it would require signs to be posted at hundreds of thousands of locations. Virtually every piece of equipment, vault, or pit large enough for an employee to "stick his head in" would qualify as a potential confined space.

In a similar vein, the Eastman Kodak Company (Ex. 14–176) stated:

In a complex chemical plant, there will be hundreds of tanks, reactors, columns, and other process vessels which qualify under the proposed definitions.

Union Carbide (Ex. 14–88) also objected to the numerous signs that would be required as follows:

The problem with both provisions is that, as applied to a modern chemical plant, they would require identification, evaluation, and notification of hundreds or thousands (perhaps tens of thousands) of confined spaces. Virtually every piece of equipment, vault or pit large enough for an employee to enter would qualify as a confined space, and there are uncounted numbers of those.

Every manhole into a sewer or electrical or telecommunications area is a confined space. Would OSHA require every manhole cover throughout the United States have a sign warning of the hazards which may be present?

OSHA also received testimony at the hearings (Chicago Tr. 272–274; Houston Tr 779–780, 940–942) regarding the number of signs that would be required. For example, Rohm & Haas (Houston Tr. 941) testified as follows:

This aspect would require us to post up to 3000 additional signs in our plant. This type of labelling would be counter-productive and would also detract from the performance-oriented goal of the standard.

Posting of signs would create over-reliance on a sign to identify a confined space. We are concerned that we may miss identifying many of these spaces during the plant-wide survey mentioned above, and as a result some spaces will not have signs posted. If an employee relies on a sign to tell him that a confined space hazard exists, he may determine that a confined space hazard is not present if a sign is not posted.

Similarly, AMOCO testified (Chicago Tr. 272) as follows:

Paragraph (c)(4) requires the posting of signs near the entrance of confined spaces. There is no qualifier to indicate that the signs would be required only when there is a potential access to the space. A broad interpretation of this paragraph would require us to post signs at the potential entrances of confined spaces regardless of whether access to the space is physically possible.

In our facilities, there are literally thousands of potential entrances to confined spaces.

Some commenters identified the impracticality of identifying such spaces as storm and sanitary sewers. For example, United Technologies (Ex. 14–178) stated:

We know of no practical method of posting signs near, yet outside of, manholes located at grade level in roadways, parking lots, floor spaces. etc.

The City of Cincinnati (Ex. 14–9) also noted the impracticality of applying the posting requirement to manholes and sewers as follows:

Many areas in the municipality meet the criteria of "permit required confined spaces," but do not allow for the posting of signs. All of our sewers fall into this category, both storm water and combined sewers.

In a public environment, signs on every manhole in the street is impractical!

Other commenters identified the burden of listing individual hazards in a confined space on the sign. They argued that the burden of updating or replacing signs whenever the hazards within a confined space changed or whenever the sign was destroyed was unreasonable. For example, Union Carbide (Ex. 14–88) commented as follows:

Besides the burdens associated with those requirements, Union Carbide is concerned that they may actually pose hazards to employees. The main hazard is an overreliance on lists and signs. The presence of hundreds or thousands of signs throughout a chemical plant would tend to downgrade awareness on the part of employees, who would come to assume that if a space is not on a list or lacks a sign, then it is not a permit-required confined space. Yet, the large number of such spaces creates the very real possibility that some may be overlooked, despite the most vigilant of programs. The result could be employee entry into permit-required confined spaces without taking the necessary precautions. Even if every single permit space were identified on a list and with a sign, signs fall off or are obscured, particularly in chemical plants where sign maintenance is a major undertaking. Where hazards change with changes in service, a posted sign may be outdated and hence dangerously misleading.

Organizational Resources Counselors, Inc. (ORC, Ex. 14–143) echoed this concern:

Also, even when a sign has been posted outside a confined space, it can deteriorate, be removed, or become obscured. Where hundreds of such signs must be posted, it is even more likely that at least some of the signs will be damaged, removed, or obscured.

Finally, requiring each sign to list the hazards which could be present in each confined space would be an administrative nightmare, especially where the hazards of confined spaces change frequently or are varied. For example, the hazards posed by entry into a tank or vessel will depend on the last contents. Are new signs to be posted every time a new chemical is introduced?

One hearing participant (Chicago Tr. 273) also claimed that sign maintenance would be costly, testifying as follows:

Since most of the signs in a refinery or chemical plant are exposed to weather, their maintenance would be extremely expensive.

The Chemical Manufacturers Association (Ex. 138) maintained that signs can create a false sense of security and can lead to information overload. They contended that a large number of warning signs, which would be required in many chemical plants, would be ineffective because employees tended to ignore them.

As an alternative to posting signs, many commenters suggested the use of an effective confined space permit entry system in combination with training as an alternative to posting signs (Ex. 14–57, 14–76, 14–78, 14–86, 14–88, 14–91, 14–94, 14–111, 14–143, 14–157, 14–170, 14–176, 14–184, 138). For example, Beaumont & Associates (Ex. 14–57) stated:

Employee training about confined spaces should be allowed in place of signs designating confined spaces.

Also, the Texas Chemical Council, (Ex. 14–86) said:

It is critical that employees be trained, as well as, possibly reminded, depending upon the entry condition.

Union Carbide (Ex. 14–88) supported the training alternative as follows:

In its years of experience with confined space permit programs, Union Carbide has learned that proper employee training and education to identify permit spaces and their hazards are more effective, more efficient, and safer than the overly burdensome approach proposed.

Still another commenter (Ex. 14–91) agreed with this point, stating:

Training is a more appropriate and effective means of informing employees of permit space hazards.

One commenter (Ex. 14–68) disagreed, arguing that training was an ineffective means of preventing unauthorized entry, as follows:

Training is *not* an effective means of preventing unauthorized entry nor is a posted sign. The use of the conjunction, "or," in the proposed standard leaves the employer a choice among providing a positive denial of entry provision such as a locked barrier, posting a warning sign or providing training. There should be no doubt that the first choice will usually be "training" such as "Don't go in there." At most, a sign may be posted to supplement the instructions. These

precautions are so inadequate as to be no precaution. [Emphasis supplied in original.]

Many of the accidents in the rulemaking record resulted when an employee failed to recognize the hazards involved in entering a permit-required confined space. Therefore, OSHA has determined that it is important to identify permit spaces and to inform employees of their presence and the hazards involved.

At the time of the proposal, OSHA believed that the posting of warning would be the most cost effective method of warning employees. In that regard, the Agency recognized that training all employees in the location of all permit spaces and in the hazards involved in each space could impose significant costs on employers. However, as brought out by the rulemaking participants, the posting requirement in the proposal did not account for existing permit space programs that have been successfully protecting employees, using a wide range of approaches to providing the necessary information to employees.

The record also indicates that some rulemaking participants interpreted proposed paragraph (c)(4) to require the specific hazards posed by the space to be listed on the sign. OSHA did not intend the sign to contain a list of all the specific hazards posed by the permit space. Rather, the proposed rule would simply have required the basic type of hazard (such as asphyxiation and engulfment) to be mentioned. In fact, in explaining this provision of the proposal (54 FR 24091), OSHA stated:

> The Agency believes that employees need this information to understand the seriousness of potential hazards in the workplace. The Agency anticipates that compliance with this requirement would ensure that employees who are not involved in permit space operations would be sufficiently informed so that they would not attempt to enter permit spaces. OSHA notes that only personnel who work with permit spaces would need to know more about the potential hazards.

In order to recognize all methods of informing employees and to clarify the intent of the rule, OSHA is adopting a performance-oriented version of proposed paragraph (c)(4) in the final standard. Paragraph (c)(2) of final §1910.146 reads as follows:

> If the workplace contains permit spaces, the employer shall inform exposed employees, by posting danger signs or by any other equally effective means, of the existence and location of and the danger posed by the permit spaces.

OSHA believes that this language will require employers to protect their employees but will also allow them to use the most cost-effective method available. For example, employers who are already providing sufficient training to protect their employees effectively need not purchase and maintain unnecessary signs. On the other hand, employers can choose to post danger signs to protect employees if they desire. Whatever method is used, the standard requires it to inform employees exposed to the hazards posed by permit-required confined spaces of the existence, location, and danger of those spaces. Additionally, the provision in the final rule makes it clear that the sign is to indicate the danger involved in permit space entry, not to list all the specific hazards that might be encountered.

In enforcing this provision, OSHA will check to ensure that methods other than warning signs are truly effective in imparting the required information to employees. General training in the OSHA standard, for example, cannot be expected to adequately inform employees of the location of permit spaces in the workplace. The final rule places the burdens of identifying the spaces and of controlling the resultant hazards on the employer not on the employee.

Some commenters suggested that OSHA adopt a limited posting rule that would recognize the posting of copies of the entry permit at the entrance to those spaces that are opened for entry or that would require signs only for permit spaces that could be entered inadvertently. For example, the Monsanto Company (Ex. 14–170) suggested:

> We recommend that, instead of this burdensome approach, the permit itself serve as the communication of the hazards since it will be posted during an actual entry. If a vessel has multiple entry points during a confined space entry then additional signs or copies of the permit could be posted at those points to serve as the hazard advisory.

The Chevron Corporation (Ex. 14–174) added:

> We believe that this section should be reworded to allow either signs *or copies of completed permits* that are posted near or at the entrance to the permit space to be used to notify employees of the hazards and that only authorized individuals may enter the permit space. The permit system is intended to provide all information about the permit space on the permit itself and it only seems reasonable that a copy of the permit should be able to serve as the written means of information about the space.

In its prehearing comment (Ex. 14–143), the Organization Resources Counselors, Inc. (ORC) stated:

> ORC believes that posting a sign at or near every identified permit space is unnecessary, costly, and inappropriate for those spaces which do not provide an opportunity for random or inadvertent entry. In an average chemical plant or refinery, there will be hundreds of vessels, columns, tanks, and other pieces of process equipment which would meet the criteria for definition as permit required confined spaces, but which offer no opportunity for casual or inadvertent entry because these spaces are closed when in service, and cannot be opened to permit entry without significant amounts of labor and tools.
>
> It is appropriate to post a sign where there is opportunity for random unauthorized, or casual or inadvertent [entry], such as an open pit. In addition, it would be appropriate to post signs near spaces that have been opened to permit entry by authorized employees to make others aware that entry into the space is prohibited to unauthorized individuals.

OSHA has not adopted any of these suggestions. Posting the entry permit would not serve to inform unauthorized employees of the danger of entry. If there is no authorized entry being conducted, there would be no permit to post. Thus, posting entry permits would not function to warn employees of spaces that were not the subject of an entry permit. Additionally, once authorized entry was underway, an attendant would be stationed to prevent unauthorized employees from gaining access to the space (final §1910.146(i)(8)).

ORC's suggested approach would seemingly allow permit spaces to be configured so that employees could enter them "casually" or "inadvertently".[10] The Agency believes that it is important to ensure that unauthorized employees cannot enter permit spaces unintentionally. Paragraphs (c)(3), (d)(1), (i)(8), and (j)(5) of the final rule specifically require employers to take measures intended to prevent such entry. Allowing permit spaces to remain unguarded to the extent that employees could "casually" or "inadvertently" enter them is prohibited by the standard altogether. For example, assuming that they are configured as permit-required confined spaces, open pits would have to be guarded in some manner to prevent access to the spaces except when an authorized entry was undertaken.

[10] ORC also suggested that it would be appropriate to post permit spaces where there is "opportunity for random unauthorized" entry. OSHA considers all unauthorized entry to be basically random in nature. Because of the nature of their comments and of their example (open pits), the Agency does not believe that ORC intended to recommend posting all permit spaces subject to unauthorized entry with signs. Therefore, OSHA has discussed their suggestion of posting permit spaces subject to "casual" or "inadvertent" entry. While it is possible that ORC and others who made similar comments intended something else, OSHA could not determine what that intent might be.

Therefore, OSHA is not adopting the ORC suggestion.

OSHA believes that ORC's concerns regarding the number and types of spaces that need to be posted are being addressed by the final rule. The final rule would not require the posting of any permit space whose only means of access necessitates the use of tools or keys, provided that the employees who are expected to gain entry into these spaces are trained to recognize the hazards involved. Restricting access to permit spaces in this manner protects employees effectively without the use of signs.

Paragraph (c)(3) of the final rule addresses employers who decide that their employees will not enter permit spaces. This provision requires such employers to take effective measures to prevent their employees from entering permit spaces. These measures could include permanently closing the space and barriers, supplemented by training employees and posting danger signs. In any event, the steps taken by the employer must be effective in preventing employee entry into permit spaces.

Paragraph (c)(3) of the final rule has been taken from the third sentence of the introductory text of proposed paragraph (c), on which OSHA received no substantive comment. The proposed introductory text simply referred to proposed paragraph (c)(10), relating to duties to other employers, as being the only requirement other than those in the introductory text that applied to employers whose employees do not enter permit-required confined spaces. In the final rule, due to the change in format of paragraph (c) discussed earlier, §1910.146(c)(3) lists all other requirements that must be met by these employers:

(1) Paragraph (c)(1) relating to identification of permit spaces in the workplace (first sentence of introductory text);

(2) Paragraph (c)(2) relating to informing employees of the presence of permit spaces (proposed paragraph (c)(4));

(3) Paragraph (c)(6) relating to changes in confined spaces (second sentence of introductory text); and

(4) Paragraph (c)(8) relating to work by contractors (proposed paragraph (c)(10)).

OSHA believes that these provisions in the final rule will protect employees in workplaces where permit space entry is prohibited.

Paragraph (c)(4) of the final rule requires that employers who decide to have employees enter permit spaces establish written permit space programs (permit programs) which comply with §1910.146. This provision is based on the fourth sentence of the introductory text of proposed paragraph (c).

OSHA notes that the final rule, unlike the proposed rule, specifies that the program must be written. A written plan is necessary so that confusion or misunderstanding regarding the program's requirements is avoided.

A written permit program was strongly supported by Mr. John Moran, an OSHA expert witnesses who testified at the Washington, D.C., public hearing. In his written testimony (Ex. 22), Mr. Moran stated his views regarding a written program:

> The preparation of an employer-specific written confined space program is essential, in my view. It serves not only as an essential reference for supervisors and operators, but forces—or should force—thoughtful consideration of employer-specific issues relevant to development and implementation of an effective confined spaces program.

The Food and Allied Service Trades (FAST) of the AFL-CIO (Ex. 14–213) also supported a written program, as follows:

> We cannot overstate the importance of a *written plan*. Having the plan maintained in this form and available for worksite inspection offers an invaluable set of protections for the workers employed at facilities where confined spaces may exist. [Emphasis supplied in original.]

Mr. Keith Mestrich of FAST testified at the Chicago public hearing (Chicago Tr. 37) concerning the benefits of a written plan:

> With a written pla[n] it provides workers and the representatives a chance to go into the plant and take a look exactly how the employer plans to fill out the permits; who he plans to allow in entry spaces; the training that's going to go on; everything that should be happening whenever a worker goes into a confined space.

Mr. Robert Hill of the Oil, Chemical and Atomic Workers International Union (Houston Tr. 1063) also felt that the permit program should be in writing:

> This standard should state that the permit required confined space entry program must be written and accessible to employees.... It is the workers who enter and perform work in the permit spaces.

The Utility Workers Union also recommended that a written permit space program be required. Mr. Michael Kenny, testifying on their behalf (Chicago Tr. 649), stated:

> Accountability rates an equal place with training for a successful confined space program. A written permit system identifying hazards in the permit space, restricting access to authorized employees, will provide accountability.

OSHA agrees with these commenters that a written program provides the very basis of any permit space entry operation, providing a reference for guidance and direction to supervisors and employees alike. A program that is in writing will also serve to place accountability for all functions related to permit space entry and will aid in avoiding mistakes and misunderstandings. Additionally, because of the flexibility and discretion which the standard provides to the employer in achieving compliance, a written plan is essential to demonstrate that all aspects of permit space entry have been taken into consideration. For these reasons, OSHA has decided to specify in the final rule that the permit space program be in writing. The requirement for a written program has also been added to the introductory text of paragraph (d) of the final rule. Additionally, OSHA is requiring employers to make the written program available for inspection by employees and their authorized representatives. The agency believes that such access is essential for the successful implementation of a permit space entry program.

Issue 3 of the hearing notice (54 FR 41462) requested comment on the subject of worker participation in the design and implementation of a permit-required confined spaces program. In particular, OSHA was interested in information about successful programs and the costs and benefits associated with employee participation.

The Agency received several comments on the subject (Ex. 14–38, 14–210, 14–215, 14–220, 14–222) and some testimony at the public hearings (Washington Tr. 225–226, 251, 386, 589–590; Houston Tr. 1063–1064; Chicago Tr. 317–318, 348–352, 356, 376, 379–380, 411, 427–428, 532–533, 612–613, 622–623). However, most of these commenters did not respond directly to the issue. The majority of the commenters expressed support for the concept of employee participation in the creation of a permit program. Some commenters (Ex. 14–38, 14–210; Washington Tr. 225–226, 251, 386, 589–590; Houston Tr. 1063–1064; Chicago Tr. 317–318, 348–352, 356, 379–380, 427–428) even felt that OSHA should promulgate a provision in the final rule requiring joint management-employee committees for the creation of such programs. Others (Ex. 14–215, 14–220, 14–222; Chicago Tr. 532–533, 613, 622–623) stated that OSHA should not interfere with what these commenters believed was primarily a labor-management issue.

The commenters who were in favor of requiring employee participation in a permit program cited the benefits of increased compliance and improved procedures. For example, Mr Eric Frumin of the Amalgamated Clothing and Textile Workers Union testified at the Washington hearing (Washington Tr. 589–590). Mr. Frumin said that:

> We don't know who is going to be responsible for designing the confined space program to comply with this standard, but the chances are quite high, it's going to be someone who does a lot of things other than just safety.
>
> Whatever you call them—employer relations, personnel, security, and that problem is not unique to one plant in Williamsburg, Virginia. All over this country company management is taking on more and more diverse responsibilities and less specialization in the area of safety.
>
> And the only effective check on whether untrained managers are implementing inadequate confined space programs will be the ability of workers to be involved in that process and to make sure that the programs are adequate.
>
> Given the extent of union participation in the chemical and other industries, absent a mandate from OSHA, that involvement will never take place until after an accident or catastrophe and maybe not even then.

The Independent Liquid Terminals Association (ILTA, Ex. 14–210) agreed, and also pointed out that employee involvement would increase compliance. They stated:

> ILTA is in favor of involving employees in the design and implementation of permit space programs. The employees can offer invaluable feedback on real dangers versus perceived ones. In addition, involving the employees will contribute to the successful implementation of the program since it will not be viewed as a program forced upon them without their input. This is not to say that every employee should be involved. In the terminal business[,] involving terminal operations personnel, i.e., superintendents, engineers etc., would be helpful.

Other commenters also agreed that employee involvement was desirable, but believed that OSHA should not dictate worker involvement. For example, one commenter (Ex. 14–215) said:

> Amoco considers employee suggestions when making decisions concerning confined space entry however we have no formal procedures for soliciting and reviewing employee input. Such a formalized system could delay decision-making regarding confined space entry. If any problems occur with the confined space entry program, the employer, not the employee representatives, will be held responsible. Therefore, we believe that the employer should have the ultimate authority for making decisions concerning confined space entry. How an employer addresses employee input should be a matter between management and labor and employee participation should not be mandated by regulation.

Another commenter (Ex. 14–222) stated the view that employee involvement was impossible to mandate if such involvement was to be effective,as follows:

> While employee participation in procedures development can have many benefits, it cannot be mandated. It must be voluntary.
>
> Effective communication is the key to assuring employee feedback and suggestions. Such communication must be voluntary; it cannot be forced/mandated. (Where poor employer/employee communications exist, there is little effective feedback.) For this reason, we suggest that OSHA endorse, but not require, that active employee participation be a part of the design/implementation of a firm's permit space program.

The Agency agrees that involvement by employees is vital to the creation of an effective permit space program and that such involvement should be encouraged. However, OSHA has determined that it would be very difficult to mandate labor-management collaboration in the development of the permit program. None of the respondents suggested language that would provide for employee input into an employer's permit space program without dictating how any disagreements would be resolved. Additionally, the standard does provide opportunity for the contribution of employees involved in permit space entry in paragraph (d)(13) on permit space program review and in paragraph (g)(2)(iv) on review of employee training upon evidence of deficiencies. Therefore the Agency, has decided not to require the creation of a formal system for employee input and review of entry procedures.

Paragraph (c)(5) of the final rule sets provisions that employers can follow in lieu of complying with paragraphs (d) through (f) and (h) through (k), if the employer can demonstrate that the permit space contains only atmospheric hazards and that continuous forced air ventilation will maintain those permit spaces safe for entry. This paragraph is based, in part, on paragraph (i) of the proposed rule.

Paragraph (i) of the proposal, *Special permits for entry into low hazard permit spaces,* would have allowed employee entry into a "low-hazard" permit-required confined space without an attendant on hand. OSHA included this provision in the proposal based on the belief that either the space posed a low level of risk or its hazards were controlled so as to reduce the level of risk. The Agency regarded these spaces as posing a low enough risk that an attendant would not have been necessary and that more limited procedures could have been used for entry. While a permit would still have been required, it could have been issued to authorize entry as often as necessary for up to a year.

In regard to proposed paragraph (i), Issue 11 of the NPRM asked the following questions:

(1) To what extent should permit requirements be differentiated based upon level of risk?

(2) What criteria should an employer use to determine if the use of a special permit is appropriate?

(3) Should OSHA limit an employer's ability to qualify for use of a special permit once he or she has had a special permit revoked?

In Issue 13 of the hearing notice (54 FR 41461), OSHA asked for comment on an issue raised by a commenter (Ex. 14–45) concerning how employers would document the decision that a certain permit space was a low hazard space. OSHA also asked several other questions related to the documentation of an employer's determination of a space as "low hazard". In addition, Issue 17 of the NPRM solicited comments regarding the existence of work areas that would not need all of the protective measures required by the proposed rule.

Many rulemaking participants addressed the question of to what extent the permit requirements should be differentiated based on the risk posed by the space. Some favored separate treatment of different levels of risk, either explicitly (Ex. 14–50, 14–81, 14–102, 14–149, 14–167, 14–182, 14–199, 14–221) or implicitly by their support of proposed paragraph (i) (Ex. 14–22, 14–27, 14–52, 14–57, 14–153, 14–170, 14–183; Washington Tr. 359; Chicago Tr. 617; Houston Tr. 943). Others (Ex. 14–28, 14–94, 14–99, 14–111, 14–178, 14–184, 14–193, 14–217, 119; Washington Tr. 383; Houston Tr. 789; Chicago Tr. 214, 235, 370, 674) argued that the requirements should be the same for all permit-required confined spaces.

Two commenters (Ex. 14–81, 14–167) supported OSHA's statement in the preamble to the proposal (54 FR 24087) that there are permit spaces that either pose such a low level of risk or have their hazards so controlled that they could be safely entered without an attendant under a permit lasting as long as a year. For example, the National Ready Mixed Concrete Association (Ex. 14–81) stated:

> As indicated in our general comments above, NRMCA strongly believes OSHA

should differentiate permit-requirements based on the level of risk involved in particular confined spaces. OSHA correctly states that there are confined spaces which, while subject to the proposed standard, either pose such a low level of risk or have had their hazards so controlled, that they could be entered without an attendant on hand under a permit, which could last as long as a year.

Other rulemaking participants (Ex. 14–22, 14–27, 14–52, 14–57, 14–153, 14–170, 14–183; Washington Tr. 359; Chicago Tr. 617; Houston Tr. 943) lent their support to this concept by advocating separate requirements for low hazard permit spaces. Mr. Donald Martin, testifying on behalf of Rohm and Haas, Texas (Houston Tr. 943), supported paragraph (i), as follows:

[P]aragraph (i) allows for special permits for entry into low hazard permit spaces without an attendant to up to a period of one year, under certain provisions. We generally support this concept because it requires us to formally address potential hazards that could exist in our motor control centers, drive-in storage trailers and diked areas around our storage tank farms.

Although we have never experienced an injury or fatality related to this type of confined space entry, we believe it should be addressed nonetheless.

In their initial comments on the proposal, Monsanto (Ex. 14–170) agreed with the reasoning behind paragraph (i), as follows:

Monsanto endorses the concept of OSHA allowing a confined space entry without an attendant in certain types of situations.

However, on the basis of the hearing testimony, Monsanto did reconsider their support and, in their post-hearing comment (Ex. 140), recommended a single level of permit space, as follows:

In continuing to reflect on this issue, we believe that the "low hazard" or ["]non-permitted" space may well turn out to be a confusing point to employers and to the compliance process in OSHA. A better approach may be to specify one level of confined space instead of two. The one level would require a permit and an attendant. Any other spaces would fall outside the scope of this standard.

Many of those supporting the concept of a "low-hazard" confined space (Ex. 14–27, 14–81, 14–95, 14–124; 14–139, 14–149, 14–150, 14–153, 14–162, 14–164, 14–169, 14–221; Washington Tr. 553; Chicago Tr. 189; Houston Tr. 943) noted its application to specific types of spaces. These rulemaking participants cited diked areas, manholes, and tanks as examples of spaces that posed an extremely low probability of having an IDLH atmosphere, resulting in a "low hazard" classification.

Other rulemaking participants (Ex. 14–28, 14–94, 14–99, 14–111, 14–178, 14–184, 14–193, 14–217, 119; Washington Tr. 383, 547; Chicago Tr. 214, 235, 370, 674; Houston Tr. 789) disagreed with the concept of treating any permit-required confined spaces in a different manner. Many of the commenters addressing this issue (Ex. 14–94, 14–111, 14–193, 14–217; Washington Tr. 547), felt that the creation of a special "low risk" category of permit spaces only increased the likelihood of confusion, misunderstanding and misplaced confidence, possibly increasing the chances of an accident. For example, Mr. Robert J. Cordes (Ex. 14–28) stated:

I do not like the idea of a special confined space permit based upon the level of risk. There should be no differentiation in permits based upon level of risk. When the employer initially makes his judgments about those spaces which will need a permit, he has done just that. A space either needs a permit or it does not. If, as an example, a below-grade pit containing a water pump is judged to be a permit required space, then a permit, including a test for oxygen, etc. is required every time the pit is entered. An attendant should be required every time a permit is required. On the other hand, if the initial analysis determined that there is no need to require a permit when the pit is entered, none is needed unless something special such as hot work is scheduled. No attendant is needed at those sites which do not require a permit. If a permit is required, then a qualified (i.e. competent) person, who could also be an attendant, should conduct all tests and complete the permit form. One form and one procedure should exist. We don't want to introduce possibilities for confusion and mistakes by having special rules apply to lower level risks...

Texaco's post-hearing submission (Ex. 119) reinforced their objection to "low hazard" permit spaces:

As stated in Texaco's testimony, we do not support the concept of "low hazard permit spaces". Texaco believes that paragraph (i) simply leads to confusion, dilutes the scope, application, and protection offered by the Standard and renders the Standard unreasonably vague. We again recommend that this section be deleted in its entirety.

OSHA has decided not to carry proposed paragraph (i) forward into the final rule. The Agency agrees with the view that a "low hazard" designation for certain permit-required confined spaces would lead to confusion and reduce the protection afforded employees under final §1910.146. While OSHA believes that different levels of risk should lead to different levels of protection, the permit space program will necessarily require the employer to implement protective measures that will address the hazards in the permit spaces adequately and appropriately. Under the final rule, employers will need to take increasingly stronger steps to ensure the safety of employees involved in entry operations in more and more hazardous permit spaces. The basic performance-oriented nature of OSHA's permit space standard forces employers to develop whatever procedures are necessary to eliminate or control hazards in permit-required confined spaces. Spaces posing the least risk (above the threshold set by the definition of permit-required confined space) will necessitate the fewest procedures to ensure safe entry. Spaces containing severe or multiple hazards will require more detailed and comprehensive procedures. Lastly, confined spaces not posing the minimum risk set by the definition of permit-required confined space require the least amount of effort to render them safe for employees; such spaces need neither attendants nor permits.[11]

On the other hand, there are some confined spaces that do not normally contain a hazardous atmosphere, but that might under certain conditions. These spaces are typically designed for employees to enter periodically, but they usually lack adequate ventilation to prevent the accumulation of a toxic or flammable atmosphere or to prevent the depletion of oxygen. Many of the "low-hazard" spaces mentioned in the record are spaces of this type. For example, diked areas, as noted by several commenters (Ex. 14–124, 14–150, 14–168, 14–184, 113, 140), do not normally pose hazards severe enough to warrant the issuance of permits or the presence of attendants. The telecommunications industry (Ex. 14–95, 14–104, 14–110, 14–139, 14–149, 14–162, 14–169, 14–188) contended that their manholes do not contain sufficient hazards to justify coverage under the permit space standard. Under industry practices currently used for entry into such spaces, these confined spaces do not have a potential to contain any hazard capable of causing death or serious physical harm, except in very rare circumstances.

OSHA believes that the practices necessary to make confined spaces that merely have the potential to contain hazardous atmospheres (as opposed to one that contains a hazardous atmosphere under normal conditions) safe are widely recognized and used throughout various industries. OSHA requirements for such spaces are contained in §§1910.268(o), for

[11] These spaces are addressed in the definition of non-permit-required confined space and in paragraphs (c)(1) and (c)(8) of the final rule. These provisions require employers to evaluate these confined spaces to ensure that they are not permit spaces and to re-evaluate them if their use or configuration changes in a manner that might pose hazards to entrants.

underground telecommunications manholes and unvented vaults, and 1926.956, for underground electric transmission and distribution work. The Agency included similar requirements in §1910.269(e), for "enclosed spaces" in its proposed standard for electric power generation, transmission, and distribution work (54 FR 5012), and in proposed §1910.146(i), for "low-hazard" permit spaces. The practices necessary for eliminating the potential hazardous atmosphere for these spaces as set out in these documents include checking the cover for evidence of possible hazards, placing barriers after the removal of the cover, performing atmospheric testing, and providing continuous mechanical ventilation. Atmospheric testing includes testing for oxygen content, for the presence of flammable vapors and gases, and for potential toxic air contaminants. Mechanical ventilation is provided if a hazardous atmosphere is detected.

OSHA believes that these practices can be adopted to ensure safe entry into any confined space that can be maintained safe for entry by ventilation alone. Some confined spaces are designed for employees to enter under normal operating conditions, although they do not provide sufficient natural or mechanical ventilation to ensure an adequate supply of oxygen or to disperse flammable gases and vapors and toxic air contaminants that may be introduced accidentally into the permit space environment. Testing the atmosphere within the space and providing adequate continuous ventilation can normally eliminate the hazardous atmosphere, producing the equivalent of a non- permit confined space. Other types of permit spaces with only atmospheric hazards can be isolated, purged, and ventilated from outside the space. If no entry is needed to achieve a safe atmosphere, then procedures similar to those described earlier for the telecommunications and electric utility industries can be followed to ensure the safety of entrants.

By contrast, however, for a permit space that contains a hazardous atmosphere under normal operating conditions, it is usually necessary to make an initial entry in order to control the hazards within the space. The initial entry involves the exposure of the entrant to any hazards within the space, since the purpose of the entry is to control the hazards for future entries. The measures that must be taken to control the hazards, such as cleaning the space, vary with the types of hazards present within the space. Similarly, permit spaces into which hazards (such as welding or toxic or flammable cleaning materials) are introduced during entry need the protection afforded by the complete permit space program in order to assure that all measures, in addition to ventilation, necessary for the protection of entrants are followed. In these cases, the employer's evaluation of the space before entry must take into account these additional sources of hazardous atmospheres that will be introduced into the space during entry. Pre-entry monitoring will not provide the needed assurances of safety in these situations. Accordingly, the permit system is necessary to provide protection form hazards in the permit space during these types of entries. The permit identifies the measures that must be taken to ensure that employees can safely enter the permit space, and the attendant watches for conditions not envisioned during the preparation of the permit and for other prohibited conditions. These two elements of the permit space program are essential for the safety of authorized entrants working in spaces that would contain a hazardous atmosphere under normal operating conditions.

Additionally, ANSI Z117.1–1989 (Ex. 129), Section 2, provides that a space which, by configuration, meets the definition of a confined space but which is found, after evaluation, to have little potential for the generation of hazards or to have had its hazards eliminated by engineering controls is to be considered as a non-permit confined space. The ANSI standard treats these spaces separately from permit-required confined spaces, applying only the requirements for identification of confined spaces and evaluation of their hazards and for atmospheric testing, along with special provisions for non-permit confined spaces. The ANSI standard does not apply the other requirements of the consensus standard to such spaces, but provides only that these other requirements be considered for application to the procedures used for entry.

OSHA has determined that it is not appropriate to require the entry permit program to be implemented for entries into permit spaces that contain only atmospheric hazards which the employer demonstrates can be controlled with ventilation alone. These spaces can be made safe for entry following specific procedures that are spelled out in paragraph (c)(5) of the final rule. Paragraph (c)(5) of the final rule allows employers to conduct entry operations for such spaces in accordance with these procedures without following the non-training related provisions of the permit space program (paragraphs (d) through (f) and (h) through (k) of the final rule). The procedures in paragraph (c)(5) are based on proposed paragraph (i), with modifications supported by the rulemaking record, and are explained in the following discussion.

Additionally, OSHA has determined that spaces that have had all hazards eliminated can be reclassified as non-permit spaces for as long as the hazards remain eliminated. (It should be noted that continuous forced air ventilation controls atmospheric hazards—it does not eliminate them.) For spaces posing only non-atmospheric hazards, if those hazards can be removed without entry into the space, the permit space may be reclassified as a non-permit confined space after the hazards are removed. For example, the engine for a cement mixer can be locked out, and the mixer can then be safely entered for maintenance (assuming there are no other hazards inside the mixing drum). For spaces with atmospheric hazards and for spaces with non-atmospheric hazards that can only be eliminated through entry into the space, the permit space can first be entered following all the requirements spelled out in paragraphs (d) through (k) of the final rule; and, after the employer certifies that the hazards have been eliminated, the space can be reclassified as a non-permit confined space. Requirements for the procedures to be used in reclassifying permit spaces are contained in final §1910.146(c)(7), discussed later in this section of the preamble.

OSHA believes that the approach taken in paragraphs (c)(5) and (c)(7) of the final rule is consistent with that taken in ANSI Z117.1–1989. The major difference is that the consensus standard treats all non-permit required confined spaces [12] alike, whereas the OSHA standard separates them into two categories—permit spaces with atmospheric hazards controlled by

[12] The ANSI definitions of "confined space", "permit-required confined space", and "non-permit confined space" differ somewhat from OSHA's definitions of these terms. OSHA's definition of "permit-required confined space" is basically the same as ANSI's definition of "confined space". Under the ANSI definition, all confined spaces have an actual or potential hazard, while OSHA's definition of "confined space" includes spaces with no hazards at all (which are not regulated under final §1910.146). The final rule's definition of "non-permit-required confined space" covers these hazard-free confined spaces, as well as spaces that have had their hazards eliminated under paragraph (c)(7). The ANSI definition of "non-permit-required confined space" covers confined spaces whose hazards have been eliminated by engineering controls and confined spaces that have "little potential for generation of hazards". It is the ANSI "non-permit-required confined spaces" that are regulated under paragraphs (c)(7) and (c)(5) of the final rule.

means of ventilation alone and permit spaces that have been reclassified as non-permit confined spaces because the hazards have been eliminated.

This two-pronged approach better protects employees than the ANSI standard for two basic reasons. First, by minimizing the amount of regulation that applies to spaces whose hazards have been eliminated, it encourages employers to actually remove all hazards from permit spaces, which is the best possible protection for entrants. The rules that do apply in such situations (paragraph (c)(7), discussed later in this section of the preamble) are only those necessary to ensure that the hazards have indeed been removed. Second, for permit spaces that can be maintained safe by ventilation alone, the regulation specifies exactly what is required of the employer. As noted earlier, the practices required by paragraph (c)(5) for these spaces have been demonstrated in the telecommunications and electric utility industries as being highly effective in protecting entrants from the limited hazards present in such spaces (Ex. 14–7, 14–39, 14–53, 14–80, 14–171; Washington Tr 180–181). The ANSI standard does not specifically require such protective measures as ventilation in such cases. If the employer needs additional flexibility in controlling the hazards in these permit spaces, it is available by following the full permit procedures outlined in paragraphs (d) through (k) of the final rule. These provisions, although they require additional protection in the form of attendants and permits, give the employer more flexibility in applying different controls to the hazards that are present.

Based on review of the record, OSHA has determined that there are circumstances in which employers can control atmospheric hazards without following the full permit procedures outlined in paragraphs (d) through (k) of the final rule. As noted earlier, some industries, such as telecommunications (regulated under §1910.268(o)), have successfully protected employees from atmospheric hazards in workspaces through testing and continuous ventilation, without following all the requirements proposed in §1910.146. OSHA believes that such experience indicates that ventilation and testing could protect employees throughout general industry from atmospheric hazards posed by similar types of permit spaces. Accordingly, OSHA has decided to allow employers, under certain conditions, to control atmospheric hazards within a permit space following specific procedures that are spelled out in the final rule in lieu of compliance with paragraphs (d) through (f) and (h) through (k) of the final rule. The only requirements from the full permit space program that would apply to entry following these procedures are the training provisions in paragraph (g) of the final rule. The Agency has determined that training employees in the procedures is necessary and appropriate and that paragraph (g) contains the relevant requirements for this training.

Paragraph (c)(5)(i) of the final rule sets forth the conditions that must be met before a permit space may be entered under the alternative procedures, which are specified in paragraph (c)(5)(ii).

The first condition, set out in paragraph (c)(5)(i)(A) of the final rule, is that the employer must be able to demonstrate that the only hazard posed by the permit space is an actual or potential hazardous atmosphere. The procedures required under paragraph (c)(5)(ii) are only appropriate for atmospheric hazards, and the spaces for which these procedures can be used pose only this type of hazard. If the space poses other hazards as well, either all the hazards must be eliminated, under paragraph (c)(7) of the final rule, or the space may only be entered following the full permit space procedures set out in paragraphs (d) through (k).

The second condition, set out in paragraph (c)(5)(i)(B) of the final rule, is that the employer must be able to demonstrate that ventilation alone is sufficient to maintain the permit space safe for entry. In order for the space to be considered safe, the atmosphere within the space after ventilation may not be expected to approach a hazardous atmosphere. This is necessary so that, if the ventilation shuts down for any reason (such as loss of power), the employees will have enough time to recognize the hazard and either exit the space or restore the ventilation. A guideline of 50 percent of the level of flammable or toxic substances that would constitute a "hazardous atmosphere" may be used by employers in making the determination required under paragraph (c)(5)(i)(B). [13] Additionally, the work to be performed within the space must not introduce any hazards—work with hazardous quantities of flammable or toxic substances and hot work are not permitted. This type of work would introduce hazards beyond those accounted for by the determination that the permit space can be maintained safe for entry. Paragraph (c)(5)(i)(B) indicates clearly that an employer who relies on continuous forced air ventilation to maintain spaces safe for entry must be able to establish that other measures are not needed to protect entrants.

The third condition, set out in paragraph (c)(5)(i)(C) of the final rule, is that the employer must develop monitoring and inspection data that supports the demonstrations required by paragraphs (c)(5)(i)(A) and (c)(5)(i)(B). The atmospheric monitoring data must show that ventilation will keep the air inside the permit space within the guidelines of paragraph (c)(5)(i)(B), discussed earlier. The data required by paragraph (c)(5)(i)(C) are essential for the employer and employees, as well as OSHA, to be able to determine whether or not the space can be maintained safe for entry with the use of ventilation alone.

The fourth condition, set out in paragraph (c)(5)(i)(D) of the final rule, is that, if an initial entry is performed to gather the data required under paragraph (c)(5)(i)(C), it be conducted in accordance with the full permit space program requirements given in paragraphs (d) through (k). The Agency recognizes that monitoring and inspection data may be obtained either through entry into a space, or from outside the space, as long as the data provide complete and accurate information on air contaminants throughout the confined space. In many instances, however, it will be necessary to make an initial entry into the space in order to make the necessary determination. Paragraph (c)(5)(i)(D) requires that any entry to obtain the data be performed in accordance with all the provisions of the standard, because any relief from permit space program requirements is not allowed until the process of demonstrating, inspecting, monitoring, and documenting the conditions to be expected during entry is completed.

The fifth condition, set out in paragraph (c)(5)(i)(E) of the final rule, is that the determinations and supporting

[13] Two exemples may help to clarify this guideline.

(1) The LFL for methane is a concentration of 5 percent by volume. Ten percent of this value is 0.5 percent, a concentration which would be considered hazardous, by definition. Under the guideline, the measured concentration of methane should not exceed 0.25 percent after ventilation in order for the procedures specified in paragraph (c)(5)(ii) of the final rule to be acceptable.

(2) The 8-hour time weighted average PEL for chlorine, under Table Z-1, is 0.5 parts per million. This concentration of chlorine would be considered hazardous by the definition of "hazardous atmosphere". Under the guideline, the measured concentration of chlorine should not exceed 0.25 parts per million after ventilation in order for the procedures specified in paragraph (c)(5)(ii) of the final rule to be acceptable.

data required by paragraphs (c)(5)(i)(A) through (c)(5)(i)(C) be documented and made available to employees who enter the spaces under the terms of paragraph (c)(5). This documentation will enable the employer, employees, and OSHA to evaluate the determination that paragraph (c)(5) applies to a given permit space.

The sixth, and final, condition, set out in paragraph (c)(5)(i)(F) of the final rule, is that the entry be performed in accordance with the specific procedures required by paragraph (c)(5)(ii).

Paragraph (c)(5)(ii) of the final rule sets forth the procedures that must be followed for entries under paragraph (c)(5). The procedures detailed in this paragraph have been derived from several sources. Proposed paragraph (i) set out procedures that could be used for spaces that presented an extremely low probability of encountering atmospheric hazards. Proposed paragraphs (i)(1) and (i)(2) would have required testing, ventilation, and other measures necessary to ensure that the space remained safe for entry. These provisions, modified as warranted by the public record, have formed the basis of most of the requirements contained in paragraph (c)(5)(ii) of the final rule.

Section 4 of ANSI Z117.1–1989 provides requirements necessary for safe entry into non-permit confined spaces. OSHA also relied on some of these provisions, specifically the training and testing requirements contained in Sections 4.2 and 4.4, respectively, in the development of paragraph (c)(5)(ii) of the final rule.

Lastly, the Agency based some of the provisions of this paragraph of the final rule on the existing telecommunications and proposed electric power generation, transmission, and distribution standards. Paragraph (o) of §1910.268 sets forth requirements for the protection of employees performing telecommunications work. Current industry practice in compliance with these requirements has provided effective protection for employees performing work in such spaces as manholes and unvented vaults. Paragraph (e) of proposed §1910.269 set out provisions that OSHA believed were necessary (and widely used) for the protection of employees performing electric power generation, transmission, and distribution work in "enclosed spaces".[14] (This proposed paragraph was also based largely on §1910.268(o).) These proposed and existing standards provide provisions that OSHA believes are necessary and appropriate for the protection of employees in the two industries from atmospheric hazards that can be controlled through the use of ventilation alone. OSHA has determined that these standards, with appropriate modification, can also be used to protect employees in general industry from permit spaces presenting atmospheric hazards that can be maintained safe for entry by means of ventilation alone.

Paragraph (c)(5)(ii)(A) of the final rule requires that any conditions that make it unsafe to remove an entrance cover be eliminated before the cover is removed. Some conditions within a permit space, such as high temperature and high pressure, may make it hazardous to remove a cover from the space. For example, if the atmospheric hazards within the space cause high pressure to be present within the space, the cover could be blown off in the process of removing it. To protect employees from such hazards, a determination must be made as to whether or not it is safe to remove the cover. Such a determination would require the employer to examine the conditions that are expected to be in the permit space. The cover would be checked to see if it is hot; and, if it is fastened in place, it would be loosened gradually to release any residual pressure. An evaluation must also be made of whether conditions at the site could cause a hazardous atmosphere to accumulate in the space, which would make it unsafe for employees to remove the cover. The cover could not be removed until it is safe to do so.

Paragraph (c)(5)(ii)(B) of the final rule requires that openings to permit spaces be guarded to protect employees from falling into the space and to protect employees in the permit space from being injured by objects entering the space. The guard could be in the form of a railing, a temporary cover, or any other temporary barrier that provides the required protection. If the opening to the space is situated so that employees and objects cannot fall into the space, no additional guarding is necessary. This provision was taken from existing §1910.268(o)(1)(i), which sets forth an equivalent requirement for underground telecommunications work.

Paragraph (c)(5)(ii)(C) of the final rule requires the internal atmosphere of the permit space to be tested with a calibrated, direct-reading instrument before any employee enters the space. The atmosphere must be tested, in sequence, for oxygen content, for flammable gases and vapors, and for potential air contaminants. This provision, which is based on proposed paragraph (i)(1)(ii), is necessary to determine whether or not ventilation alone will be able to maintain the space safe for entry. The results of this testing must be within the expected range for the space, based on the employer's determination under paragraph (c)(5)(i)(A).

Paragraph (c)(5)(ii)(D) of the final rule prohibits employees from being in the space when a hazardous atmosphere is present. Any entry into a permit space containing a hazardous atmosphere must be conducted in accordance with the full permit space program requirements given in paragraphs (d) through (k).

Paragraph (c)(5)(ii)(E) of the final rule sets out requirements for the continuous forced air ventilation that must be used to maintain the permit space safe for entry. First, no employee may enter the space until the forced air ventilation has eliminated any hazardous atmosphere found within the space. Second, the ventilation must be directed to ventilate the immediate areas where an employee is or will be present within the space and must continue until all employees have left the space. Third, the air supply for the ventilation must be from a clean source and must not increase the hazards in the space. These provisions, which have been taken from ANSI Z117.1–1989 Sections 9.1 and 9.1.1 and from proposed §1910.269(e)(10) and (11), ensure that the atmosphere within the permit space remains safe during the entire entry operation.

Paragraph (c)(5)(ii)(F) of the final rule requires the permit space to be periodically tested as necessary during the entry to ensure that the continuous forced air ventilation is preventing the accumulation of a hazardous atmosphere. The frequency at which such testing would have to be performed is dependent on the nature of the permit space and the results of the initial testing performed under paragraph (c)(5)(ii)(C) of the final rule. For example, if the initial testing found no evidence of flammable gases or vapors and if the permit space is not normally expected to present the hazards posed by such gases and vapors, no further testing would be necessary. If a flammable gas or vapor is initially detected, frequent or continuous testing would be appropriate. The testing required by final paragraph (c)(5)(ii)(F), in combination with continuous forced air ventilation required by paragraph (c)(5)(ii)(E), ensures that entrants remain

[14] Defined in proposed §1910.269 as a working space, such as a manhole, vault, tunnel, or shaft, that has a limited means of egress or entry, that is designed for periodic employee entry under normal operating conditions, and that under normal conditions does not contain a hazardous atmosphere, but that may contain a hazardous atmosphere under abnormal conditions.

protected the entire time they are present within the permit space.

Paragraph (c)(5)(ii)(G) of the final rule requires employees to exit the permit space immediately if a hazardous atmosphere is detected. Additionally, the employer is required to evaluate the permit space to determine how the hazardous atmosphere developed and to implement measures to protect employees from the hazardous atmosphere before any subsequent entry under paragraph (c)(5) procedures is undertaken. Obviously, if a hazardous atmosphere is detected during entry, the permit space has not been maintained safe for entry. For any subsequent entries to be authorized under paragraph (c)(5), the employer must determine what went wrong, must take whatever measures are needed to prevent a recurrence, and must demonstrate that the subsequent entries can be performed safely, as required by paragraph (c)(5)(i).

Paragraph (c)(5)(ii)(H) of the final rule requires the employer to verify that the permit space is safe for entry and that the measures required by paragraph (c)(5)(ii) have been taken. The verification must be in the form of a certification that contains the date, the location of the space, and the signature of the certifying individual and that is made available to entrants. The certification documents the employer's compliance efforts. The certification, in combination with the documentation required under paragraph (c)(5)(i)(E), will maintain employer accountability for compliance with paragraph (c)(5)(ii), will enable OSHA to evaluate compliance with the standard, and, where permit space incidents have occurred, will assist OSHA in ascertaining how those incidents arose.

Paragraph (c)(6) of the final rule requires employers to reevaluate non-permit confined spaces whenever changes in the use or configuration of the space might increase hazards to entrants. If the reevaluation warrants, the space must be reclassified as a permit space.

The second sentence of the introductory text of proposed §1910.146(c), from which final paragraph (c)(6) was taken, would have required employers to reevaluate confined spaces in which changes have occurred to determine whether the space has become a permit space. This provision read as follows:

> If there are changes in a confined space which previously was not a permit space, the employer shall reevaluate that space to determine if it has become a permit space.

One commenter (Ex. 14–45) was concerned that all non-permit confined spaces would have to be reassessed for every change, however minor. In response to this comment, OSHA requested, in Issue 7 of the notice of public hearing (54 FR 41462), information on whether guidelines should be listed to indicate when work spaces would need reevaluation. The Agency also sought information on what those guidelines should be.

Most of the testimony on this issue dealt with the conditions under which a permit space should be "reevaluated" after entry. For example, Mr. Tom Lawrence, representing the Monsanto Company (Washington Tr. 520–528), testified that the atmosphere in the permit space would have to be retested if the entrants left the space unoccupied or if nearby environmental conditions were to impact the confined space adversely.

These comments are not directly relevant to the issue raised in the hearing notice, that is, under what conditions should a non-permit confined space be reevaluated. The final rule contains separate requirements intended to protect employees from hazards arising when conditions in a permit-required space change. For example, final paragraph (i) requires the employer to ensure that attendants know of and can recognize potential permit space hazards and that they monitor activities inside and outside the space to determine if it is safe for entrants to remain inside. It is the duty of the attendant to order entrants to leave when evidence of an uncontrolled hazard exists (final paragraph (i)(6)). Also, it is the duty of the entry supervisor to determine, at appropriate intervals, whether the conditions within the space remain safe for the presence of employees and to cancel the permit whenever conditions are otherwise (final paragraph (j)(6)). The Agency believes that the final rule fully addresses the hazards of changes within permit spaces during entry and that the wide ranging circumstances causing new hazards not addressed by the permit are too numerous to list in the standard.

The issues at hand, however, are: (1) whether OSHA should revise the language of the introductory text of proposed paragraph (c) to present guidelines as to what types of changes in confined spaces would necessitate reevaluation of non-permit spaces and (2) what types of changes would result in the reclassification of a non-permit space into a permit space. Only three commenters (Ex. 14–45, 14–57, 14–178) addressed these issues. S. C. Johnson and Son, Inc. (Ex. 14–45) suggested that the language be revised to indicate that reevaluation would only be necessary when the changes introduced increased hazards. The other two argued that periodic evaluation should be required as changes warrant.

OSHA believes that the language contained in the proposal was widely understood. However, the Agency is revising the text of this provision to indicate more clearly that reevaluation is required only when changes "that might increase the hazards to entrants" occur and to indicate that reclassification of a non- permit confined space to a permit-required confined space may be necessary. OSHA believes that this modification will clarify the standard and will result in a more performance-oriented final rule. OSHA does not expect employers to reevaluate spaces because trivial changes have occurred that do not affect the nature of the space or the work performed in the space.

Paragraph (c)(7) of the final rule gives procedures under which the employer may eliminate hazards within a permit space so that it may be reclassified as a non-permit confined space. OSHA believes that this paragraph will protect employees by encouraging employers to eliminate (as opposed to control) hazards within permit spaces. OSHA anticipates that some spaces will be reclassified back and forth from time to time, because of changes in their configuration or use. Accordingly, the Agency has included language in this paragraph to indicate clearly that the reclassification is valid only as long as the hazards remain eliminated.

Paragraph (c)(7) reflects the public input on Issues 11 and 17 of the NPRM and Issue 13 of the hearing notice, as discussed earlier under the summary and explanation of paragraph (c)(5). As noted in that discussion, OSHA believes that employees are fully protected from the hazards of permit space entry once all hazards within the space have been eliminated. Clearly, if there are no hazards within the permit space, an entrant is in no danger. By contrast, if the hazards are simply controlled rather than removed, the entrant could be injured upon failure of the control system. Therefore, the Agency has determined that it is appropriate to allow employers who eliminate hazards within permit spaces to reclassify those spaces as non-permit confined spaces.

Paragraph (c)(7)(i) of the final rule allows the employer to reclassify a permit space as a non-permit confined space if there are no actual or potential atmospheric hazards and if all other hazards within the space are eliminated

without entry into the space. The reclassification would be valid as long as the non- atmospheric hazards remain eliminated.

This paragraph applies only to permit spaces containing no actual or potential atmospheric hazards. OSHA expects that this provision will apply primarily to spaces containing hazardous energy sources or containing engulfment hazards. The control of hazardous energy sources is addressed by existing §1910.147, *The control of hazardous energy sources (lockout/tagout).* That standard covers the service and maintenance of machines and equipment in which the unexpected energizing or start up of the machines or equipment or release of stored energy could cause injury to employees. OSHA believes that it is possible in some cases to deenergize and lockout machinery and equipment, using the procedures specified in §1910.147,[15] so that the energy hazards are eliminated without any entry into the permit space. For spaces posing only engulfment hazards, it may be possible to remove the hazard by removing the engulfing material from the space before entry. In these cases, the Agency believes that entry into these spaces, after the hazards have been removed, is at least as safe as (if not safer than) entry in accordance with the full permit space program requirements given in paragraphs (d) through (k). Paragraph (c)(7)(i), therefore, allows the reclassification of these types of spaces after their hazards have been eliminated.

The reclassification of permit spaces allowed under paragraph (c)(7)(i) of the final rule recognizes that spaces such as mixers and material bins can have their hazards removed before entry, so that entrants are fully protected without the need for permits, attendants, or other features required by the full permit space program requirements given in paragraphs (d) through (k). Mixers can be locked out before it is entered for servicing or maintenance, removing the mechanical hazards. A material bin posing an engulfment hazard can be emptied before entry, thus removing that hazard. These are the types of spaces that can be made safe for entry following paragraph (c)(7)(i) of the final rule.

[15] If the equipment or machinery is not deenergized and locked out or tagged in accordance with §1910.147, then it must be guarded as required in other general industry standards, such as Subpart O, for machine guarding, and §1910.303(g) and (h), for the guarding of electric equipment. As long as the equipment or machinery inside the permit space remains guarded, employees within the space are not considered to be exposed to any equipment-related hazards.

Permit spaces that contain or have the potential to contain hazardous atmospheres may also be reclassified as non-permit spaces, under paragraph (c)(7)(ii) of the final rule. The Agency believes that these spaces need to be treated the same as any space that must be entered in order to eliminate hazards. After this type of space is isolated, purged, and ventilated from outside, it must be entered to test the atmosphere and inspect conditions within the space in order to ensure that the hazards have indeed been eliminated. (Once again, control of a hazardous atmosphere is not the same as its elimination.)

Paragraph (c)(7)(ii) of the final rule allows the employer to reclassify a permit space as a non-permit confined space after a permit entry is performed to eliminate hazards within the space. The permit entry with must be conducted in accordance with the full permit space program requirements given in paragraphs (d) through (k). This reclassification would also be valid only as long as the hazards remain eliminated.

As noted earlier, OSHA believes that entry into a permit space whose hazards have been removed is safe. Some spaces, however, must be entered either to remove the hazards or to verify that the hazards have been eliminated. For example, if the disconnecting means for an energy source is inside the permit space, the space must be entered in order to deenergize it and lock it out. Also, as noted previously, if the permit space poses any atmospheric hazards, it must first be entered in order to perform the testing and inspection that is necessary to determine whether the hazards have been eliminated. As long as the entry to remove the permit space hazards is conducted in accordance with the full permit space program requirements given in paragraphs (d) through (k), the space can be considered as safe and reclassified after the hazards have been removed.

The types of permit spaces that could fall under paragraph (c)(7)(ii) include such spaces as chemical tanks and boilers. Chemical tanks can frequently be made safe by draining them of their contents, purging any residual chemicals with water, and ventilating the space after purging is complete. Boilers can be made safe for entry by shutting them down, opening the access ports to allow for temperature reduction and natural ventilation, and entering the space to remove any residual hazards, such as loose buildup that could fall onto entrants. In each case, an entry, conducted in accordance with the full permit space program requirements given in paragraphs (d) through (k), must be performed in order to ensure that the hazards have been eliminated.

Paragraph (c)(7)(iii) of the final rule requires employers seeking to reclassify a permit space to document the basis for the determination that all permit space hazards have been eliminated, through a certification that contains the date, the location of the space, and the signature of the certifying individual. The certification must be made available to each employee entering the space.

This provision is basically equivalent to paragraphs (c)(5)(i)(E) and (c)(5)(ii)(H) of the final rule. In each case, the employer must substantiate all determinations that compliance with the alternate provisions is appropriate, so that employers, employees, and the Agency have the means by which to evaluate those determinations. Compliance with this provision will require careful consideration of the spaces to be reclassified. OSHA believes that this paragraph imposes a reasonable burden, considering that compliance will enable employers to have employees enter these reclassified spaces without the need to implement the full array of permit space program requirements.

If a permit space hazard arises in a space that has been reclassified under paragraph (c)(7), paragraph (c)(7)(iv) of the final rule requires employees to exit the space and requires employers to reevaluate the space to determine if the space must be reclassified again as a permit space.

This provision indicates clearly that employers retain responsibility for the safety of employees who enter spaces after the spaces have been reclassified as non-permit confined spaces. The employer must determine if it is still appropriate, under the circumstances identified through the reevaluation, to classify the space where the hazard arose as a non-permit confined space. A reevaluation aimed at reestablishing compliance with paragraph (c)(7) will encompass the demonstrations, testing, inspection, and documentation required in paragraphs (c)(7)(i) through (c)(7)(iii) of the final rule. OSHA anticipates that some employers will seek to reestablish compliance with paragraph (c)(7), while others will choose to conduct the entries in accordance with the full permit space program requirements given in paragraphs (d) through (k). The Agency's concern is that the approach chosen adequately protect employees who enter the spaces.

Paragraph (c)(8) of the final rule contains requirements pertaining to the responsibilities of host employers to employees of other employers (contractors) who are to perform permit-

required confined space entry. This provision corresponds to paragraph (c)(10) of the proposed rule. Host employers who comply with these requirements will enable their contractors to develop and implement permit space programs that satisfy §1910.146. As noted in the preamble to the proposal (54 FR 24091), a contractor who is unfamiliar with a particular workplace may experience difficulties in identifying and controlling permit space hazards, especially where the host employer assumes that the contractor knows how to operate safely in a particular permit space simply because the contractor has a particular professional expertise.

In Issue 18 of the NPRM (54 FR 24088), OSHA asked if the term "contractor" was sufficiently inclusive to ensure that all employers who have permit space operations in workplaces they do not control benefit from the provision in proposed paragraph (c)(10). OSHA also asked if there were employers who, while neither being contractors nor having control of the workplace, would have employees enter permit spaces.

Many commenters responded to the questions posed in Issue 18 (Ex. 14–61, 14–62, 14–63, 14–123, 14–132, 14–158, 14–161, 14–162, 14–170, 14–171, 14–182, 14–183, 14–185, 14–219). The majority felt that no further clarification of the term "contractor" was necessary. For example, the Department of Defense, Force Management and Personnel (Ex. 14–219) stated:

> The term "contractor" used in the proposed standard is suitably defined to ensure that all individuals that may have to work in confined spaces would be covered under the requirements.

The Duquesne Light Company (Ex. 14–182) agreed:

> The term "contractor" is sufficiently inclusive to ensure that noncompany employees are made aware of permit space hazards at the site on which they work.

Three commenters (Ex. 14–63, 14–158, 14–171) believed that the term "contractor" was not sufficiently inclusive. The comments of the American Insurance Association (Ex. 14–158) were typical of these:

> ... we believe that the term "contractor" does not accurately describe all employers whose employees may be required to enter into confined spaces at the premises of a host employer, and may in fact mischaracterize the nature of the relationship between the host and the visiting or guest employee in many instances. As an example, although insurance company personnel on occasion are called upon to make inspections or observations of the premises of their insureds for insurance and related purposes, insurers do not typically act as "contractors" for their insureds in that regard. We request that OSHA use another term such as "dispatching employer" or a similar term when referring to an employer whose employees are sent to the premises of a host employer.

The Atlantic Richfield Company (Ex. 14–123) recommended that "contractor" be changed to read "contractor/subcontractor" in the final rule, since many primary contractors subcontract out specific tasks. The State of Maryland (Ex. 14–63) recommended that the term "contractor" be expanded by adding to it "or temporary employment agency or service."

On the basis of the information submitted to the record, OSHA believes that the term "contractor", as it is used in the regulatory text, is inclusive enough to cover all employees who may be required to enter permit spaces. The Agency has continued to use the term, unchanged, in the final rule. Temporary employment agencies or subcontractors are considered to be "contractors" by OSHA. In any case, OSHA only uses the term "contractor" as an example (parenthetical) of the usual type of "personnel other than its own employees" that a host employer is likely to encounter. In this final rule, OSHA intends to cover the operations of all employers whose employees enter permit spaces.

Paragraph (c)(8) requires host employers:

(1) To inform the contractor that the workplace has permit spaces that may be entered only under a permit space program;

(2) To apprise the contractor of hazards associated with the permit space;

(3) To apprise the contractor of any permit space procedures the host employer has implemented;

(4) To coordinate entry operations with the contractor; and

(5) To debrief the contractor at the conclusion of entry operations.

This provision of the final rule is based on paragraph (c)(10) of the NPRM.

Several comments were received concerning the host employer's responsibilities to the contractor. The commenters agreed that the host employer should be required to inform contractors of the hazards present in, and the precautions the host employer has previously taken regarding, the host employer's permit spaces (Ex. 14–81, 14–86, 14–107, 14–111). However, there was some objection to the proposed requirement that the host employer provide "all available information" on permit space hazards to the contractor (Ex. 14–30, 14–157, 14–161, 14–171, 113). These commenters suggested that the requirement was too broad and recommended that the host employer provide only "pertinent" information to the contractor. For example, the American Petroleum Institute (Ex. 14–168) had this concern with paragraph (c)(10) of the NPRM:

> In many circumstances, it is absolutely vital to the safety of all workers that confined space entries in existing process facilities remain under the close control of the host company, using one common *and consistent set of procedures established for the facility*, conforming to the OSHA rule.
>
> However, the language proposed seems to preclude this approach, and instead requires that the host company provide the contractors with all the necessary information, and that the contractors then independently comply with the regulation through their own diverse programs. [Emphasis was supplied in original.]

The Hartford Steam Boiler Inspection and Insurance Company (Ex. 14–131) brought up a subject (identification of permit entry permit spaces) which was not covered in the NPRM. They stated:

> The regulation is unclear as to who would identify the entry permit spaces[,] the contractor or the host employer.

A comment from S.C. Johnson & Son, Inc. (Ex. 14–45) asked that OSHA "further clarify" the requirements concerning a host employer's duty to other employer's employees. Other commenters (Ex 14–111, 14–131, 14–150), while not disagreeing with the intent of proposed paragraph (c)(10), also asked that it be clarified or provided recommended language for amending the provision.

In response to the concerns expressed relating to proposed paragraph (c)(10), OSHA has rewritten and reorganized the standard's provisions. The final rule breaks out the different provisions in the proposed paragraph into separate requirements.

In paragraph (c)(8)(i), OSHA is requiring that the host employer inform the contractor that the workplace contains permit spaces, and that entry into those spaces is allowed only through compliance with a permit space program meeting the requirements of this standard. This very basic information would have been required to be provided to contractors in any case, under the proposed provision to provide "all available information"; but OSHA has decided, in order to eliminate any confusion or misunderstanding, to specifically require the host employer provide it to the contractor.

This is the type of approach taken throughout final paragraph (c)(8)—OSHA has provided more specific language with respect to what is

required, as opposed to the relatively open-ended general language contained in the proposal. The Agency believes that this approach is responsive to the comments received on proposed paragraph (c)(10) and that the final provisions give better guidance to employers as to what is expected in terms of compliance.

In paragraph (c)(8)(ii), OSHA is requiring the host employer to provide the contractor with the elements (the hazards posed by and the host employer's experience with the space) that indicate that the space in question is a permit space. This provision does not require a host employer to make a detailed investigation of any permit spaces, but merely to provide to the contractor whatever information the host employer used in identifying a permit space.

In paragraph (c)(8)(iii) of the final rule, OSHA is requiring the host employer to apprise the contractor of the precautions or procedures, if any, that the host employer has implemented for the protection of employees in or near permit spaces where contractor personnel will be working.

OSHA considers that the information required from the host employer, clearly set out in paragraphs (c)(8)(i) through (c)(8)(iii), is the minimum needed by a contractor to perform permit space entries at a host employer's workplace. This is the same information that the Agency would have required under proposed paragraph (c)(10), but it has been presented in a more precise manner. Except for the open-ended nature of proposed paragraph (c)(10), there was no substantive objection to the provision itself.

OSHA has included paragraphs (c)(8)(iv), (c)(8)(v), and (c)(9) in the final rule to further address the relationship between the host employer and the contractor. These provisions, which have no counterparts in the proposal, cover coordination of efforts to provide safe permit space entry operation and the exchange of information between the host and the contractor. They are also a direct outgrowth of the recognition, as reflected in the record, that coordination between host employers and contractors is essential to the safety of all employees who must enter permit spaces.

Various witnesses and commenters (Ex. 14–63, 14–111, 14–124, 14–147) recommended that additional coordination between host employer and contractor was desirable (see the previous discussion of paragraph (c)(8)). With respect to this question, some commenters (Ex. 14–63, 14–178, 14–183, 113, 138) recommended that the rule address the responsibilities of contractors in more detail. For example, the State of Maryland's Occupational Safety and Health Program (Ex. 14–63) stated: "Maryland strongly recommends that ... consideration be given to expanding Section (c)(10) to more clearly define the role of the contractor. Although (c)(10) indicates to the 'host employer' that he/she has obligations to the contractor, the obligations of the contractor are not clearly defined." The State of Maryland concluded that the contractor's obligation to comply with §1910.146, which was clearly noted in the preamble to the NPRM (54 FR 24091) should be made explicit in the standard as well.

Another commenter (Ex. 14–111) suggested that proposed paragraph (c)(10) require contractors to comply with all provisions of §1910.146 and that contractors be required to "... obtain all relevant information from the host employer regarding specific workplace hazards that could only be recognizable by the host employer." The commenter suggested that the host employer, in turn, be required to "provide the relevant information to the contractor."

Another rulemaking participant (Ex. 14–124) noted, however, the lack of information a host employer may have, as follows:

> ... OSHA should recognize that the owner/operator may not have expertise in confined space entry and may only be able to provide the contractor with a list of chemicals, their MSDSs and physical information on the confined space. The owner/operator may be hiring an experienced contractor to perform the work precisely because he recognizes that he does not have the expertise to perform the task safely. In such a situation, the owner could not be expected to advise the contractor.

This commenter recommended that OSHA revise proposed paragraph (c)(10) to require that contractors communicate and coordinate with host employers as necessary to comply with proposed paragraphs (c)(1) through (c)(9) and to provide that the host employer's failure to provide information requested by the contractor does not relieve the contractor from the requirement to comply with the standard.

OSHA has decided that the regulatory burdens placed upon host employers concerning permit space entry in paragraph (c)(8) of this final rule should also be placed upon contractors where applicable. Therefore, the Agency is including new paragraph (c)(9) in the final rule to address the duties of the contractor with respect to safe permit space entry operations. OSHA believes that these additional requirements will contribute significantly to the increased safety and health of host employer and contractor employees where such employees are involved in permit space entry operations.

Paragraph (c)(9)(i) of the final rule is the corollary of paragraph (c)(8)(ii) and requires that the contractor obtain any available information concerning permit space hazards and entry operations from the host employer. As noted earlier, this exchange of information should help the contractor to anticipate the permit space hazards that may be present during entry.

Numerous witnesses at the hearings commented about the host employer-to-contractor relationship. The opinion was virtually unanimous that coordination, including coordination of joint permit space entry operations between the two employers, was essential (Ex. 138; Washington Tr. 540; Houston Tr. 632, 724, 780; Chicago Tr. 302). These hearing participants argued that it is vital that each employer be aware of the other's tasks and work procedures.

Some who testified (Washington Tr. 418) felt strongly that contractors should be required to comply with the host employer's entry program, because they have observed cases where the contractor either had an inadequate program or no program at all. In their written comment (Ex. 14–188), the American Petroleum Institute (API) complained that proposed paragraph (c)(10) might be construed to prohibit a host employer from requiring a contractor to use the host's permit program. API recommended in its post-hearing comment (Ex. 113) that contractors, to minimize confusion and possible misunderstanding, adhere to the host employer's permit program when employees of each employer simultaneously conduct entry operations, stating:

> Often, contractors and the host employer's employees enter the same confined space to perform work activities. Confusion and misunderstanding could result if such a space is subject to two or more confined space programs. It is preferable in such a situation for a single confined space program to govern. Usually the host employer is in the best position to understand the hazards, and require a uniform plant-wide procedure for confined space entry.

Another commenter (Ex. 14–86) also expressed concern about situations in which both host employers and contractors have employees working in permit spaces. The commenter suggested that the standard allow contractors either to develop their own permit space programs or adopt the program used by the host employer. Additionally, this rulemaking

participant testified (Houston Tr. 781) that "[s]uch flexibility is needed to accommodate the wide variety of experience levels among contractors regarding confined space work and the wide variety of tasks required."

Some rulemaking participants (Ex. 14–131, 14–138, 117; Washington Tr. 359–360), representing companies who inspect boilers and pressure vessels, stated that proposed paragraph (c)(10) should require host employers to take all measures necessary to render permit spaces safe for entry and, where possible, "low-hazard" before having contractors enter those spaces. One witness stated (Washington Tr. 360), "Such a requirement would not put an additional burden on the host employer, while it would provide the most effective means of protecting the safety of our employees and those of other contractors or similar employers." The Factory Mutual Engineering Association, an organization whose employees are required to enter confined spaces owned and controlled by other employers, recommended in its post-hearing comment (Ex. 117) that host employers be given virtually all responsibility for testing and preparation of a permit space for entry by contractors, unless the host's employees never enter the permit spaces.

OSHA agrees with the testimony advocating coordination between the host employer and contractor and has included paragraphs (c)(8)(iv), (c)(9)(ii), and (d)(11) in the final rule to require such coordination. Paragraph (d)(requires employers to coordinate entry operations when employees of more than one employer are working simultaneously as authorized entrants in a permit space, so that employees of one employer do not endanger the employees of any other employer. This provision applies generally to all multi-employer permit space entry operations, so as to address the relevant hazards under the variety of conditions actually encountered. The hazards of multi-employer permit space entry operations exist whether or not one of the employers acts as a host employer. [16] Therefore, OSHA has adopted paragraph (d)(11) to cover coordination among all employers whose employees are present during entry operations. Paragraphs (c)(8)(iv) and (c)(9)(ii) direct the host employer and contractor, respectively, to the basic requirement for coordination of efforts to protect employees from permit space hazards. This coordination should include a determination of what permit program is to be used by the contractor. The final rule does not prohibit the host employer from requiring a contractor to use the host's permit program, nor does it require the contractor to use the host's program. The host employer may choose to condition its contract on the contractor's compliance with the host's program, as is often the case in the petrochemical industry.

While OSHA agrees that a specified division of responsibilities may be appropriate in some cases, it may not be so in others. The rulemaking record indicates that there is a wide range of circumstances in which contractor personnel enter permit spaces. There are circumstances in which contractors set up complete permit space programs at host employers' workplaces, and there are situations in which both contractor and host employer employees are working side-by-side in a permit space. For example, one commenter (Ex. 14–63) stated, "... the general industry employer often will leave to a contractor the job of cleaning, repairing and maintaining confined spaces, such as tanks, vaults and vessels."

Because of this, OSHA believes that flexibility is necessary and that the host and contractor should cooperate and should make arrangements to implement a permit program best suited to their particular situation. The final rule provides this flexibility.

Paragraph (c)(8)(v) of the final rule requires the host employer to debrief the contractor at the end of entry operations concerning any hazards confronted or created during entry operations. Paragraph (c)(9)(iii) of the final rule requires the contractor to inform the host employer of the permit program followed and of any hazards confronted or created in permit spaces. These provisions had no counterpart in the proposal.

During the hearings several witnesses were asked, because they had complained about poor contractor performance and lack of accountability, if they would favor a provision in the final rule requiring contractors to report back to the host employer concerning any problems encountered, and procedures used, during permit entry operations. Many witnesses (Washington Tr. 420; Houston Tr. 743–744; Chicago Tr. 158) agreed that such a provision would be desirable. For example, in its post-hearing comment (Ex. 119), Texaco stated:

> The contractor should be required to notify the host in case of a hazard development in order that steps may be taken for: protection of personnel, protection of personnel possibly in adjacent facilities, protection of equipment and adjacent equipment (that is, if a hazard develops, then not only could the contractor be affected, but the adjacent host's employees and equipment as well). The host must be informed in order to investigate and take corrective action if warranted.

The Agency agrees that the host employer needs to be informed of the permit space program the contractor is using. This information will enable the host employer to take steps to coordinate its efforts to protect employees from permit space hazards with the contractor. Additionally, it is necessary for the host employer to receive information on any hazards found or created within the space during entry operations in order to enable the host employer to deal with these hazards during the current entry and to take measures to control them in subsequent entries. Additionally, the host employer will have this information available to assist future contractors who may be called upon to perform permit space entry. OSHA has therefore added a provision, paragraph (c)(9)(iii), that requires contractors to inform host employers of the permit program followed and of any hazards confronted or created in the permit space during entry operations. To help ensure that such information is provided to the host employer, OSHA has included a requirement in the final rule, paragraph (c)(8)(v), that the host employer debrief the contractor at the conclusion of entry operations, seeking the same information that the contractor is required by paragraph (c)(9)(iii) to provide the host employer. This exchange of information is thus required by OSHA of both host employer and contractor.

Paragraph (d), Permit space entry program.

As noted previously, requirements proposed in paragraph (c) that related to the permit space program have been included in paragraph of the final rule. The Agency believes that separating general provisions from requirements pertaining only to the program will make the final standard more understandable. Accordingly, paragraph (d) sets forth requirements for the design and implementation of permit-required confined space programs. The Agency notes that, except insofar as paragraph (d)(2) allows employers to defer hazard evaluation until actual entry operations are planned, employers are expected to begin developing their permit space

[16] A manhole that is shared by two utility companies (gas and water, for example) is one case in which neither employer may be considered the host employer. If employees of both employers are present, but neither employer acts as the host, paragraph (d)(11) would still require coordination of permit space entry operations.

programs (such as arranging for designation and training of personnel to be involved in entry operations and for rescue and emergency services) when they identify permit spaces that are to be entered by their employees. The Agency observes that an employer who waits until the last minute before entry operations begin to develop an permit space program is unlikely to have properly trained and equipped personnel available. Paragraph (d) sets forth requirements for planning of entries, so that by the time entry begins all of the program elements are in place and entries are conducted safely.

The introductory text of paragraph (d) provides that, under the permit-required confined space program required by paragraph (c)(4) of final §1910.146, the employer must comply with all the rules given in the remaining paragraphs of paragraph (d). The introduction serves merely to introduce the list of duties of an employer under a permit space entry program.

Paragraph (d)(1) of the final rule requires the employer to implement measures necessary to prevent unauthorized entry. This provision corresponds to proposed paragraph (c)(5). As noted previously, OSHA believes that it is very important to prevent unauthorized access to permit spaces. The rulemaking record demonstrates that such entry is frequently fatal.

Some commenters (Ex. 14–124, 14–130, 14–163, 14–189) argued that proposed paragraph (c)(5) was unnecessary, because proposed paragraph (c)(4) covering the posting of warning signs provided sufficient protection.[17] For example, Amoco Corporation (Ex. 14–124) stated:

> We do not think that it is necessary to post signs *and* provide barriers in lieu of training to restrict unauthorized entry. The employer should have the option of using either signs or barriers depending on the conditions. Therefore, we suggest that the phrase, 'signs and barriers' should be replaced by 'signs or barriers.' [Emphasis supplied in original.]

Similarly, another commenter (Ex. 14–163) found the two proposed provisions redundant, as follows:

> I find paragraphs (c)(4) and (c)(5) to be redundant. Both of these issues could be dealt with in one paragraph. Perhaps, (c)(4) could read: "Information. shall post signs near permit spaces to notify employees what hazards may [be] present and that only authorized entrants may enter the permit spaces. Training and, as necessary, signs or barriers shall be used to prevent unauthorized entry into permit spaces."

Monsanto Company (Ex. 14–170), on the other hand, supported proposed paragraph (c)(5), stating:

> Again, an important element in a successful confined space entry program is training in the recognition of confined spaces and the potential hazards. As OSHA acknowledges in the next definition, (c)(5), training is an alternative to posting signs and barriers.
>
> Paragraph (c)(5)—Monsanto supports OSHA's proposal to use training or other forms of warning as equivalent means for preventing unauthorized entry into confined spaces.

Some commenters (Ex. 14–68, 14–173) felt that OSHA's proposal was too weak in this area. They felt that training and signs would not prevent employee entry into permit spaces. For example, the Quaker Oats Company (Ex. 14–173) argued:

> These sections address notification (with signs) to employees that hazards exist and that only authorized entrants may enter the permit space. Paragraph (c) (5) additionally requires training *or* signs and barriers as a means of preventing unauthorized entry. We feel that these paragraphs can be combined and strengthened.
>
> We recommend that all permit spaces be posted, notifying employees that hazards may be present and only authorized entrants enter. These signs would be appropriate postings during non-entry times and during the permitted entry. All employees should be instructed as to restricted areas, and confined spaces should be secured whenever feasible with positive barriers such as locks. [Emphasis was supplied in original.]

Another commenter (Ex. 14–68) also contended that the proposal would not provide effective protection, as follows:

> Training is *not* an effective means of preventing unauthorized entry nor is a posted sign. The use of the conjunction, 'or,' in the proposed standard leaves the employer a choice among providing a positive denial of entry provision such as a locked barrier, posting a warning sign or providing training. There should be no doubt that the first choice will usually be 'training,' such as, 'Don't go in there.' At most, a sign may be posted to supplement the instructions. These precautions are so inadequate as to be no precaution. [Emphasis was supplied in original.]

OSHA believes employees need to be informed of the hazards of permit spaces (paragraph (c)(2)) and need to be protected again the hazard of accidental entry into these spaces (paragraphs (c)(3) and (d)(1)). In the proposal, these two considerations were addressed in paragraph (c)(4), *Employee information*, and in paragraph (c)(5), *Prevention of unauthorized entry*, respectively, for employers whose employees would be entering permit spaces. In the final rule, these two considerations are addressed in paragraphs (c)(2) and (d)(1), respectively, for these same employers.

Normally, training and signs are methods of informing employees of the presence and hazards of permit spaces, and they do little to prevent unauthorized access. However, if the workplace is so configured as to prevent access of unauthorized entrants into areas containing permit spaces, training, alone or in combination with signs, may prevent the unauthorized access to the spaces. Otherwise, covers, guardrails, fences, or locks will be necessary. It is the employers responsibility to use whatever measures are necessary to prevent unauthorized entry.

Additionally, OSHA intends this provision to require the employer to take administrative measures to ensure that all entries into permit spaces are authorized entries. Unauthorized entrants are hazards to themselves and to other personnel, because they expose themselves to permit space hazards without the necessary equipment or training. Furthermore, they disrupt entry operations, jeopardizing the safety of personnel who are working in the space or who are sent in to rescue or remove them from the space. The Agency believes that many of the permit space accidents documented in the rulemaking record resulted from an overly casual attitude about the authorization of entry.

Paragraph (c)(5) of the proposal was designed to underscore the importance of allowing employees to enter permit spaces only after the employer has taken the measures necessary for safe entry. However, in view of the wide variety of possible permit spaces and assortment of protective techniques, the Agency is adopting a performance-oriented approach to this provision in the final rule. The examples given in proposed paragraph (c)(5) have not been carried forward, and paragraph (d)(1) in the final rule simply requires employers to take whatever steps are necessary to prevent unauthorized employee into permit spaces. This approach will provide the flexibility employers need to provide the most effective protection for their employees.

Paragraph (d)(2) of the final rule requires the employer to identify and evaluate the hazards of permit spaces that employees will enter before they actually do so.

This provision corresponds to paragraph (c)(1) of the proposal, which read as follows:

> [The employer shall i]dentify and evaluate each hazard of the permit spaces, including determination of severity;

[17] See the summary and explanation of final paragraph (c)(2) earlier for a discussion of the issues regarding informing employees about the presence and hazards of permit spaces.

Many commenters (Ex. 14–86, 14–88, 14–124, 14–143, 14–150, 14–177, 138) complained that the phrase "including determination of severity" was ambiguous and unneeded. In its comment, Organization Resources Counselors, Inc. (Ex. 14–143) stated:

> It is difficult to understand what OSHA intends that the employer do relative to making a "determination of severity". Neither the standard, nor the preamble, offer guidance on what this phrase means or what additional action or information should be secured by the employer under his permit required confined space program. The extensive definitions of hazardous atmosphere, IDLH, immediate-severe health effects, permit required confined space, low hazard permit space, etc., provide sufficient guidance in evaluating the hazards of a space without the need for this ambiguous phrase, therefore, we recommend that it be deleted.

Another commenter, API (Ex. 14–168), stated:

> API agrees in general with this item, but the requirement for 'including determination of severity' is undefined, impractical, and totally unnecessary, given the extensive definitions of hazardous atmosphere, IDLH, immediate severe health effects, permit required confined space, and low-hazard permit space. These definitions, woven into the employer's entry permit program, ensure adequate protection without the additional ambiguous burden of 'including determination of severity'. The preamble offers no guidance on interpreting this requirement. The phrase should be deleted.

OSHA agrees that the phrase is unnecessary and possibly confusing. Specifically, the Agency concurs with the Texas Chemical Council (Ex. 14–86), who stated:

> By definition a confined space entry has the potential for the most severe penalty—death. Therefore, to define determination of severity as death under hazard identification would not be productive nor necessary for industry.Therefore, the proposed phrase "including determination of severity" has not been carried forward into the final rule.

Some commenters (Ex. 14–94, 14–118, 14–157, 14–170, 14–176) expressed concern over when OSHA expected employers to identify and evaluate hazards to comply with proposed paragraph (c)(1). For example, The Department of the Navy (Ex. 14–91) stated:

> It is important to identify and evaluate the hazards of permit spaces, and this must be done prior to entry. Is the intent of this section to require an initial facilities inspection for permit spaces or to require inspection and evaluation as work occurs? If initial facilities inspections are required, how soon must they be completed?

CMA (Ex. 14–118) had a similar concern, saying:

> The Hazard Identification section, 29 C.F.R. 1910.146(c)(1), appears to require an initial grand survey of workplaces to identify confined spaces and an analysis of the severity of their hazards. CMA members believe very strongly that this approach is misguided and could contribute to the very hazard this standard is designed to reduce.
>
> OSHA's proposed approach would be reasonable in a static work environment. Today's business environment in the chemical industry and many others is a dynamic one. Manufacturing equipment and processes are designed to be flexible to adapt to rapidly changing product demands. Consequently, the confined space hazards in this dynamic environment are also in a state of flux. The most effective approach to hazard identification will take into account the dynamic nature of today's workplace.

Still another commenter (Ex. 14–176) agreed with this assessment, explaining:

> The potential hazard of each [permit space] will depend upon the last contents and this may change frequently in batch operations. The nature and severity of the potential hazard can only be determined just prior to actual entry into the confined space.

Paragraph (c)(1) of the NPRM would have applied only to employers whose employees would enter permit spaces. Those employers would have been the ones to develop and implement a permit program. Moreover, OSHA expected that the detailed hazard identification required by proposed paragraph (c)(1) need only be performed if actual entry into a permit space was contemplated. OSHA did not intend that the hazard identification required by proposed paragraph (c)(1) be performed as part of the initial determination of the presence or lack of permit spaces in the employer's workplace under the introductory text of proposed paragraph (c). (A discussion of the initial determination of whether or not the workplace contains permit spaces is contained under the discussion of final paragraph (c)(1) earlier in this section of the preamble).

The Agency notes that the identification of a permit space inherently involves the identification of a hazard (at least in broad terms). OSHA expects that the general information obtained through compliance with paragraph (c)(1) of final §1910.146 will facilitate compliance with paragraph (d)(2). Identification of the hazards (so that entry can be safely planned for and authorized) need only be undertaken before entry—when the entry permit is being prepared. In order to make this clear in the final rule, paragraph (d)(2) specifies that the hazards be identified before employees enter the permit space.

OSHA anticipates that employers will identify and evaluate permit space hazards as necessary for development of permit space programs. For example, the Agency expects that employers who conduct frequent entries into permit spaces will be identifying and evaluating permit space hazards at the same time they are identifying permit spaces. On the other hand, OSHA understands that employers may not need to identify or evaluate the hazards of permit spaces that are entered at 5- or 10-year intervals until several years after the identification of those spaces. In the interim, since there are no authorized entries into those spaces, the program would only require that unauthorized entries be prevented. The hazards in the spaces need only be evaluated in detail some time before entry (for example, when the entry permit is prepared). The final rule makes this clear—the basic identification of permit spaces required by paragraph (c)(1) of the final rule must be performed by the effective date of the final rule; the evaluation of the specific hazards posed by permit spaces identified under paragraph (d)(2) is required "before" entry.

Paragraph (d)(3) of the final rule requires the employer to establish the means, procedures, and practices necessary for safe permit space entry operations. This requirement has been taken from proposed paragraph (c)(2).

In reaction to the general nature of the language contained in proposed paragraph (c)(2), the State of Maryland Occupational Safety and Health Program (Ex. 14–63) stated "Although industries currently using permit entry may be familiar with these requirements, an employer to whom all of this is new will never know what to do without further guidance." They noted that, as indicated in the preamble to the NPRM (54 FR 24090), the identification of hazards does not protect affected employees during entry if the employer does not follow through with the necessary hazard controls. The State recommended that OSHA include a list of measures that would be required for hazard control.

The Agency agrees that the standard should provide some indication of the types of measures that employers will be required to take to control permit space hazards. Given the variety of permit space configurations and hazards, as well as the Agency's policy favoring performance-oriented standards, OSHA has added a list of control measures for use in permit space programs. The list,[18] which is not meant

[18] The list of control measures was taken from provisions in the final rule or the proposal, as identified in the brief discussion of each measure.

to be all inclusive, lists the common types of general control methods used to ensure safe permit space entry, as follows:

(1) *Specifying acceptable entry conditions.* This control measure ensures that the employer has identified the hazards that could reasonably be expected to be found in the space and has limited entry conditions to those that are safe for entry. For example, if a space could contain a flammable gas, the employer would set a limit of 10 percent of the LFL of the gas [19] as an entry condition. This would ensure that a flammable mixture is not present upon entry into the space. (See the summary and explanation of paragraph (f)(9), which requires the entry conditions to be specified on the entry permit, for a fuller discussion of acceptable entry conditions.)

(2) *Isolating the permit space.* The permit space must be isolated from serious hazards. For example, if energized parts of electric equipment are exposed, the circuit parts must be deenergized and locked out in accordance with §1910.333(b). Mechanical equipment posing a hazard within the space must be locked out or tagged in accordance with §1910.147 or guarded in accordance with Subpart O of the General Industry Standards. Chemical or gas lines that are open within the permit space must be isolated by such means as blanking or blinding, misaligning or removing section of lines, pipes, or ducts, or a double block and bleed system. (See the summary and explanation of paragraph (f)(8), which requires the isolation measures used to be specified on the entry permit, and the definition of "isolation" for a fuller discussion of isolation.)

(3) *Purging and ventilating the atmosphere of the space.* If the atmosphere of a permit space is IDLH, it must be made safe for employees to enter. This is accomplished by ventilating the atmosphere, after purging if the space is a flammable liquid container or if purging is otherwise necessary, before an employee enters the space. This cleans the air within the permit space so that it is no longer IDLH and, thus, safe for employees to breathe. (See the summary and explanation of paragraph (f)(8), which requires the hazard control measures, such as purging and ventilation of permit-required confined spaces, to be specified on the entry permit, for a fuller discussion of purging and ventilating permit spaces.)

(4) *Barriers.* Barriers must be provided around the permit space opening for two reasons: (1) to prevent unauthorized entry into the space [20] and (2) to protect employees inside the space from objects and persons outside the space. Paragraph (d)(3) requires barriers whenever they are necessary to protect employees within the permit space. If entrants face a substantial risk of injury due to unauthorized entry, due to objects falling into the space, or due to vehicular hazards during entry into and exit from the space, then barriers would be required. (See the discussion of proposed paragraph (c)(9), which would have required the use of barriers and which has not been carried forward into the final rule, later in this preamble.)

(5) *Testing and monitoring.* The employer must ensure that conditions in the permit space are acceptable for entry throughout the duration of entry operations. This is accomplished through the use of test instruments to monitor the atmosphere within the space, the use of ventilation to maintain a safe atmosphere, and the use of inspections to ensure that isolation is being maintained for the space. (See the summary and explanation of paragraphs (d)(5) and (f)(10), which relate to the testing and monitoring of permit-required confined spaces, for a fuller discussion of testing and monitoring conditions within these spaces.)

Paragraph (d)(4) of the final rule requires the employer to provide the equipment necessary for safe entry into and rescue from permit spaces at no cost to employees, to maintain that equipment properly, and to ensure its proper use by employees.

This provision has been taken from paragraph (c)(7) of the proposal, which read as follows:

> [The employer shall p]rovide, maintain and ensure the proper use of the equipment necessary for safe entry, including testing, monitoring, communication and personal protective equipment;

One commenter (Ex. 14–86) argued that the equipment listed in this proposed paragraph was not always necessary. The commenter recommended revising the rule to make this clear.

OSHA has adopted language in paragraph (d)(4) of the final rule that clarifies the intent of this provision. The rule now requires the employer to provide the equipment necessary for safe entry into and rescue from [21] permit spaces, as well as maintain it and ensure its safe use. The list of equipment contained in the proposal has been revised to indicate that these are among the types of equipment covered by the rule, with an indication of when each type of equipment would be necessary. Also, the equipment list has been expanded by adding ventilating, lighting, rescue, barriers, and ingress and egress equipment. These are the types of equipment normally expected to be used in permit entry operations.

In Issue 4 of the hearing notice (54 FR 41462), OSHA asked several questions concerning the accuracy of monitoring and testing devices, which might be affected by humidity or other factors. OSHA requested information on the reliability, or lack thereof, of test instruments under adverse conditions. OSHA also asked which types of devices cause the most problems, and which the least, as well as what the specific problems were and when they most often occur.

One commenter had expressed concern about the accuracy of test instruments prior to publication of the hearing notice (Ex. 14–70), but did not speak directly to the questions asked in Issue 4. Another commenter, the Johnson Wax Company (Ex.14–222), submitted a comment after the hearing notice had been published and which responded directly to Issue 4. Johnson Wax noted that the accuracy of oxygen meters was affected by altitude, in that the meters would give increasingly lower readings as the altitude increased. They also noted that oxygen meters must be allowed to "acclimate" in very cold or very humid situations.

Johnson Wax also stated that combustible gas meters had the same problems as oxygen meters, with the additional problem of degradation in the presence of chlorinated solvent or silicon fluid vapors. Lastly, Johnson Wax emphasized the importance of calibrating combustible gas meters using the gas expected to be present in the confined space. According to the commenter, calibration with a gas not encountered would result in an inaccurate reading.

In the Washington, D.C. public hearing, Mr Robert Gilardi of the

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For a discussion of the comments on the individual control methods, see the summary and explanation of the relevant paragraph later in this preamble.

[19] See the definition of hazardous atmosphere for the source of the 10 percent limit.

[20] Barriers for this purpose are not addressed by paragraph (d)(3), which treats entrant safety; they are addressed by paragraph (d)(1), which treats safety for unauthorized employees.

[21] Rescue equipment is mentioned in final §1910.146, though it was not in proposed paragraph (c)(7). In the proposal, this equipment was specifically addressed under paragraph (c)(8). The Agency decided that it would be clearer if all equipment associated with entry operations was addressed in a single provision. The remainder of proposed paragraph (c)(8), on rescue procedures, has been retained in paragraph (d)(9) of the final rule.

Compressed Gas Association (CGA, Washington Tr. 456) gave his opinion of the accuracy of testing and monitoring devices used by CGA:

> We feel that the accuracy of the instruments is very adequate and, in addition, they're calibrated before they're used. For example, without mentioning commercial names, there are small oxygen analyzers that are used by the commercial diving industry that are very accurate and they're a fairly low cost item.

The National Institute for Occupational Safety and Health (NIOSH) submitted a very helpful and detailed discussion of hearing Issue 4 in its post-hearing comment (Ex. 134). NIOSH discussed the effects of high relative humidity, altitude, and ambient temperatures on oxygen monitors, concluding that such monitors are significantly affected by high humidity only at levels exceeding 90% relative humidity, that most oxygen monitors automatically compensate for changes in temperature,[22] and that the effect of atmospheric pressure changes on oxygen monitors can be significant if they are not calibrated at the ambient pressure in which they will be operated.

NIOSH also tested combustible gas meters, concluding that the variations found were within acceptable limits. NIOSH did not test combustible gas meters for accuracy in varying pressure and temperature environments, but stated that such meters should not be significantly affected by these changes.

Regarding the use of specific material monitors (such as those for CO, CO_2, SO_2, and H_2O), NIOSH recommended adherence to manufacturer's instructions concerning temperature limits, relative humidity ranges, and any known chemical interferences. The NIOSH comment also contained information and recommendations concerning non-specific monitors.

NIOSH concluded its comment with recommendations concerning the care of batteries used in monitors and a strong emphasis on the proper calibration and maintenance of monitoring equipment. NIOSH also concluded that operator training and skill levels are very important factors to be considered in the monitoring of workplace atmospheres, to the extent that such monitoring cannot be effectively accomplished without a trained and skilled operator.

OSHA has concluded, based upon the information received in response to the questions asked in hearing Issue 4, that the accuracy of testing and monitoring equipment may be significantly affected under certain conditions of humidity, pressure, or temperature or by the presence of interfering chemicals. However, if the equipment is properly selected, calibrated, and maintained and if it is operated by well trained employees, the testing and monitoring needs for entry and work in permit-required confined spaces can be effectively met.

Paragraph (d)(5) of the final rule requires employers to evaluate permit space conditions when conducting entry operations. This paragraph also sets forth specific requirements for testing conditions within the space to ensure that hazards inside the space are eliminated or controlled. This entire paragraph is new, except for paragraph (d)(5)(iii), which pertains to the proper sequence for testing for atmospheric hazards and which was taken from proposed paragraph (i)(1)(ii).

The State of Maryland (Ex. 14–63) criticized proposed paragraph (c), covering the permit-required confined space program, in the following manner:

> It does not appear to require that any protective action be taken! All the employer would have to do is have a permit that covered these things.... For example, without the implementing language, for item (c)(1) all the employer would have to do is make a list.They went on to state:
>
> Actually the low hazard permit space requirements are more clearly spelled out in section (i) than high hazard requirements are in (c) (2).
>
> (c)(2) could benefit from the testing language in [(i)](1)(ii).

Several commenters (Ex. 14–68, 14–116, 14–147) stressed the importance of testing in the determination of acceptable entry conditions within a permit space before entry and during work inside the space. For example, one rulemaking participant (Ex. 14–147) stated:

> Prior to entry, atmospheric testing would have to be performed to ensure that the conditions under which the permit was originally issued had not changed. This is an essential requirement of ensuring that the confined workspace is safe to enter.

Several more commenters (Ex. 14–63, 14–123, 14–154) specifically recommended placing requirements relating to testing in the general paragraph (proposed paragraph (c)). Typical of these, Boeing Support Services (Ex. 14–154) stated:

> Specific references to instruments for testing procedures and to testing and ventilation requirements are stated only in the low-hazard portion. These references need to be given in the main text as well, which has only nonspecific references...

The proposed rule required evaluation of permit space conditions in an indirect way (as, for example, in proposed paragraph (d)(2)(v), which provided that the entry permit specify the testing and monitoring procedures to be used); but, as Maryland has stated, the proposal never specifically and directly required testing. OSHA agrees with the State's and other's criticisms in this regard and has included paragraph (d)(5) in the final rule to address this concern. Paragraph (d)(5) contains language that clearly requires the employer to evaluate permit space conditions before and during entry operations and that sets forth the elements of that evaluation.

Paragraph (d)(5)(i) of the final rule requires the employer to test conditions in the permit space to determine if acceptable entry conditions exist before entry is authorized to begin. As previously noted this testing is important to detect any hazardous atmosphere or other hazards that may be present in the permit space. However, if isolation of the space is infeasible because the space is large or is part of a continuous system, the employer must perform pre-entry testing to the extent feasible before authorizing entry and, if entry is authorized, must continuously monitor entry conditions in the areas where authorized entrants are working.

The type of testing that needs to be performed is dependent on the hazards that are present within the space. For permit spaces posing atmospheric hazards, atmospheric testing would be necessary. For other hazards, different tests will be necessary. For example, if the permit space poses thermal hazards, the temperature within the space would need to be tested. Paragraph (d)(5)(i) requires the employer to conduct whatever tests are necessary to ensure that acceptable entry conditions are present.

Because sewers and similar permit spaces are large, continuous systems, conditions encountered at the point of entry may not be indicative of conditions at distances further from the point of entry. Also, since the space usually cannot be effectively isolated, conditions at any particular point in the space may deteriorate suddenly due to the introduction of a material from another point in the system that creates a hazardous environment for the entrants. Under these conditions, pre-entry testing often will not detect such hazards, and the need for continuous atmospheric monitoring becomes paramount. Atmospheric monitoring is necessitated virtually from the time pre-entry testing is done until the last entrant leaves the permit space. Because of these conditions, the procedure for authorizing entry into sewers has

[22] For best results, NIOSH recommends calibration of oxygen monitors at the temperature at which it is to be operated.

evolved so that authorization is usually granted immediately before entry. In their testimony, the Service Employees Union indicated that their members who work in sewers do perform pre-entry testing, usually with a 12 to 18 inch or longer wand attached to the test instrument (Washington Tr. 403, 404). They also indicated that entrants wear monitoring equipment at all times (Washington Tr. 434) after they have entered and as they perform entry operations within the permit space.

Paragraph (d)(5)(ii) of the final rule requires permit spaces to be tested or monitored, as necessary, to determine if acceptable entry conditions are being maintained during the course of entry operations. This provision is derived from paragraph (d)(2)(v) of the proposed rule, which would have required that the procedures and equipment necessary for such testing or monitoring be placed on the permit. Such testing or monitoring would thus have been required by the proposal, but only in an indirect way. (See the preceding discussion of final paragraph (d).) To eliminate any possible doubt or confusion regarding this matter, appropriate testing or monitoring during the course of entry operations is specifically required by this final rule. This provision requires whatever periodic or continuous monitoring would be necessary to protect employees. For example, as noted earlier, sewer entry operations preclude complete pre-entry testing, and continuous monitoring is necessary to assure the safety of sewer workers. Paragraph (d)(5)(ii) of the final rule would require this continuous monitoring to be performed.

Paragraph (d)(5)(iii) of the final rule specifies the proper sequence to be used when permit spaces are tested for atmospheric hazards. This provision requires employers to test first for oxygen, then for combustible gases and vapors, and then for toxic gases and vapors.

This requirement has been taken from paragraph (i)(1)(ii) of the proposal. Proposed paragraph (i) only applied to entry into "low hazard" permit spaces. However, since the proper sequence for testing for atmospheric hazards should be the same regardless of the characterization of the permit space, this provision should be applied equally to all permit entries. By placing this provision in paragraph (d) of final §1910.146, which applies generally, the proper sequence of testing for atmospheric hazards is assured for all types of permit-required confined spaces. Paragraph (d)(5)(iii) reflects generally accepted safe work practice, as adopted in Section 6.1 of ANSI Z117.1 (Ex. 14–4, 14–127). As noted earlier, its general application was recommended by several commenters (Ex. 14–63, 14–123, 14–154).

A test for oxygen must be performed first because most combustible gas meters are oxygen dependent and will not provide reliable readings in an oxygen deficient atmosphere. In fact, the Johnson Wax Company (Ex. 14–222) stated that "there is [a] specific (sensor dependent) oxygen level below which the combustible gas sensor will *not* respond at all [emphasis was supplied in original]." Combustible gases are tested for next because the threat of fire or explosion is both more immediate and more life threatening, in most cases, than exposure to toxic gases.

Additionally, this provision contains a note indicating that atmospheric monitoring in accordance with non-mandatory Appendix B, supplemented by reference to non-mandatory Appendix E for permit space operations in sewers would be considered as satisfying the requirements of this paragraph. OSHA has included these non-mandatory appendices for use by any employers who might not have the resources to design their own atmospheric monitoring programs. The presence of these appendices in the final rule is not intended to restrict an employer's ability to design and implement an atmospheric monitoring program that meets the needs of a particular workplace.

Paragraph (d)(6) of the final rule requires an attendant to be stationed outside a permit space into which entry is authorized for the duration of entry operations. This paragraph has been taken from the introductory text of paragraph (f) of the proposal. OSHA has included a note in the final rule to explain that attendants may be assigned to monitor more than one space and that they may be stationed at any location outside the permit space, as long as they can effectively perform the duties set by paragraph (i) of final §1910.146.

The Agency has determined, based on its review of the rulemaking record, that stationing an attendant to monitor permit space entry is a critical element of an effective permit space program. In particular, OSHA believes that an attendant's ability to communicate with the authorized entrants and with the designated rescue and emergency services maximizes the likelihood that information on hazards arising in permit spaces will be transmitted in time for safe evacuation or rescue of entrants. Because of the importance of the role attendants play in permit space entry operations, OSHA believes that it is necessary to highlight the requirement for their presence outside permit spaces. Therefore, the Agency has placed this requirement in final §1910.146(d), which contains the basic rules on permit- required confined space programs, rather than in §1910.146(i), relating to the duties of attendants. OSHA believes that this stresses the importance of this requirement and that, as a result, employers will be more aware of the need to station attendants outside permit spaces during entry operations.

As noted in the summary and explanation of the definition of "attendant", the proposed definition of this term addressed the number of spaces or entrants an attendant could monitor, providing that an attendant could not monitor more spaces or entrants than specifically authorized by the entry permit. A number of commenters (Ex. 14–28, 14–45) objected to the proposed provision and suggested that OSHA allow the attendant to monitor only one permit space at a time. As a result of these early comments, the Agency listed their concerns as one of the issues in the notice of public hearing (54 FR 41462). In Issue 8 of the hearing notice, OSHA asked if the final rule should limit the number of entrants, entry portals, or permit spaces an employer may assign a single attendant to monitor. OSHA also asked what limits would be appropriate, what criteria should be used by employers in deciding on the number of attendants, and where, in relation to the entry portal, attendants should be stationed.

Several rulemaking participants (Ex. 14–179, 14–200, 14–208, 14–210, 14–215, 142; Washington Tr. 466, 551, 575; Houston Tr. 1057; Chicago Tr. 185, 245, 311, 364, 498, 534, 597, 615) addressed this issue. Some of the rulemaking participants (Ex. 14–210; Washington Tr. 575–576; Chicago Tr. 185–186, 310–311; Houston Tr. 1057) believed that attendants should not be allowed to monitor more than one permit space at a time because if an emergency developed in one space the attendant's attention would be fully taken for that space and the attendant would not be able to monitor other spaces adequately. For example, the Independent Liquid Terminals Association (ILTA, Ex. 14–210) said:

> ILTA still maintains that an attendant must be allowed to monitor only a single entry portal at one time.... How can an attendant monitor an entrant in more than one place? If the entrant's breathing apparatus breaks in any way while the attendant is at another location, how can the attendant respond to the entrant's predicament? In addition, how can the attendant protect the entrant from

external hazards or unauthorized entry if he/she is not present?

Others opposed to the language in the proposed definition (Ex. 14–38, 14–61, 14–63; Chicago Tr. 363) were more concerned that the attendant would be allowed, under a series of permits issued by an employer, to monitor more spaces than he or she can effectively handle. They argued that the standard should limit in some fashion the number of spaces that an attendant would be allowed to monitor. For example, the UAW (Ex. 14–38) stated:

> The statement that the "attendant may monitor not more entrants or more permit spaces than the entry permit specifically authorizes is vague.
>
> This definition could allow an attendant to monitor more spaces than should be safely monitored.

Still others (Ex. 14–200; Washington Tr. 466, 551–552; Chicago Tr. 534) were concerned that the standard retain its flexibility by not specifying a limit on the number of spaces that could be monitored by a single attendant. The Longview Fibre Company's comment (Ex. 14–200) was illustrative of these commenters, as follows:

> If the attendant's responsibility is only to monitor the entry work, and summon a rescue team, but not participate in actual entry for rescue purposes, the attendant should be allowed to monitor as many entries or entry points as is practical based on the work environment, work being performed and method of monitoring, i.e. radio, T.V. camera, handline or voice.
>
> * * * * *
>
> An example of monitoring various points of entry into a confined space would be a power or recovery boiler fire box, a continuous cooking pulp digester or paper machine dryer drums. Although the equipment may be entered simultaneously by various employees from different entry points, the monitoring of any of the crew members may be successfully accomplished by a single attendant. The rescue may be achieved from a common entry point, radio communications may allow for multiple monitoring, and the size of the vessels or confined spaces and/or scope of work may allow for visual monitoring of more than one entry at a time.

In response to the NPRM, another commenter (Ex. 14–34) suggested that OSHA specifically recognize the use of radios so that a single attendant could monitor as many as 32 entrants. Acknowledging the possibility that electronic surveillance and communication equipment could assist attendant in carrying out their duties and might allow the safe monitoring of multiple permit space entry operation by a single attendant, OSHA raised Issue 9, which related to the use of such equipment. In the hearing notice (54 FR 41463), OSHA observed that, if attendants were not permitted to enter permit spaces for rescue purposes, an attendant's chief responsibility with respect to rescue could be to summon the rescue team. In that case, the Agency recognized that the attendant's ability to detect that entrants need help and to summon the rescue team, not the attendant's proximity to the entrants, could be of critical importance. Therefore, OSHA requested information on the issue of whether or not the Agency should permit reliance on electronic surveillance and communication equipment and on how the permit-required confined space standard should treat this equipment.

OSHA received few comments and little testimony concerning this issue. The Longview Fibre Company (Ex. 14–200) had this to say about Issue 9:

> In many confined space entries actual visual contact is not possible due to the size of the particular vessel or complexity of the structure. In such cases, alternate means of communications such as radios may be the only workable alternative.

The Independent Liquid Terminals Association (Ex. 14–210) had this opinion:

> Remote radios would be useful in conjunction with visual observation of the entrant especially in extremely large or dark confined spaces. However, the radios under no circumstances should replace the attendant. Working inside a confined space often requires cumbersome personal protective equipment or other mechanical equipment. Handling a remote radio while wearing industrial rubber gloves would be difficult.

The Amoco Corporation (Ex. 14–215) also believed that electronic monitoring equipment should be permitted, stating:

> We do not believe that the entrant needs to be in direct line of sight of the attendant for effective monitoring.... In such circumstances [line of sight not possible], we use two-way radios to keep the entrants in contact with the attendants and have found this to be an effective monitoring system.... Different types of monitoring equipment will be suitable for monitoring different numbers of entrants safely. Setting an arbitrary upper limit based on the most sophisticated equipment will not be suitable for less sophisticated technologies. Likewise, setting a limit based on a less sophisticated technology will cause underutilization of more advanced technologies. Rather than set an arbitrary upper limit, we believe that the limit should be determined by the capabilities and limitations of the monitoring equipment used as well as other pertinent factors at the site. Therefore, we support a performance oriented approach with the employer making the determination of how many entrants can be safely monitored by an attendant.

In light of the comments and testimony received concerning these two issues, OSHA has decided to expand on the performance- oriented approach taken in the proposal. The final rule has adopted a rule in paragraph (d)(6), under the general provisions for permit-required confined space programs, that requires the employer to provide at least one attendant outside the permit space into which entry is authorized. As noted earlier, this requirement has been taken from the introductory text of proposed paragraph (f). To address the issue of how many spaces an attendant is allowed to monitor, OSHA is including an explanatory note following paragraph (d)(6) to indicate that an attendant can monitor as many spaces as is possible while complying with paragraph (i) of the final rule, which sets forth attendants' duties. The note also indicates that the attendant may be stationed in any position from which he or she can perform the duties required by paragraph (i).[23] The Agency notes that the attendant could be stationed in a control room that allows him or her to monitor entrants remotely. Electronic monitors, television monitors, public address systems, and barricades could be used to assist the attendant in performing duties required under paragraph (i). In addition, OSHA has adopted a provision requiring employers to adopt procedures to enable the attendant respond to emergencies without distraction from his or her responsibilities under paragraph (i). This provision appears in paragraph (d)(7 of the final rule.

In this manner, attendants may monitor no more permit space entry operations than they can safely handle. For example, if the attendant is communicating with authorized entrants by voice contact only, that attendant would not be able to monitor any other permit spaces that were not within voice contact, under paragraph (i)(5). Also, if the number of spaces and the number of authorized entrants are too much for one attendant to keep track of, as required by paragraph (i)(3), then additional attendants would be required. This protects authorized entrants from working in permit spaces that are not being adequately monitored.

On the other hand, this approach also provides the flexibility employers need to protect employees in a manner best suited to their permit space operations.

[23] These duties include keeping an accurate count of authorized entrants, communicating with these entrants, monitoring activities inside and outside the space for hazards, summoning rescue services, and keeping unauthorized persons out of the space.

The final rule allows the use of electronic surveillance and other devices as aids or augmentations to the monitoring process so that the attendant's duties described in paragraph (i) of the final rule can be effectively performed for each permit space being monitored. In most cases, the use of such a device would allow an employer to economize by increasing the number of permit spaces a single attendant could effectively and simultaneously monitor (although OSHA is not permitting the use of such devices to replace an attendant entirely). Additionally, the attendant would normally be stationed near the entry point of the permit space, but the use of an electronic monitoring device makes it possible for an attendant to effectively perform his assigned duties from a remote location. Television monitors, public address systems, and barricades can also be used to assist the attendant in monitoring activities outside the space and in warning unauthorized personnel away from the space.

Paragraph (d)(8) of the final rule requires the employer to designate the persons who are to have active roles in entry operations, to identify the duties of these employees, and to provide such employees with the training required by paragraph (g). This provision addresses such personnel as entry supervisors, authorized entrants, and attendants.

Paragraph (d)(8) in the final rule has been taken from proposed paragraph (c)(6), which would have required the employer to train entrants, attendants, and entry supervisors. Two commenters (Ex. 14–88, 14–163) argued that proposed (c)(6), in conjunction with proposed paragraphs (e) , (f), and (g), were too general in nature. These commenters believed that the regulation should be more specific as to the content of training, the evaluation of the training received, follow up training, and the qualifications of the trainers.

OSHA agrees with these commenters that the training provisions contained in the proposal were too general. Follow up training was not addressed in proposed paragraphs (c)(6), (e), (f), or (g), and the proposal was too vague in certain areas. To address these problems, the Agency has incorporated into the final rule a paragraph dedicated to training requirements—paragraph (g). All the specific training requirements spread throughout the proposed standard have been placed in this one paragraph to provide better guidance as to what is required and to emphasize the importance of training in the permit-required confined space program. (See the summary and explanation of paragraph (g) of the final rule for a detailed discussion of issues related to training.) OSHA has also revised the language proposed in paragraph (c)(6) so that the general program requirement for training to be provided references the specific training provisions in paragraph (g) of the final rule. Paragraph (d)(8) of the final rule also requires the employer to designate which employees will perform the various functions assigned by the standard and to identify their duties under the permit space program. This will enable employers, employees, and OSHA to identify which employees need to receive what training under final §1910.146.

Paragraph (d)(9) of the final rule requires the employer to establish procedures for summoning rescue and emergency services (to rescue entrants from permit spaces and to provide necessary emergency services to rescued employees) and for preventing unauthorized personnel from attempting a rescue. The Agency anticipates that employers will choose between entry and non- entry rescue as part of compliance with paragraph (d)(9) of the final rule.

This provision was taken from proposed paragraph (c)(8), which would have required that procedures and equipment necessary to rescue entrants be provided and implemented. For the reasons noted under the discussion of paragraph (d)(4) of final §1910.146, the Agency has placed the requirements relating to rescue equipment proposed in paragraph (c)(8) under final §1910.146(d)(4), which sets forth requirements relating to all types of equipment used in permit space entry operations. Additionally, although the Agency received no comments recommending the revision of the proposed language, OSHA has adopted wording for this requirement that is different from that in proposed paragraph (c)(8). The final rule clarifies that rescue procedures include procedures both for summoning rescue and emergency services and for preventing unauthorized rescue (that is, rescue by employees who are prohibited by the standard from performing this function).

Paragraph (d)(10) of the final rule requires the employer to establish a system for the preparation, issuance, use, and cancellation of entry permits as required by the standard.

This provision was taken from proposed paragraph (c)(3), on which no substantive comments were received. This requirement in the final rule is essentially the same as proposed paragraph (c)(3), except that "cancellation" has been added as a part of the system of permit use. Cancellation of a permit is required by various provisions in the final standard and is part of the permit's proper use. For further clarification, the language in the final rule replaces the proposed word "proper" (which was ambiguous) with the phrase "as required by this section". The "proper" preparation, issuance, use, and cancellation of permits is spelled out in paragraphs (e), (f), and (j) of final §1910.146.

Paragraph (d)(11) of the final rule requires employers to coordinate entry operations when employees of more than one employer are working simultaneously as authorized entrants in a permit space, so that employees of one employer do not endanger the employees of any other employer. The summary and explanation of this requirement can be found under the discussion of paragraphs (c)(8)(iv) and (c)(9)(ii), addressing the issue of coordination of efforts to protect employees during multi- employer permit space entry operations.

Paragraph (d)(12) of the final rule requires employers to establish the necessary procedures for concluding the entry once entry operations have been completed.

This provision was taken from proposed paragraph (d)(6), which would have required the individual authorizing the entry to cancel the permit after completion of work and after the exit of all entrants, and from proposed paragraph (g)(1)(v), which would have required the person authorizing the entry to take measures necessary for concluding the entry. Although the comments received on the proposal contain no specific recommendations for placing the two proposed provisions among the general requirements, the final rule reflects the Agency's determination that employers need to conduct their entry operations in a carefully planned and systematic fashion from start to finish, so that authorized entrants and other employees affected by entry operations are protected from permit space hazards. In particular, the cancellation of the permit would alert the employer to take the appropriate measures for the shut down of the space, the closing of the entry portal, and the return of the space to normal operating conditions. Without these procedures, employees would be exposed to such hazards as being locked inside the space, accidentally entering the space, and possible fire or explosion when the space is returned to its normal operating mode. OSHA has placed the proposed requirements among the general requirements applying to the overall permit space program in order to alert

employers to the need for planning these procedures before entry into the space.

Final paragraph (d)(12) is effectively identical to proposed paragraphs (d)(6) and (g)(1)(v). Proposed paragraph (d)(6) would have required the cancellation of the permit after entry operations were completed. Proposed paragraph (g)(1)(v) would have required the person in charge of the entry to take measures (such as closing off the permit space and canceling the permit) necessary for concluding the entry once the work authorized by the permit was completed. The requirement proposed by paragraphs (d)(6) and (g)(1)(v) that the entry supervisor actually cancel the permit and execute the shutdown procedures has been retained in the final rule as paragraphs (e)(5) and (j)(3), and the concerns raised by commenters in regards to the two proposed provisions are addressed under the discussion of paragraph (e)(5) of the final standard. Paragraph of final §1910.146 is couched in performance-oriented terms, because the Agency recognizes that the measures needed for compliance with final paragraph (d)(12) will vary from workplace to workplace. The Agency believes that combining and redesignating the language from the two proposed provisions into paragraph (d)(12) of the final rule will clearly indicate the importance of an orderly transition between periods when entry is authorized and periods when entry is not authorized.

While the preamble to the proposed rule (54 FR 24091, 24092) indicated that OSHA expected employers to review and revise their permit space programs in light of entry experience, the proposal did not specifically require such review. In Issue 6 of the notice of public hearing (54 FR 41462), OSHA raised a series of questions related to the issue of whether or not the rule should explicitly specify review of permit entry programs. The Agency was interested in gathering information on what conditions necessitated review, on the needed frequency of review, and on appropriate administrative measures for implementing the evaluation of programs.

Witnesses at the hearings and commenters who addressed this issue generally agreed that some form of review process was a part of successful permit entry programs (Ex. 14–184, 14–210, 109, 129; Washington Tr. 85, 466–467; Chicago Tr. 128–129, 166–167, 495, 523, 533, 614; Houston Tr. 1093). Most agreed that any requirement OSHA set for such a review should be performance oriented and should allow the employer the flexibility to review the permit space program as conditions at the workplace warrant. For example, the Independent Liquid Terminals Association (Ex. 14–210) stated:

> Permit programs should be reviewed on a site-by-site basis. The criteria for designating the review period should be the frequency with which personnel enter confined spaces. Facilities in which personnel routinely enter confined spaces should review their program annually, incorporating any newly identified hazards or procedures.

Similarly, Mr. Jack Dobson, representing the American Society of Safety Engineers, testified (Chicago Tr. 614) supported the ANSI Z117.1 performance-oriented approach, as follows:

> Issue No. 6. The ANSI Standard Z117 appropriately addresses the review process regarding confined space entry programs. Conformity to Sections 3.3 regarding hazard evaluation, 3.5 hazard reevaluation, and 15.5 regarding verification of training would greatly enhance the continuity of a confined space safety program.
>
> We do agree that the review process is an essential element of any safety and health program, however, we feel that any language relative to such a review should be performance oriented, thus allowing employers to develop a review system which would be consistent with their particular operation.

The Agency believes that employers have an ongoing responsibility to reevaluate their permit space programs periodically and to revise their programs based on changes in permit space hazards and on the employer's experience with their entry operations. In regard to periodic evaluation of permit space hazards, ANSI Z117.1–1989 (Ex. 129) Section 3.5 states:

> A qualified person(s) shall determine the need for periodic identification and re-evaluation of the hazards based on possible changes in activities in the space, or other physical or environmental conditions, or both, which could adversely affect the space. When need is determined, a qualified person(s) shall conduct the identification and re-evaluation process.

This language indicates that review and revision of permit space programs [24] are generally accepted practices to ensure the efficacy of these programs. OSHA has determined that, while many employers already review and revise their permit space programs, it is appropriate to require all employers to undertake such a review.

[24] Although this ANSI requirement applies specifically to reevaluation of hazards for a particular permit space entry, OSHA views this section in the broader sense as compelling a reevaluation of the entire permit space program in order to meet the provision. Such an interpretation provides the best possible protection for employees.

In response to the questions OSHA raised on the appropriate frequency of program evaluation, three rulemaking participants, the Independent Liquid Terminals Association (Ex. 14–184, 14–210), Midwest Consortium for Hazardous Waste Worker Training the (Ex. 109), and the National Safety Council (Ex. 129; Chicago Tr. 495), supported an annual evaluation. The Midwest Consortium for Hazardous Waste Worker Training supported their recommendation as follows:

> Annual evaluation should include evaluation of the total program as well as the identified confined spaces to assure that the program is being implemented fully. The requirements of the program specified in (c)(1—10) need to be reviewed. Monitoring the space is just one component of the evaluation. Changes in company policy, federal, state and local regulations, conditions and processes in the plant or advances in the field may impact this review. Prudent industrial hygiene practice generally includes annual review of standard operating procedures in order to provide adequate protection of employee safety and health.

Others argued, however, that periodic review should not be specified by the OSHA standard (Washington Tr. 466–467; Chicago Tr. 166–167). For example, the American Gas Association (AGA, Washington Tr. 466–467) stated:

> For the same reason, prescribing the type and extent of training, experience or qualifications of individuals who would evaluate spaces is extremely problematic and is better left to individual employers who are better suited to make that determination. We also agree with OSHA's statement in the preamble not to establish program review criteria when OSHA said it believes compliance with the proposed rule will necessitate on-going evaluation of program effectiveness. That statement reflects exactly what performance based language is all about and AGA support[s] such performance language.

OSHA believes that review of the permit space program by the employer is an important element of a successful confined space program. The record contains ample evidence of this: every employer representative questioned about program review responded that periodic review was conducted, normally every year. The question is how should the final rule address this matter. The Agency has concluded that a two-pronged approach is needed.

First, the employer should be required to review the permit space program any time conditions at the workplace indicate that the existing procedures provide inadequate protection. Several commenters and witnesses mentioned "near misses" as being indications of possible problems (Ex. 101; Chicago Tr. 166–167; Houston Tr. 1093). Other

conditions warranting review of an permit space program include: the detection of a hazard not addressed by the entry permit, the detection of a condition forbidden by the entry permit, a change in the use or configuration of the confined space, and employees complaints about the effectiveness of the program. This type of review will ensure that the program is updated as needed for continued employee protection.

Second, the employer should be required to review the permit program within one year from entry. This would result in an annual review for employers whose have at least one permit space entered each year. As noted in the post-hearing comment of the Midwest Consortium for Hazardous Waste Worker Training (Ex. 109), such factors as changes in company policy, new or revised governmental regulation, and changes in technology and design make a periodic review desirable, even in the absence of problems in actual entry. Additionally, annual review was common among employers who testified about periodic program evaluation. The Agency believes that an annual review can promote necessary changes to the permit space program before an employee is actually injured. An evaluation of the program each year will also force employers, who may become complacent about the hazards of confined space entry at their workplaces, into serious consideration of whether their permit space program are truly effective. Obviously, if no permit spaces were entered during the year, there would be no cancelled permits to review, and no review would be required in that year.

The review process is covered under final paragraphs (d)(13) and (d)(14), which had no counterparts in the proposal. Under paragraph (d)(13), the employer is required to review entry operations when the employer has reason to believe that the measures taken under the permit program may not protect employees. The employer must then revise the program, responding to problems brought out by the review, before any subsequent entry is authorized. Paragraph (d)(14) requires an employer to conduct a review of the permit space program, using canceled permit retained as required under paragraph (e)(6), within one year after each entry. An annual review process could be used to meet this provision; however, if permit spaces were entered less frequently than once per year, no review would be required until one year after an entry. Again, any inadequacies would have to be corrected. Both paragraphs include notes containing information to assist employers in complying with the requirements. OSHA believes that these provisions are reasonably necessary to protect employees who enter permit entry spaces, in order to assure that the permit program reflects the conditions currently encountered in the workplace.

Paragraph (e), Permit System.

Paragraph (e) specifies the elements of the permit system required by paragraph (d)(10) of the final rule. The single most important feature of the permit system is the creation and use of an entry permit. An employer uses the permit to authorize employees to enter permit spaces and to document the measures taken to protect authorized entrants from permit space hazards. (Requirements pertaining to the contents of an entry permit are set out in paragraph (f) of the final rule.)

OSHA has determined that the preparation of a permit will help the employer determine if conditions in a permit space are safe for employee entry. A permit will also provide a concise summary of the entry procedure that will be useful to the personnel who are conducting the entry operations and to any personnel who need to review the conduct of entry operations after entry has been completed.

The permit system set forth in paragraph (e) of the final rule also requires the involvement of a person (the entry supervisor) who authorizes the entry and has responsibility for entry operations. This involvement will ensure that a person with the qualifications to identify permit space hazards and the authority to order corrective measures for their control will oversee entry operations. It will also compel employers to take direct responsibility for the safety of employees working in permit- required confined spaces.

Proposed paragraph (d) contained requirements on permit systems and on the permit itself (although the title of this paragraph was *Permit system*). In the final rule, OSHA has separated the requirements into two distinct paragraphs—paragraph (e), *Permit system*, and paragraph (f), *Entry permit*. As discussed in Section I, *Background*, and in Section II, *Hazards*, earlier in this preamble, numerous injuries and fatalities have occurred because employers did not take the proper precautions for the safety of employees working in permit spaces. All too often, employers either did not recognize permit space hazards or they failed to follow through with the necessary measures for employee protection. The Agency has determined that employers who require their employees to enter permit spaces must systematically implement permit space programs to prevent injuries and fatalities. OSHA believes that separating the requirements for a permit system from those for the content of the permits themselves will alert employers to the need for adopting an overall system for authorizing entries into permit-required confined spaces. The Agency further believes that permit systems that comply with paragraph (e) will enable employers to maintain control over permit space entry operations throughout the entry's duration so as to ensure the protection of authorized entrants.

Paragraph (e)(1) of the final rule requires employers to document the completion of the measures necessary for safe entry operations through the preparation of an entry permit.

This paragraph in the final rule was based on proposed paragraph (d)(1). The rulemaking participants who addressed this proposed paragraph supported the need for a written permit. For example, the Marine Chemist Association Inc. (Ex. 14–55) stated that a permit is the essential ingredient of a permit space program, in that it establishes responsibility. The Monsanto Company (Ex. 14–170) also agreed with the requirement for a permit system that serves to identify hazards and the measures taken or to be taken during entry to control them. In support of the requirement for a permit system, Mr. Ray Witter, an OSHA expert witness, testified (Houston Tr. 639) as follows:

> Well, in my opinion, you need to prepare a written permit system because that is the only way that you can ensure that people have looked at the various hazards that exist and have decided what has to be done or if nothing has to be done. If you do not provide a permit, it is left to the evaluation of the individual, and all of us, as people, can forget something.

As discussed previously, OSHA has determined that it is necessary to require explicitly that the list of measures taken for protection of employees who enter permit spaces be recorded on a permit along with a notation that all these measures have been completed before entry. OSHA wishes to emphasize that the permit is considerably more than a simple checklist; it requires careful thought and planning. All measures necessary for making the particular permit space safe for entry must be listed; otherwise, it is likely that some procedures will be omitted, with serious consequences. The permit enables the entry supervisor and the other personnel involved in entry operations to keep track of the

precautions taken to protect employees. It also allows authorized entrants to verify that each protective measure has been checked by someone.[25]

Paragraph (e)(1) also contains a note indicating that non- mandatory Appendix D contains examples of permits whose elements are considered to comply with the requirements of this section. The precise elements that must be listed on a permit for a given permit space entry are dependent on the hazards within the space and, perhaps, on the operations to be performed during entry operations.

As noted above, this provision is based on proposed paragraph (d)(1), which required that employers prepare permits through which all conditions to be evaluated to ensure safe entry were identified. OSHA has determined that the proposed language, insofar as it focused on the "conditions" to be evaluated, did not clearly indicate what information was required in the permit. In particular, the Agency observes that proposed paragraphs (d)(2) and (d)(3) required information that did not relate to "conditions". Therefore, paragraph (e)(1) of the final rule (in conjunction with paragraph (f)) has been written to clearly indicate the breadth of the information required in the permit. Specifically, paragraph (e)(1) of final §1910.146 requires the permit to document the completion of measures required by §1910.146(d)(3). Additionally, OSHA is requiring the entry permit to be completed before entry is authorized.

Paragraph (e)(2) of the final rule requires the entry supervisor identified on the permit to sign the entry permit to authorize entry.

This provision was taken from proposed paragraph (d)(5), which would have required the signature of the person authorizing the permit before entry began but after safe entry conditions were established. (Paragraph (e)(1) of the final rule requires the employer to establish safe entry conditions before the permit is authorized.) The few rulemaking participants (Ex. 14–63, 14–170; Houston Tr. 1061) who addressed proposed paragraph (d)(5) advocated the provision. The State of Maryland's Occupational Safety and Health Program (Ex. 14–63) succinctly stated the purpose of this requirement in their support for a requirement that the person authorizing the permit sign it, as follows:

> [T]he signature establishes individual accountability. If a person is asked to sign the form, there is a greater chance that the items the form requires will be addressed than if no one has to sign the form.

Proposed paragraphs (d)(2) and (d)(3) set out the elements that would have been required on permits. Proposed paragraph (d)(2) listed the elements (the "checklist" portion of the permit) that had to be present on all permits, while paragraph (d)(3) listed additional elements that would also have had to be listed, unless the entry supervisor assumed direct charge of the entry operation for its duration. The items that would not have been required to be listed were:

(1) The identity of the permit space;

(2) The purpose of the entry;

(3) The date of the entry and the authorized duration;

(4) A list of the authorized entrants;

(5) A list of eligible attendants;

(6) A list of individuals eligible to be in charge of the entry; and

(7) The signature and printed name of the entry supervisor originally authorizing entry.

In issue 5 of the NPRM (54 FR 24086), OSHA asked several questions pertaining to the use of a "checklist" permit for permit-required permit space entry when the employer directly supervised entry operations. The questions were directed to whether or not a the use of a checklist permit in lieu of a full permit would be effective in protecting employees. OSHA also requested information on projected cost savings, actual workplace experience using the checklist approach, and examples of actual procedures and permits that have been used.

OSHA received many written comments and some hearing testimony concerning this issue. Several of the commenters (Ex. 14–47, 14–91, 14–94, 14–98, 14–119, 14–123, 14–161, 14–170, 14–179, 14–183, 14–193) who addressed this issue misunderstood the intent of the proposed standard, which was to allow the omission of several items from the written permit if the individual authorizing the entry was in direct control of the entry for its duration. These commenters apparently believed that OSHA was proposing that no permit at all be required when the entry authorizer is present for the duration of the entry. In a representative comment, the Monsanto Company (Ex. 14–170) stated:

> Our experience is that the confined space entry permit serves to assist in effective preparation of the space as well as communication about the space during the entry period. We may utilize direct supervision for a particularly difficult confined space entry but that would be in addition to, not in lieu of, a permit.

Other commenters (Ex. 14–86, 14–99, 14–153, 14–184; Chicago Tr. 102) did not directly answer the questions posed in Issue 5, choosing instead to address other related concerns. For instance, the Texas Chemical Council (Ex. 14–86) wondered how shift changes would affect the proposed provision:

> Often entries are worked on [a] 24 hour a day basis and no one individual can be there during that time period. The authority or responsibility for the job transfers between individuals. Therefore, it is necessary to have an extension of authority beyond the singular person.

These commenters apparently believed that the proposal would have required a single entry supervisor for the entire entry. Their concerns were unfounded since the proposed provision would have accepted transfer of responsibility between on-coming and off-going entry supervisors (although the proposal did not state this explicitly).

Several commenters (Ex. 14–27, 14–28, 14–30, 14–88, 14–99, 14–119, 14–137) were critical of the checklist system, as a form of abbreviated permit. Some of the commenters felt that inclusion of all the information (as listed in proposed (d)(3) as well as proposed (d)(2)) was necessary. For example, the Northwest Pipeline Corporation (Ex. 14–27) said:

> It is Northwest's opinion that a permit form requiring all information pertinent to the entry is necessary to ensure a safe entry into confined spaces and compliance with this proposed standard.

In a similar vein, the Union Carbide Corporation (Ex. 14–88) stated:

> It is important for all critical information to appear on the permit in writing. Union Carbide requires permits to include in writing the place, time, purpose, personnel assigned, and name of authorizing individual, among other information, even when the authorizing individual assumes direct charge of the entry for its duration. The potential risk of miscommunication where critical information is not written down significantly outweighs the incremental benefits of not using a written permit containing all necessary information.

Still other commenters (Ex. 14–81, 14–123, 14–137), while not objecting to the "checklist permit" provision, felt

[25] Although the entry permit does not provide an absolute method of verifying that entry conditions are acceptable, it does provide a ready means to check that all items listed on the permit have been accounted for. If no one remembered to take one of the listed precautions, it would not be documented on the permit—a hazard that should be caught by the entry supervisor during his or her review. The entry supervisor and other employees can also verify that the test results given on the permit are within the range allowed. The final rule makes the entry supervisor responsible for ensuring that the elements listed on the permit have been completed. The signature of the entry supervisor who originally authorized the entry signifies that these measures have been taken.

that the intended relief would be of little value to them. The National Ready Mixed Concrete Association (NRMCA, Ex. 14–81) commented that:

> While NRMCA has no objection to the exemption of permit required confined spaces for situations in which the person who authorizes entry assumes direct charge for the duration, we consider it unlikely that much benefit would accrue to the ready mixed concrete industry by virtue of such an exemption. It is unlikely that the authorizing supervisor could often be directly in charge of a confined space entry for its duration.

A few commenters (Ex. 14–57, 14–73, 14–98) favored the exemption. For example, Beaumont & Associates (Ex. 14–57) supported the exemption, as follows:

> It would be appropriate to allow an entry permit which did not specify location, time, purpose, persons allowed entry, and duration of permit, if the person authorizing the entry remained at the entry location for the duration of the entry.

OSHA believes that the proposed provision was, unfortunately, misunderstood by many commenters, causing them, in many instances, to generate responses not pertinent to the issue. OSHA also believes that some of the objections stemmed, to a large extent, from a misunderstanding of this provision.

Based upon the rulemaking record, OSHA has decided not to allow the use of an abbreviated, or "checklist" permit in the final rule. OSHA agrees with the Union Carbide Corporation that it is important that all critical information appear on the permit in writing for two reasons. First, all the pertinent information will then be available, on the permit, to the entrants who will then be better equipped to make independent judgments as to the adequacy of pre-entry preparations. Second, the inclusion of all critical information on the permit will facilitate the program reviews required under paragraphs (d)(12) and (d)(13) of the final rule. In fact, the elements that the proposal would have allowed to be omitted are essential for the identifying the permit space and for identifying employees who could provide information about problems that may have arisen. OSHA believes that the benefits of including all the permit items (as listed in paragraph (f) of the final rule) far outweigh the slight cost savings that might have accrued through the use of an abbreviated permit. (The employer may, however, use a preprinted, checklist-type permit, provided it contains all the information required under paragraph (f) of the final rule, with all entries completed and with the signature of the entry supervisor.)

Paragraph (e)(3) of the final rule requires the employer to make the completed permit available to all entrants at the time of entry, such as by posting it at the entry portal, so that the entrants can confirm that performance of all necessary pre-entry measures has been indicated on the permit.

This requirement was not contained in the proposed rule. However, several commenters (Ex. 14–4, 14–124, 14–157, 14–161, 14–170, 14–174) suggested that OSHA make posting a copy of the permit a requirement in the final rule or stated that their company required such posting and that they believed such posting of the permit was appropriate. They argued that this posting would alert employees to the presence of hazards within the space and of the measures necessary for the protection of employees.

OSHA agrees that making the permit available to all authorized entrants would provide them with information on protective measures to be taken to make the permit space safe for entry. By inspecting the permit and observing recorded test results and the tester's signature or initials, the authorized entrants could check to see if pre-entry preparations have been completed. OSHA agrees that making the completed permit available to the entrants (whose safety and health, after all, is most at stake during entry operations) is important enough to be required in this final rule. Entrants will then be able to make their own judgments as to the completeness of pre-entry preparations and to point out any deficiencies that they believe exist. A requirement that the completed permit be posted at the entry portal or otherwise be made available to the entrants at the time of entry has therefore been incorporated into this final rule.

Paragraph (e)(4) of the final rule requires that the duration of a permit not exceed the time required to complete the assigned task or job identified on the permit in accordance with paragraph (f)(2) of the final rule.

This provision has been taken from paragraph (d)(3)(iii) of the proposal, under which a permit would have been allowed to remain valid for up to 1 year, so long as all conditions required by the permit were maintained. The comments OSHA received concerning the proposed provision (Ex. 14–28, 14–57, 14–63, 14–80, 14–109, 14–116, 14–151, 14–161) objected to allowing permits to be valid for so long. These commenters said that the 1-year limit was arbitrary, because it was unreasonable to expect that entry conditions would remain acceptable for that long. They pointed out that conditions within the space would almost certainly change over that amount of time and that the hazards within the space would have to be reevaluated. For example, the International Brotherhood of Teamsters (Ex. 14–109) stated:

> In Section (d)(3)(iii), OSHA proposes to allow a confined space permit to be issued for as long as a year at a time "so long as all conditions under which the permit was issued are maintained." For OSHA to suggest that a permit could be good for a year defeats much of the purpose of having a permit system at all. It invites complacency, and invites workers and supervisors to make unwarranted assumptions about conditions that may affect the safety of the entry. For example, it would not be appropriate to rely on one long-term entry permit for a tank in a brewery that had to be entered repeatedly—but not continuously —over the course of a year. Even a much shorter term, designated rescuers may go home at the end of their shift. Additionally, issuance of a long-term permit means that the authorizing person, who likely only works about 40 hours a week, may very well be unaware and unavailable at times when conditions change that should cause the permit to be amended or revoked.
>
> For reasons such as these, we strongly favor the recommendation on p. 7 of the NIOSH Criteria Document on Working In Confined Spaces: "The permit shall be dated and carry an expiration time that will be valid for one shift only. The permit shall be updated for each shift with the same requirements."

OSHA has decided to limit entry permit duration to whatever period of time is necessary for completion of the assigned task or job, which is identified on the permit under paragraph (f)(2) of the final rule. The duration of the permit is not directly relevant to the safety of employees working in permit-required confined spaces. As long as acceptable entry conditions are present, employees can safely enter and perform work in permit spaces. The length of time entry operations take should not be a factor in whether acceptable entry conditions exist in the space, as long as the permit system conforms to the requirements of final §1910.146. If conditions within the space change so that entrants are endangered, then the following steps should fully protect these employees:

(1) The entry supervisor, when he or she assumes responsibility for a space and when he or she performs periodic checks, ensures the presence of acceptable entry conditions (paragraph (j)(6)).

(2) If the hazard being introduced is atmospheric in nature, the testing and monitoring of the space will detect it (paragraph (d)(5)(ii)).

(3) If other hazards are being introduced, the entry supervisor, the

attendant, and authorized entrants are trained to detect their presence (paragraphs (g), (h)(1), (i)(1), and (j)(1)).

(4) Entrants would vacate the permit space (paragraphs (h)(4) and (h)(5), (i)(6), and (j)(3)).

These steps fully protect entrants from hazards developing during entry operations. Limiting the duration of the permit to an arbitrary length of time would not reduce the risk of entry into permit spaces because the conditions within the space are required to be monitored periodically.[26] On the other hand, the permit should not be valid for a period longer than necessary to complete the task being performed inside the space. Otherwise, entrants could be unnecessarily exposed to the residual hazards of permit spaces. Therefore, OSHA has decided to adopt a requirement that the permit be valid for a period not to exceed that necessary to complete the task or job for which the permit was obtained in place of the proposed requirement that it be valid for no longer than 1 year.

In complying with paragraph (e)(4) of the final rule, the employer need not, but may, state a specific time period (a number of hours or days) on the permit. For instance, the permit's duration could be stated in terms of the removal and installation of a relief valve or the cleaning of the inside surfaces of a tank. OSHA's intent here is merely to place some reasonable limitation on permit validity.

Paragraph (e)(5) of the final rule covers cancellation of entry permits. It requires the entry supervisor to terminate the entry and cancel the permit when the entry operation covered by the permit has been completed or when a prohibited condition arises in or near the permit space.

This provision in the final rule is based upon proposed paragraphs (d)(6) and (g)(1)(iv). Specifically, paragraph (d)(6) of the proposed rule would have required the "individual authorizing the entry" to cancel the permit. Many commenters (Ex. 14–80, 14–86, 14–88, 14–94, 14–118, 14–123, 14–143, 14–150, 14–188) stated that the proposed provision was unduly restrictive because the individual who originally authorized entry was often not present upon completion of entry operations. For example, the Chemical Manufacturers Association (Ex. 14–118) argued as follows:

Paragraph (d)(6) requires that the individual who authorized the entry must cancel the permit. This requirement could pose unwarranted inefficiencies and hazards. In many cases, the original authorizing individual will be away from the worksite and unavailable to cancel the permit. In addition, another individual trained to authorize and cancel a permit may note a condition that warrants canceling the permit. Any individual trained to authorize entry should be able to cancel the permit.

The Agency acknowledges that there are situations where more than one entry supervisor is needed over the course of entry operations. For example, when multi-shift entry operations are conducted, more than one entry supervisor would be used for a permit space. Additionally, even for entry operations that do not extend across more than one shift, the original entry supervisor may be absent from the workplace for other reasons. Therefore, the Agency has adopted language to provide that the entry supervisor, not the person who authorized entry, will cancel the permit. As noted under the discussion of the term "entry supervisor", OSHA does not intend to restrict the position of entry supervisor to a single individual. Any individual who has been designated as the entry supervisor has the authority to terminate entry and cancel a permit. Of course, the entry supervisor on duty at the completion of the entry operation will normally be the one to terminate and cancel the permit.

Paragraph (e)(6) of the final rule requires that canceled entry permits be retained for at least 1 year to facilitate the annual review of the permit space program required under paragraph (d)(14). Paragraph (e)(6) had no counterpart in the proposed rule. Its inclusion in the final rule is based on OSHA's conclusion that the permit space program needs to be reviewed at least once per year. Canceled permits are among the materials that need to be covered by the annual review (as required by paragraph (d)(14)). OSHA believes that information on any problems that arise during entry operations should be available to the personnel who perform the review. For example, there may be information which, while not alarming when related to a single entry, may in fact turn out to be important evidence of a problem or of a trend that could lead to a problem. Indeed, Mr. Dan Glazier, representing the Motor Vehicle Manufacturers Association (Chicago Tr. 187–188), noted this very point in his testimony, as follows:

If you have an indication that the oxygen level has dropped in this confined space or that the combustible level has exceeded 5 percent of the [LFL], then certainly there is something unique about [that] confined space that is causing it to go bad.

Therefore, I would want to track that for a certain period of time and we never really outlined that. But to try to determine what is causing that confined space, what is unique about that [confined] space which is causing it to go bad. That lends some credibility to I think to keeping the permits for a certain period of time so that you can track confined spaces that I should say, "are known bad actors".

For these reasons, paragraph (e)(6) also requires the employer to annotate its permits to indicate any problems so that the appropriate revisions to the program can be made.

Paragraph (f), Entry Permit.

Paragraph (f) of the final rule specifies the information that must be included in the permit prepared under paragraph (e) of final §1910.146. As noted previously in the discussion of paragraph (e), that information sums up the employer's efforts to identify and control conditions in permit spaces. OSHA has determined that the preparation of the permit will be a central part of the employer's determination as to whether conditions in a permit space are safe for employee entry. The permit itself will provide a concise summary of the permit space program requirements for a particular entry that will be useful to the personnel who are conducting the entry operations and to any personnel who need to review the conduct of entry operations after the operations have been terminated. Additionally, OSHA believes that properly prepared entry permits will assure employees that the employer's permit space program will protect them from permit space hazards.

The remaining discussion of paragraph (f), following, provides a summary and explanation of each of the items required to be identified on a permit. The introductory language of paragraph (f) explicitly requires all the information listed in paragraphs (f)(1) through (f)(15) to be included on an entry permit.

Paragraph (f)(1) requires an identification of the space to be entered. This is effectively identical to paragraph (d)(3)(i) of the proposed standard. OSHA received no substantive comments on the proposed paragraph.

Paragraph (f)(2) requires the purpose of the entry to be listed on the permit. This is identical to paragraph (d)(3)(ii) of the proposed standard, on which no substantive comments were received.

Paragraph (f)(3) requires the date and the authorized duration of the entry permit to be entered. The duration of

[26] Since the final rule requires the entry supervisor to re-evaluate the space upon assuming responsibility for it (under paragraph (j)(6) of the final rule), entry conditions will be checked at least once per shift.

the entry permit need not be stated in terms of actual time, but may be stated in terms of the completion of the task for which permit space entry is being performed. This provision corresponds to paragraph (d)(3)(iii) of the proposed standard. (See the summary and explanation of paragraph (e)(4) of the final rule, earlier in this preamble for further discussion of the acceptable duration of a permit and for a discussion of the comments received on paragraph (d)(3)(iii)).

Paragraph (f)(4) requires a listing of the authorized entrants. The employer may place the names of authorized entrants on the permit or may choose to track them by any other effective means.

This provision corresponds to paragraph (d)(3)(iv) of the proposed standard. Many rulemaking participants objected to the proposed provision (Ex. 14–28, 14–86, 14–94, 14–111, 14–118, 14–124, 14–125, 14–143, 14–150, 14–161, 14–170, 14–176, 14–188, 119), citing concerns about the infeasibility of placing a large number of names on the entry permit itself. These rulemaking participants argued that, while it was important to track the presence of employees working within the space, maintaining an accurate list of authorized entrants for a particular permit space entry operation was unnecessary. They also contended that maintaining such a list would be nearly impossible for large entry operations involving hundreds of authorized entrants. Most of these rulemaking participants suggested using a performance- oriented approach that recognized all types of tracking means, such as rosters, having the attendant keep an accurate count of entrants, and sign-in and sign-out sheets.

In its post-hearing comment (Ex. 119), which was typical of the objections to proposed paragraph (d)(3)(iv), Texaco stated:

> The point is that there may be 50 to 60 people working in this one vessel and due to the complexity of the work, the personnel will change constantly. The contractor plans the work in advance, the operations personnel check and assure that the vessel is safe for entry and does this without the knowledge of the actual names of personnel who will be entering the vessel. The names of the personnel are assigned by the contractor(s) just prior to the start of the shift, *at the same time that the operator is checking the vessel for entry.* The problem with assigning *actual names* for vessel entry is compounded by the fact that the personnel change at the last moment due to absences, etc., and the fact that workers are constantly changing even throughout the shift.
>
> In *summation*, actual names on the permit would greatly delay the start of the work at each shift and Texaco submits that this delay is not warranted *since it provides no greater worker protection.* With the personnel inside the tower constantly changing, the listing of actual names *on the permit* would be a virtual impossibility. The point is to assure that all get out if an alarm is sounded. The Standard should contain performance oriented language that would allow an employer the flexibility to decide upon and implement *the most reasonable safety procedure for tracking personnel inside a particular permit space.* Of course in practical situations, this would include either sign in sheets, entry badges, or tag boards. [Emphasis supplied in original.]

The main purpose of the proposed requirement was to provide an accurate list of employees inside the space so that it would be possible to determine quickly and accurately whether all entrants had been rescued in an emergency. A second purpose was to provide assurance that all employees had evacuated the space at the end of entry operations. To achieve these goals, the proposal would have required the permit to list the names of all authorized entrants within the permit space.

Based on the rulemaking record, OSHA concludes that the proposed provision would have been unduly restrictive and somewhat impractical for permit space entry operations involving large numbers of entrants. However, the Agency is still concerned that, without an accurate entrant tracking system, entrants may be left inside permit spaces after the operation is complete.

The rulemaking participants (Ex. 14–34, 14–111, 14–118, 14–124, 14–170, 14–188, 119) mentioned several possible alternatives to the listing of entrants names on the permit: tag boards, entry badges, sign-in sheets, and electronic tracking systems. Many of these systems provide the attendant with enough information to keep accurate track of authorized entrants. OSHA believes that, as long as the system accurately traces who is in the permit space at any given moment and as long as the attendant has immediate access to the system, the attendant will be able to order the complete evacuation of a space as required by paragraph (i)(6) of the final rule. Additionally, the rescue and emergency service will be able to account for all employees working inside the permit space in the event of an emergency. Other systems, which only keep a count of the employees inside the permit space, would not be acceptable. A simple count of the number of authorized entrants would not be sufficient to ensure that all entrants have been rescued in case of emergency. Under such conditions, it would be easy to lose track of exactly how many employees have exited the space. Further, without a more systematic approach to tracking employees, entrants performing self-rescue might not inform the attendant of their emergence from the space. The rescue and emergency service employees would then be exposed, unnecessarily, to the hazards posed by entry into the permit space under hazardous circumstances. Unauthorized entrants, who might have gotten into the space and who might even have caused the emergency, could easily be counted as they exit the space, which would result in the attendant's losing track of some of the authorized entrants still in the space. These employees might then suffer further injury or death as a result.

For these reasons, paragraph (f)(4) of the final rule requires a system of tracking authorized entrants that will accurately trace who is in the permit space at any one time and that will enable the attendant to identify these employees quickly and accurately. Any system that meets the goal set by the performance-oriented language is acceptable.

Paragraphs (d)(3)(v) and (d)(3)(vi) of the proposed standard would have required a listing of all eligible attendants and individuals eligible to be in charge of the entry, respectively. Many commenters (Ex. 14–28, 14–80, 14–86, 14–94, 14–116, 14–118, 14–123, 14–124, 14–130, 14–143, 14–150, 14–157, 14–161, 14–170, 14–176, 14–188) also objected to these proposed provisions. The commenters noted that there could be large numbers of employees who were eligible to serve as attendants or as entry supervisors, even if the number who actually serve in such capacities was small. Again, the commenters urged OSHA to adopt a performance- oriented approach. For example, Dow Chemical USA (Ex. 14–130) stated:

> A list of those that are trained (or eligible) to perform the work involved in the confined space entry could be long. While a list of those directly involved and authorized for entry will be short and beneficial.

Several rulemaking participants (Ex. 14–80, 14–124, 14–188) argued that methods such as identifying attendants and entry supervisors by job title, by logs, or by badges could provide the required information in a much less burdensome fashion. Others (Ex. 14–88, 14–116, 14–130, 14–161) urged OSHA to require only the identification of attendants and entry supervisors that are involved in a particular entry operation. Some of those objecting to the proposed provision (Ex. 14–80, 14–94, 14–118, 14–157, 14–161, 14–170) noted that the information the Agency

would be requiring on the permit could be gleaned from other, more appropriate, sources (namely, personnel training files).

As discussed in the summary and explanation of paragraph (f)(4) earlier in this preamble, OSHA agrees that there are conditions, especially if large numbers of employees are involved in entry operations, under which it is unreasonable to list by name on the permit all individuals who might serve as attendants or entry supervisors. OSHA further agrees that there are methods of identifying attendants and entry supervisors other than naming them on the permit itself. Employees have another method of ensuring that individuals serving as authorized entrants, attendants, and entry supervisors are qualified. Under paragraph (g) (discussed later in this section of the preamble), the employer is required to certify that employees have received the requisite training. This certification is required to be available to employees and their representatives so that employees can verify that individuals have been appropriately trained. As a result, listing the names of eligible attendants and entry supervisors on the permit itself is not necessary.

The primary basis for proposing to require the names of the attendants and entry supervisors on the permit was that it is important for all affected employees to be able to know who the persons responsible for the safety of entrants are. If an employee notices a hazard developing, it is important for him or her to be able to notify a person with the responsibility and authority for abating the hazard or for evacuating the permit space. The proposal took the approach that the easiest method for the identification of these individuals was to name them on the permit. As noted by the comments on proposed paragraphs (d)(3) (v) and (vi), the proposal did not account for other equally effective means of identifying the appropriate persons.

At the same time, the proposal would not have afforded entrants the most effective protection. Unless provision was made for identifying the individuals currently acting as attendants or entry supervisors, permits that identify all persons eligible to fulfill those roles do not enable employees quickly or easily to identify and contact the persons actually having responsibility for safe permit entry operations at a given time. In an emergency, an employee could waste valuable time inquiring of all the individuals named on the permit to find the person that can take steps necessary to protect entrants. Meanwhile the employees inside the permit space would be endangered.

In the final rule, OSHA is requiring the employer to identify by name the current attendants (paragraph (f)(5)) and current entry supervisor (paragraph (f)(6)) for a permit space entry. Whenever new attendants or entry supervisors assume their roles, they are required to have their names placed on the permit. This provides a sure means of distinguishing these important individuals quickly and easily. It also provides the opportunity for these individuals to review the permit and entry conditions to ensure that entry conditions remain safe. In fact, under paragraph (j)(6), the new entry supervisor is required to undertake this review.

OSHA has determined that it is not necessary to identify all eligible attendants or entry supervisors on the permit. As indicated in the public comment, the list of eligible individuals could be lengthy and is of little actual use during the entry operation. Also, this information, if needed, is readily available in training records, as noted by the commenters. In fact, the employer is required to certify the training of these individuals and to make the certification available to employees and their representatives under paragraph (g)(4) of the final rule. The presence of this information on the permit would not contribute to employee safety and, as noted previously, might even hinder efforts to protect entrants in an emergency.

Paragraph (f)(7) requires the permit to contain a listing of the hazards of the permit-required space to be entered. This provision is essentially identical to paragraph (d)(2)(i) of the proposed standard on which OSHA received no significant comments.

Paragraph (f)(8) requires the permit to contain a list of the specific measures to be used for isolating the permit space and for eliminating or controlling permit space hazards before entry.

This provision combines language from proposed paragraphs (d)(2)(ii) and (iii), which proposed that the measures to be taken for isolating the permit space and for removing or controlling hazards be identified on the permit. Some commenters (Ex. 14–86, 14–124, 14–143, 14–150, 14–188) maintained that the standard operating procedures that would be used to take these measures were detailed and highly specific in nature. They argued that such detailed information was not needed on the permit itself and suggested that the final rule allow only a reference to these standard operating procedures.

With respect to these comments, OSHA notes that the entry permit need only identify the measures (such as the use of blanking to isolate a permit space) used to perform the specified steps in the permit space program. The final rule does not require the exact procedures used to be identified, because, as noted in the comments, including that degree of detail on the entry permit itself would not be practical. The detailed procedures for making the permit space safe for entry are required to be established, under paragraph (d)(3), and authorized entrants, attendants, and entry supervisors are required to be trained in their use, under paragraph (g). (See the summary and explanation of these two paragraphs for a discussion of the establishment and implementation of procedures for making spaces safe for entry and for a discussion of training requirements, respectively.) The permit need only refer to these procedures in sufficient detail to enable employees to determine what measures should be taken and how to perform those measures. (The detail to be provided on the permit is dependent, to some extent, on the training provided under paragraph (g).)

Paragraph (f)(9) requires the permit to contain a list of the acceptable entry conditions for the permit space.

This provision has been taken from proposed paragraph (d)(2)(iv), which would have required the "acceptable environmental conditions, quantified with regard to the hazards identified in the permit space, which must be maintained during entry". As noted earlier in this preamble, the proposed term "acceptable environmental conditions" has been replaced with "acceptable entry conditions" in the final rule. (See the summary and explanation of the term "acceptable entry conditions" for a discussion of the reasons for this change in terminology.)

One commenter (Ex. 14–123) argued that the acceptable entry conditions that were required to be listed on the permit were more appropriate as part of the hazard control procedures and practices required by proposed paragraph (c)(2) (paragraph (d)(3) of the final rule).

Measures for obtaining acceptable entry conditions are dependent upon the acceptable entry conditions for a given permit space. These measures must be listed on the permit under paragraph (f)(8). The entry conditions that must be present within the space must also be listed on the permit so that authorized entrants, attendants, and entry supervisors have this information on hand at the worksite. These conditions include such criteria as the

oxygen, flammable gas and vapor, and toxic substance levels that must be met before the permit space is safe for entry.[27] They also include the energy control considerations that apply to the permit space. Because the hazard control measures to be taken are directly related to the particular acceptable entry conditions for the permit space, employers will likely combine these two elements on the permit. In fact, the example permits presented in Appendix D list acceptable entry conditions as part of the hazard control measures to be taken.

Paragraph (f)(10) requires the recorded test results corresponding to the specified entry conditions, along with the signature or initials of the tester and an indication of when the tests were performed, to be entered on the permit. The results of initial and periodic tests performed under paragraph (d)(5) of the final rule would have to recorded.

This provision did not appear in the proposal. The proposal required the employer to set acceptable entry conditions (paragraphs (c)(2) and (d)(1)), to ensure that they were met before entry (paragraphs (d)(2) and (d)(5)), and to ensure that they were maintained during permit entry operations within the space (paragraphs (f)(2) and (g)(1)). The proposal required the permit to contain testing procedures and equipment necessary to verify the presence of acceptable entry conditions, and the Agency anticipated that the employer would test conditions within the space as necessary to meet these provisions.

In response to information received as part of the rulemaking record, OSHA has adopted specific requirements for the testing of conditions within permit spaces to verify that they are acceptable. (See the summary and explanation of paragraph (d)(5) for a discussion of these requirements.)

Several commenters (Ex 14–4, 14–116, 14–118, 14–148, 14–164) recommended that the results of testing performed under the standard be documented. They argued that this information would dictate the protective measures to be taken. Supporting the view that recording the results of testing was an important part of a permit system, Allwaste Tank Cleaning Company (Ex. 14–164) stated:

> The only required information should be the space identification and results of atmosphere testing. In an industry such as ours, these results will dictate the measures employed.

Additionally, there is some evidence in the record that documenting test results is a practice in current permit space programs. Three witnesses at the Chicago hearings (Chicago Tr. 123, 146, 209) agreed that documentation of test results was needed and testified that such documentation was a common practice in their particular operation.

As a result of this testimony and evidence, OSHA has concluded that recording the results of initial and periodic testing is a necessary feature of permit space programs. If the results of testing are entered on the permit, the entry supervisor has before him or her readily available evidence that pre-entry conditions have been checked and what the test results were. Additionally, the entrants themselves will be able to check the permit for themselves to see that the testing has been done and that safe conditions exist. Entrants and attendants can also use the test results as guidance on conditions to which they should pay close attention. For example, if the oxygen concentration is 19.6 percent, the attendant and entrants should be alert for signs of oxygen deficiency, such as increased breathing rate, dizziness, rapid heart beat, and headache. Furthermore, documentation of test results on the permit also facilitates the review of canceled permits required under paragraph (d)(14). If testing indicates that levels of hazardous substances are increasing, the increased hazard will be easy to recognize through a review of the recorded test results on the canceled permit. For these reasons, the Agency has concluded that a requirement to record, on the permit, the results of initial and periodic testing performed under paragraph (d)(5) is necessary and appropriate for the protection of employees entering permit- required confined spaces. This requirement appears in paragraph (f)(10) of the final rule.

Triodyne Environmental Engineering, Inc. (Ex. 14–50), stated:

> Requiring a checklist on an entry permit provides for a repetitive method which can recognize individual responsibility by requiring initials next to each task.

OSHA agrees with the commenter and has decided to require that the initials or name of the person who performed the test be placed on the permit. OSHA has also decided to require that an indication of when the tests were performed be placed on the permit as well. This information will enable the entry supervisor and the attendants to establish the identity of the person who performed the tests in case any questions arise. The date and time (or other indication of when the test was performed) will give a quick indication of when additional testing is needed. The Agency has concluded that this information is integral to the test data and that its presence on the permit is also necessary. Therefore, paragraph (f)(10) of the final rule also requires the permit to contain this information along with the results of the tests.

Paragraph (f)(11) requires the permit to list the rescue and emergency services that can be summoned and the means for summoning those services. The identification of the rescue and emergency services and the means for summoning them enable the attendant to summon the rescue and emergency services immediately in case of emergency. This provision corresponds to, and is substantively the same as, paragraph (d)(2)(vi) of the proposal. The comments on this paragraph of the proposal are discussed under the summary and explanation of paragraph (f)(13) of the final rule.

Paragraph (f)(12) requires the permit to contain a list of the communication procedures to be used by attendants and authorized entrants during entry. This provision corresponds to proposed paragraph (d)(2)(viii). The phrase "during the entry"[28] has been added in the final rule to ensure that it is understood that this provision applies only to communication equipment and procedures used during entry operations. Except as noted under the summary and explanation of paragraph (f)(13), OSHA received no significant comments on the provision as proposed.

Paragraph (f)(13) requires that the permit contain a list of equipment to be provided for compliance with the permit space standard. This equipment includes personal protective equipment, testing equipment, communications equipment, alarm systems, rescue equipment, and other equipment that the employer intends to provide to ensure compliance with final §1910.146.

Paragraph (f)(13) of the final rule has been taken from proposed paragraphs (d)(2) (v) through (ix). Requirements relating to equipment in these proposed paragraphs have been placed in one place in the final rule. OSHA believes that this simplifies these provisions. Paragraphs (d)(2)(v) through (d)(2)(viii) of the proposal would have required the permit to list the test equipment and procedures, the rescue and emergency

[27] An atmosphere meeting these levels must be not be a hazardous atmosphere, as defined in final §1910.146(b), except as otherwise permitted by §1910.132.

[28] "Entry." is defined to include the initial entry into and subsequent operations within the permit space.

services, the rescue equipment, and the communication equipment and procedures for the permit space, respectively. A few commenters (Ex. 14–28, 14–86, 14–123, 14–143, 14–170, 14–188) stated that these items were equipment and procedures that are more appropriately addressed in training or in the hazard control procedures provided under the permit space standard. Although each of these commenters was concerned about a different item to be listed, they all argued that the permit itself should be as simple as possible and that the details of the individual items are covered in more detail in training of employees or in operating procedures.

The Agency disagrees with these comments. OSHA has concluded that the permit needs to identify the equipment, as well as the procedures, necessary to ensure safe entry operations and to facilitate rescue. The authorized entrants and attendants need to know what equipment will be needed for a particular space so that the entrants spend as little time exposed to the hazards presented by permit space entry as possible. Without the proper equipment, these entrants might have to exit the space and reenter after the proper equipment has been obtained. As a result, they would be exposed to increased hazards unnecessarily. Therefore, paragraph (f)(13) of the final rule requires the permit to identify the necessary equipment.

Paragraph (f)(14) requires that the permit contain any other information whose inclusion is necessary, given the circumstances of the particular confined space, in order to ensure employee safety.

This provision is identical to proposed paragraph (d)(2)(x). One commenter (Ex. 14–161) considered the proposed requirement to be too open-ended.

OSHA believes that this performance-oriented requirement is necessary for the protection of employees involved in permit space entry operations. Due to the wide-ranging types of hazards found in permit-required confined spaces, there are many hazards that cannot be adequately addressed with any precision in a generic permit space standard. Therefore, the provision needs to be general in nature.

Paragraph (f)(15) requires that any additional permits, such as hot work permits, that have been issued to authorize work in the permit space, be identified on the permit. If the other permits are attached to the entry permit, they are considered to be part of it. This provision is essentially the same as proposed paragraph (d)(4), on which no significant comments were received.

Paragraph (g), Training.

The record strongly demonstrates a need for training employees in the hazards posed by permit spaces and in the procedures for controlling those hazards. Many of the accident descriptions in the record indicate that one of the major factors causing these accidents is a lack of employee awareness of the dangers involved in entry into permit spaces. Employees who entered these spaces were unaware of the possibility that the atmosphere inside could be immediately dangerous to life or health. In some cases, they also did not recognize the symptoms of exposure to certain life- threatening atmospheres. In other cases, they did not realize that sometimes there are no obvious symptoms. Employees who attempted to rescue fallen coworkers inside permit spaces were also unaware of the hazards involved and of the procedures for safe rescue. The result of this lack of training was often the deaths of these employees.

OSHA proposed in the NPRM to establish training requirements for permit space entrants (paragraph (e)), for attendants (paragraph (f)), and for persons authorizing or in charge of an entry (paragraph (g)). The training requirements were combined with provisions related to the duties to be performed by each of these classes of employees to stress that employees had to be instructed in these specific duties. It was the Agency's belief that these provisions would go far towards the goal of protecting employees from the hazards of permit space entry.

Some commenters (Ex. 14–62, 14–63, 14–151, 14–163, 14–173, 14–174, 14–208, 14–214) were concerned that this approach did not stress the need for training enough or that it omitted important elements. For example, several rulemaking participants (Ex. 14–63, 14–151, 14–163, 14–208, 14–214) suggested that the standard address follow-up training and instruction in cardiopulmonary resuscitation. Others (Ex. 14–45, 14–63, 14–86, 14–109) argued that the training provisions should be clarified in one way or another. To address their concerns, the State of Maryland Occupational Safety and Health Program (Ex. 14–63) recommended the incorporation of a special section on training, as follows:

> There should be a training section or an Appendix incorporated into the standard, which offers an outline or a lesson plan which addresses each item to be covered, such as reading instruments, monitoring, ventilation, rescue, etc.

The Agency agrees that the best way to address the valid concerns of these rulemaking participants is to adopt a separate paragraph on training. This approach will not only stress the overall importance of training in a permit-required confined space entry program, but will ensure consistency among the different elements required for each class of employees and will allow OSHA to treat additional considerations supported by the record.

OSHA has not provided specific training elements in the text of paragraph (g). Many of the elements of training are listed in paragraphs (h), (i), (j), and (k) for authorized entrants, attendants, entry supervisors, and rescue personnel, respectively. These other paragraphs succinctly state the duties of these individuals, and paragraph (g) requires them to be trained in these duties. Other sources also provide guidance in selecting elements of training for employees involved in permit space entry operations. For example, ANSI Z117.1–1989 (Ex. 129) lists specific elements for authorized entrants, attendants, entry supervisors, and personnel performing testing for entry operations. Employers can utilize these sources of information in developing programs for teaching employees about permit space entry operations and the hazards involved.

Paragraph (g)(1) of the final rule requires employers to provide training so that employees whose work is regulated by §1910.146 acquire the understanding, knowledge, and skills necessary for the safe performance of the duties assigned under that section. This provision combines the training requirements proposed under paragraph (f), (g), and (h) in one place.

The Agency proposed to establish training requirements for entrants, attendants, and persons to whom the employer would delegate authority to be in charge of an entry. OSHA did not specify the experience or training necessary for employees who would initially evaluate spaces or who would formulate the requirements and the procedures that employees must use for safe entry into permit spaces. Also, OSHA did not specify what experience or training would be necessary to qualify a person to perform pre-entry testing and verification of permit conditions.

In Issue 1 of the proposal, OSHA asked if the Agency should set experience, proficiency, or other criteria to qualify employees assigned to evaluate spaces initially or those assigned to develop appropriate entry procedures. OSHA also asked what those criteria should be, and if persons

with the training and experience equivalent of a certified safety professional (CSP), a registered professional safety engineer (PE), an industrial hygienist, or a marine chemist should qualify. OSHA also wanted to know if the Agency should specify experience and training requirements for persons who perform the pre-entry tests or who monitor conditions during entry and, if so, what these employees should need to know and understand.

OSHA received many comments on this issue (Ex. 14–11, 14–27, 14–35, 14–42, 14–43, 14–44, 14–45, 14–62, 14–88, 14–111, 14–118, 14–126, 14–137, 14–147, 14–157, 14–161, 14–178, 14–179, 14–182, 14–184, 14–185, 14–189, 14–193, 113, 138). The issue was also discussed during the public hearings (Washington Tr. 466; Houston Tr. 631, 1056–1057; Chicago Tr. 150–151, 314–315, 320, 370–371, 610–611, 636–637, 642).

All the commenters agreed that employees entering and attending confined spaces had to be properly trained or experienced in the duties they were to perform. Some of them (Ex. 14–11, 14–44, 14–45, 14–63, 14–163, 14–173, 14–208; Chicago Tr. 320, 642) suggested that the requirement contain specific criteria either in a separate list or in the rule itself. For example, Warren Industries (Ex. 14–44) suggested a performance standard with a list of major topics. They stated:

> OSHA should only specify the required training to the extent that they specify that "All persons dealing with Confined Spaces must have special training on these subjects" and then list certain major topics to be covered.

Marshall Hicks of the Utility Workers' International Union (Chicago Tr. 642) testified that OSHA should be more specific in its requirement. He stated:

> We would propose that the OSHA regulation specifically state what the training requirements are and the qualifications for persons who will be making a determination of whether a confined space is safe for entry or not. We believe that that particular individual is going to be determining whether or not the worker who enters is going to be able to exit and we think that the specific qualifications in training ought to be set forth in the regulation for that individual as well as others.

However, the majority of commenters recommended that OSHA should require training in a performance-oriented manner, without specifying the content of that training or the qualifications of the trainer (Ex. 14–27, 14–35, 14–43, 14–137, 14–147, 14–157, 14–161, 14–178, 14–179, 14–182, 113, 138; Houston Tr. 631). These rulemaking participants argued that there was no practical way for OSHA to itemize the training for employees because of the wide variety of hazards posed by the different types of permit spaces encountered throughout general industry. They maintained that experience was frequently the best qualification for persons who determine the appropriate measures for safe permit space entry operations. For example, Union Carbide (Ex. 14–88) stated:

> Union Carbide endorses the "competent person" concept adopted in the lockout/tagout proposed rule as the acceptable standard for proficiency. We have found that experience can be more valuable in this area than formal training.

United Technologies (Ex. 14–178) agreed that OSHA should not set detailed training criteria, stating:

> OSHA should not set experience, proficiency or other criteria for qualified individuals who are expected to evaluate spaces. Training should be a requirement but the level of training will vary with the responsibility of the individual and the complexity of the entries. The training should be appropriate for the hazards to be encountered. A uniform training requirement can only cover suggested topics (i.e. definitions, using test equipment etc.). Specific requirements will not be appropriate for many of the situations encountered. In some cases spaces may be of sufficient complexity as to require evaluation by a trained safety/Health professional.
>
> For basic programs with more limited hazards and types of spaces, adequate training may be as little as attending a short formalized training session. Field testers must be trained in hazard recognition, use of instrumentation and field checks to insure that instruments are functioning properly. Their training should be commensurate with their responsibilities. The Confined Space Program must stand alone and be evaluated on the needs and concerns of the location and hazards for which it is designed.

Ray Witter, one of OSHA's expert witnesses (Houston Tr. 631), testified as follows in support of these comments:

> There have been many comments suggesting that OSHA should specify the qualifications required to be a certified trainer. This is an impossible task so I recommend that OSHA should not even attempt to set such criteria. OSHA has set performance criteria for all other requirements and training should be no different. Thus the qualifications of the trainers must vary greatly depending on the situation facing the employer.

The Agency agrees that the wide-ranging hazards found and the various control measures to be used to control them makes specifying the types of material to be covered in training courses for workers involved in permit space entry a nearly impossible task. Furthermore, it is OSHA's policy, as set out in section 6(b)(5) of the OSH Act to state safety and health standards in terms of performance desired wherever possible. Therefore, paragraph (g)(1) does not specify the courses to be provided or otherwise detail the exact training to be provided employees involved in permit space entry operations; rather, the standard requires training employees so that they acquire the understanding, knowledge, and skills necessary to perform their duties, as required by final §1910.146. The Agency believes that this approach sets the desired objective of the training, that is, to train employees to comply with the standard.

Most rulemaking participants believed that OSHA should not require the use of professionally certified individuals, such as CSPs, Pes, certified industrial hygienists, and Marine Chemists (Ex. 14–27, 14–44, 14–45, 14–111, 14–147, 14–184; Chicago Tr. 34). For example, the Northwest Pipeline Corporation (Ex. 14–27) stated:

> OSHA should not specifically require certain criteria such as professional engineer or safety professional certification, in order to qualify for initial evaluation and procedure development. Specifications of this type would be contrary to the overall performance oriented language [of] which the rest of the document is composed.

Warren Industries (Ex. 14–44) noted that professional certification did not automatically qualify a person to evaluate permit space hazards, as follows:

> There should be NO requirement that ties the criteria for experience or proficiency to such people as CSPs, RPSEs, IHs [industrial hygienist], or Marine Chemists. Being in one of these categories in no way gives automatic qualifications for dealing with Confined Spaces and their unique problems. While the experience and education of these groups of people could be valuable in their learning the additional specifics of Confined Spaces, there is no reason to believe that a person with equivalent backgrounds would automatically be qualified to handle Confined Spaces.

S.C. Johnson & Son. (Ex. 14–45) also questioned the validity of automatic acceptance of professional certification, stating:

> A registration or certification as a safety professional (e.g., a registered professional safety engineer, industrial hygienist, a marine chemist) will not automatically qualify that person to evaluate spaces and to develop appropriate entry procedures. I have met many registered safety professionals and CIHs [certified industrial hygienist] who have little or no real world experience in the use of simple testing equipment (e.g., never used a detector tube, never calibrated a combustible gas/oxygen meter). Their entire "understanding" of confined space entries is theoretical in nature.

Texaco, USA (Ex. 14–147) noted that, while registration as a safety and health professional gives a person a portion of the training needed to identify permit space hazards, additional specific training in permit spaces would be necessary. They argued:

The fact that a person has been classified as a CSP, a registered professional engineer, an industrial hygienist, or a maritime chemist should not automatically qualify that person as having sufficient training and experience to evaluate spaces and develop appropriate entry procedures. Although it is likely that professionals with these designations have the proper academic background, they, as well as anyone else, should not be designated as qualified until training in confined space hazard evaluations and entry procedures has been received.

The Independent Liquid Terminals Association (Ex. 14–184) identified the burden that would be placed upon small businesses, if certified or registered professionals were required, as a major reason for not including this type of provision in the final permit space standard. This commenter was concerned that small employers would be forced to hire a contractor to evaluate the permit space and to develop entry procedures even though a person capable of performing those duties, but without the proper professional certification, was available.

There were other rulemaking participants, however, who supported the required use of certified or registered professionals (Ex. 14–42, 14–62), particularly in maritime industries. The National Fire Protection Association (Ex. 14–42) supported this view, stating:

A similar application of the two-tier approach used by the marine industry would require use of a professionally qualified tester for those confined spaces containing or capable of producing a toxic atmosphere during entry or work in the confined space or which pose a risk from fire or explosion. In these instances a professionally qualified tester, like a Marine Chemist or other certified professional, with demonstrated experience and training in evaluating confined spaces should be required to perform initial inspections and tests of the confined spaces prior to any entry.

Confined spaces whose only hazard is oxygen deficiency, engulfment, or other mechanical hazards may be tested and inspected by a person trained to recognize, evaluate and control these hazards.

The Shipbuilder's Council of America (Ex. 14–62) agreed with the need to specify proficiency and knowledge criteria. They argued that small employers who do not have qualified individuals should hire a contractor to evaluate the hazards in their permit spaces, as follows:

OSHA should determine experience, proficiency and knowledge criteria similar to those in 29 CFR 1915.7 [29] for the person who is qualified to evaluate the hazards associated with entering and working in confined spaces. Small businesses which do not have such persons available should be required to contract with an outside firm to perform this work.

OSHA has determined that it is not appropriate to require professional certification for persons who evaluate the hazards of permit spaces and who determine the procedures needed to control those hazards. The Agency agrees with the commenters who maintained that professional certification is not an automatic guarantee of competence. (However, OSHA recognizes that Marine Chemists are required to have extensive experience with permit space entry hazards.) Additionally, professional certification may not always be necessary for the safety of authorized entrants. The extent of knowledge required of certified safety and health professionals may simply not apply to an employer's particular permit space hazards. In such cases, a person with knowledge of the unique aspects of the employer's permit spaces may be better able to protect authorized entrants from the relevant hazards.

[29] Section 1915.4 defines "competent person." as:

The term "competent person." for purposes of this part means a person who is capable of recognizing and evaluating employee exposure to hazardous substances or to other unsafe conditions and is capable of specifying the necessary protection and precautions to be taken to ensure the safety of employees as required by the particular regulation under the condition to which it applies. For the purposes of Subparts B, C, and D of this part, except for 1915.35(b)(8) and 1915.36(a)(5), to which the above definition applies, the competent person must also meet the additional requirements of 1915.7.

Paragraph (b) of §1915.7 sets forth the criteria for designating "competent persons" as follows:

(b) *Criteria.* The following criteria shall guide the employer in designating employees as competent persons:

(1) Ability to understand the meaning of designations on certificates and of any qualifications relating thereto and to carry out any instructions, either written or oral, left by the National Fire Protection Association Certified Marine Chemist or person authorized by the U.S. Coast Guard referred to in 1915.14.

(2) Ability to use and interpret the readings of an oxygen indicator and a combustible gas indicator. The ability to use and interpret the readings of a carbon monoxide indicator and a carbon dioxide indicator, if the operations involved such hazardous gases.

(3) Familiarity with and understanding of Subparts B, C, D, and H of this part.

(4) Familiarity with the structure and knowledge of the location and designation of spaces of the types of vessels on which repair work is done.

(5) Capability to perform the tests and inspections required by Subparts B, C, D, and H of this part and to write the required logs.

Therefore, the final rule does not require that a CSP, PE, certified industrial hygienist, or Marine Chemist perform the permit space evaluation or develop the hazard control measures to be used during entry. Paragraph (g)(1) does require, however, that the person performing these duties have the understanding, knowledge, and skills necessary to perform this task. OSHA would recognize such safety professionals as having the generalized understanding, knowledge, and skills required; however, they would also have to have experience with the type of permit space found in the workplace. As noted earlier, Marine Chemists do have extensive experience with the types of permit spaces found in the maritime industry. Their experience and education would also be recognized in non-maritime workplaces without the need for supplemental training if the types of permit spaces in those workplaces were found to be comparable to those in the maritime industry. (As noted under the discussion of paragraph (a) earlier in this section of the preamble, OSHA is currently exploring the possibility of expanding the scope of Subpart B of Part 1915 to cover confined spaces throughout shipyards. Based on the rulemaking record on Subpart B, OSHA will determine whether there is a unique need for Marine Chemists in those workplaces.)

Many commenters addressed training for employees who perform pre-entry testing or who monitor conditions during permit space entry operations (Ex. 14–27, 14–35, 14–42, 14–43, 14–44, 14–45, 14–62, 14–88, 14–118, 14–126, 14–147, 14–161, 14–179, 14–182, 14–185). Some commenters gave specific criteria for the training of employees who test or monitor confined spaces (Ex. 14–42, 14–44, 14–45, 14–182). For example, NFPA (Ex. 14–42) suggested a more specific rule to qualify testers and monitors:

Training for the "qualified tester" would not require the same exposure to the breadth of hazards [as Marine Chemists require], but should stress the importance of testing every space prior to entry, what to do when results are unacceptable, and link the "qualified tester" with the "professional tester" in some follow-up capacity. The "qualified tester" should also be required to complete some minimum number of confined space inspections and tests of atmospheres prior to being designated by the employer.

* * * * *

The emphasis should be placed upon the ability of the testers to recognize various confined spaces and the potential hazards and then evaluate those hazards with the proper techniques (testing of the atmosphere or other). The case histories continue to point

out that if spaces had been evaluated many of the fatalities would not have occurred. Testers need to demonstrate performance in the evaluation phase of the recognition, evaluation and control system.

For those employers without staff professional testers, these individuals could be hired in a consultant capacity to assist with the development of the safe work practice and identify instances requiring the more advanced level of testing capability. The consultant could then be used on an as needed basis to actually test and inspect spaces. This practice is presently followed by some segments of industry who use NFPA Certificated Marine Chemists or Certified Industrial Hygienists to inspect and test storage tanks in refineries and underground storage tanks prior to removal and disposal.

In its recommendations, NFPA presented an extensive list of subjects in which they thought testers should be knowledgeable. The subjects included in the list ranged from test instrument calibration and use to hazard controls and rescue.

S.C. Johnson & Son, Inc. (Ex. 14–45), suggested similar criteria for employees who test and monitor permit spaces. Although their list was less extensive, it also included subjects, such as inspecting for safety hazards and the use of personal protective equipment, that were not directly related to testing.

Two other commenters (Ex. 14–44, 14–182) stated that personnel performing pre-entry testing and monitoring should be trained in field calibration and response checks, in limitations of the monitoring equipment, and in interpretation of results.

Other commenters stated that OSHA should not specify the criteria for individuals who perform pre-entry tests or who perform monitoring of the permit space (Ex 14–27, 14–35, 14–43, 14–126, 14–179). These commenters supported a more performance- oriented approach to the rule. For example, Transco Energy Company (Ex. 14–35) stated:

> OSHA should not establish experience and training requirements for persons who perform pre-entry tests and monitor conditions during entry. A comment to the effect of, "An individual familiar with the manufacturers' testing and calibration equipment and trained in Company testing procedures shall conduct pre-entry and/or continuous monitoring of the space," should be specified instead. Rigid training and experience specifications cannot adequately cover variations in the myriad of testing equipment currently on the market.

The Motor Vehicle Manufacturers Association (MVMA, Ex. 14–179) also supported the use of performance language, as follows:

> In any case, MVMA believes it is inappropriate for OSHA to specify any requirements, proficiency or other criteria to qualify individuals for any of these jobs. Training will be necessary but OSHA should allow employers to identify and delegate responsibility for these assignment based on training and experience of individuals.

The proposal did not contain any requirements pertaining to the training of employees performing testing or monitoring of permit spaces, unless the employee was performing such duties in the role of attendant, authorized entrant, or entry supervisor. The response to the issue of whether or not employees performing such testing or monitoring should be trained indicated overwhelmingly that these employees need to be knowledgeable in certain areas if the results of the testing or monitoring are to be meaningful. The rulemaking record indicates that those using test instruments need to be familiar with the use and calibration of the instruments, at a minimum. If these employees are involved in determining whether acceptable entry conditions have been achieved, they also need to know about the limitations of the instruments being used and about the meaning of the results obtained. If these employees also have to select the equipment to be used, they must also be trained in the selection of the proper equipment. The need for training employees performing testing and monitoring of permit spaces is clear. Therefore, the final rule adopts language that requires the employer to provide training so that all employees regulated by the standard will have the necessary understanding, knowledge, and skills.

On the other hand, the Agency is not convinced that training requirements for employees performing the testing or monitoring, or for any other employee having duties under final §1910.146 for that matter, can be specified with any precision. It is clear from the record that employers having permit space programs in place currently require attendants, authorized entrants, and entry supervisors to perform duties that are different across the various programs. Thus, for example, one employer might have the attendant perform the testing of the atmosphere within a permit space; another might have testing done by a specially trained person without other permit space duties; and a third might have the entry supervisor perform this duty. The person conducting the testing might have different responsibilities under each of these scenarios.

For these reasons, OSHA has determined that a performance- oriented approach is necessary for setting criteria on employee training, regardless of the duties involved. As noted earlier, the duties of authorized entrants, attendants, entry supervisors, and rescue personnel are spelled out in detail in paragraphs (h), (i), (j), and (k) of the final rule. Paragraph (g)(1) requires the training to impart the understanding, knowledge, and skills necessary for the safe performance of duties assigned under those paragraphs. In this way, the Agency is requiring the employer to provide whatever training is necessary to achieve this goal. The performance language used in paragraph (g)(1) will allow the employer to develop and implement the most effective confined space training program to meet the needs of the specific workplace. At the same time, by requiring employees to be trained in the duties addressed by §1910.146 and by specifying what those duties are (in paragraphs (h) through (k), in particular, and in other paragraphs of the final rule generally), the final rule sets forth guidance as to what how the training must be directed and what its content should be.

Paragraph (g)(2) of the final rule sets out the conditions under which training would have to be provided.

This provision had no counterpart in the proposed rule. Several rulemaking participants (Ex. 14–63, 14–151, 14–163, 14–208, 14–214; Chicago Tr. 316) recommended that training be provided under certain conditions. For example, the Communications Workers of America (Ex. 14–208) stated that "retraining is a very important issue" and recommended that OSHA specifically require refresher training in the final rule because of the decreasing frequency of confined space entry, at least among members of the CWA. Other commenters (Ex. 14–151, 14–214) were concerned that the proposed rule did not specify when the initial training was to be provided. The American Federation of State, County and Municipal Employees (Ex. 14–151) suggested that the rule require that training be provided before any entry is allowed.

Because of these concerns, OSHA is adopting provisions setting forth the circumstances under which training is required. OSHA has found, where training has been addressed in its standards, that refresher or ongoing safety instruction has invariably been an important component of training programs. Requirements for ongoing or refresher training can be found in many other OSHA standards, such as §1910.120, *Hazardous waste operations and emergency response*, §1910.147, *Control of hazardous energy sources (lockout/tagout)*, §1910.1025, *Lead*, and §1928.51, *Roll-over protective structures*

(ROPS) for tractors used in agricultural operations. OSHA has therefore adopted provisions specifying the conditions under which training is required by the final rule. These provisions address initial training, training based upon changes affecting safe permit space entry operations, and refresher training. The following paragraphs describe and explain each of the conditions triggering the requirement to train employees assigned duties under §1910.146.

Paragraph (g)(2)(i) requires training before an employee is first assigned duties under this section. As noted earlier, some commenters recommended that OSHA require that employees be trained before permit space operations begin. The rulemaking record strongly indicates that lack of training is one of the major causes of deaths and injuries resulting from permit space entries. The record also demonstrates that employees who have not been trained adequately endanger fellow employees as well as themselves. Because of the danger involved in allowing untrained employees to take part in permit space entry operations, OSHA is requiring employees to be trained before first being assigned duties under final §1910.146. OSHA is not providing any additional delay for training beyond the effective date. However, employees who are currently performing duties outlined in the standard and who have previously been trained need further instruction only insofar as they are unfamiliar with the hazards involved and must change their work practices so as to conform to §1910.146. The employer must still certify the training of these individuals, as required by paragraph (g)(4). Additionally, OSHA will accept on-the-job training as long as the employee involved is under the direct supervision of a trained individual and has received sufficient instruction to enable the trainee to work safely at his or her level of training.

Paragraphs , (g)(2)(iii), and (g)(2)(iv) of the final rule address the issue of refresher training. Paragraph (g)(2)(ii) requires training before there is a change in assigned duties. Such changes could be the result of new equipment or techniques introduced into the entry operations, promotions, or simple reassignments. If an employee has been previously trained in the new duties, then additional training is not required under this paragraph, provided the employer has no reason to believe that there are inadequacies in the employee's knowledge or use of the relevant permit space procedures. (If there is reason to believe such inadequacies exist, training is required under paragraph (g)(2)(iv).)

Paragraph (g)(2)(iii) requires training before there is a change in permit space operations that presents a hazard about which an employee has not previously been trained.

Paragraph (g)(2)(iv) requires training whenever the employer has reason to believe that there are deviations from the permit space entry procedures or that there are inadequacies in the employee's knowledge or use of these procedures.

Several rulemaking participants (Ex. 14–50, 14–61, 14–63, 14–82, 14–151, 14–163, 14–214) recommended that the standard require refresher training and evaluation of employee knowledge and skills to maintain employee knowledge and skills. For example, the American Federation of State, County and Municipal Employees (AFSCME, Ex. 14–151) made the following comment:

> AFSCME further believes that all training must be completed before any entry into a confined space is allowed and that training must be repeated on an annual basis or any time the hazards associated with the entry change.

Mr. Timothy Grabenstein (Ex. 14–163) supported periodic evaluation of the effectiveness of training, as follows:

> Also periodic follow-up evaluation must be included as part of this rule making to assure competency.

OSHA acknowledges the need for refresher training. Paragraphs (g)(2)(ii), (g)(2)(iii), and (g)(2)(iv) require "refresher" or "follow-up" training whenever there is a demonstrated need for it. Changes in assigned permit space program duties or exposure to hazards for which an employee has not been trained are obvious indications of a need for additional or refresher training. Similarly, any deficiency noted in an employee's work performance that is related to the safety and health of entrants would probably be a strong indication of the need for training for that employee. If training proves to be insufficient to improve the employee's performance (eliminate the unsafe acts), the employer then might consider other means of action, such as clarification of the procedures involved or disciplinary action. However, OSHA believes that training is normally the primary corrective action to be taken. Other evidence of the need for additional training may be brought out in the review of permit space program under paragraphs (d)(13) and (d)(13) of the final rule. Certainly, incidents during entry operations that employees were nearly injured are evidence of a possible need for additional training. The Agency believes that paragraph (g)(2) of the final rule will ensure that employers provide ongoing training to their employees and evaluate their permit space programs to confirm that employees have the understanding, knowledge, and skills needed for safe permit space entry operations.

Paragraph (g)(3) of the final rule requires the training to establish employee proficiency and to introduce new or revised procedures, as necessary, to assure compliance with this final rule.

As noted earlier under this discussion of paragraph (g), OSHA has decided based on the rulemaking record to set performance- oriented requirements for permit space training. Although the Agency has concluded that it is inappropriate to set specific criteria for the areas in which training is to be provided, OSHA has determined that it is necessary to set the overall objective for the training program itself. Paragraph (g)(3) of the final rule reflects this determination by requiring the training to establish proficiency in the tasks performed under §1910.146 and to introduce new or revised procedures developed under this section.

Paragraph (g)(4) of the final rule requires the employer to certify that employee training required by paragraphs (g)(1) through (g)(3) has been accomplished. This certification must contain each employee's name, the signature or initials of the trainers, and the dates of training.

As noted under the discussion of paragraphs (f)(4), (f)(5), and (f)(6), several commenters (Ex. 14–80, 14–94, 14–118) suggested that lists of trained employees be kept with training records. Local 660 of the Service Employees International Union (Washington Tr. 383) suggested that the dates of training certification be listed on each entry permit. The State of Maryland Occupational Safety and Health Program (Ex. 14–63) suggested that training records or certifications be maintained.

On the other hand, Monsanto (Ex. 14–170) urged the Agency not to adopt a certification requirement, as follows:

> Monsanto also believes that extensive certification of training, such as is required in the recent lockout/tagout standard, is a paperwork burden that is unnecessary for safety or for compliance checking and we would strongly urge that concept not be included in this or any future standards. It adds only to the burden of compliance and has very little to do with effective training or effective hazard control.

OSHA strongly believes that certification of employee training provides a valuable record to employers, employees, and OSHA in determining whether or not required training has

been accomplished. Standards on employee training commonly incorporate requirements for the certification of training, and OSHA has not found compliance with these rules to be a problem. The employer need not fill out extensive forms or individual certificates to meet this requirement. The employer could certify the training of any number of employees on a list or roster just as effectively as through the use of individual certificates. In fact, OSHA's experience under the certification requirements of other standards indicates that employers typically use existing training records to meet these requirements.

Paragraph (h), Duties of authorized entrants.

An authorized entrant is an employee authorized by the employer to enter a permit space. This is the person who faces the greatest risk of death or injury from exposure to the hazards contained within the space. Although the permit program is intended to provide protection to authorized entrants during permit space entry operations, the entrants themselves must also perform duties to assure their own safety. The employer is responsible to ensure that authorized entrants perform these duties. This is accomplished by means of training, communication of effective work rules, and internal administration.

Paragraph (h) of the final rule, which is based, in part, on proposed paragraph (e), addresses the duties required of authorized entrants. As discussed previously, paragraph (d)(8) of the final rule requires the employer to designate the employees who will have roles (such as authorized entrants) in entry operations, to identify the duties of each such employee, and to train those employees to perform their duties. OSHA has determined that while the training required for all personnel involved in entry operations under paragraph (d)(8) can properly be covered in a single paragraph (§1910.146(g)), the duties of the three classes of employees (authorized entrants, attendants, and entry supervisors) differ sufficiently that those duties need to be addressed in separate paragraphs. Training under paragraph (g) of the final rule must focus on the duties spelled out in these paragraphs.

Paragraph (h)(1) of the final rule requires entrants: (1) to know the hazards that may be faced during entry, including information on the mode of exposure, (2) to be able to recognize the signs or symptoms of exposure, and (3) to understand the consequences of exposure to the hazards.

This provision is essentially the same as proposed paragraph (e)(1), which would have required entrants to know the hazards to which they may be exposed, including only the signs or symptoms and the consequences of exposure. The Service Employees Union (Washington Tr. 428) testified that death and injury in confined spaces can be caused by skin penetrating agents and that entrants should have an understanding of the hazardous chemicals and materials to which they may be exposed, including its mode of action, so that they can better protect themselves.

OSHA believes this is a valid point. For toxic substances, the mode of exposure could be by inhalation or by dermal absorption. Unless employees are knowledgeable about the mode of exposure, they may not fully understand the nature of the hazard involved. As noted in the preamble to the proposal (54 FR 24093), the Agency believes that authorized entrants who know the permit space hazards they may confront, who can recognize the effects of those hazards, and who can understand the consequences of exposure will be significantly more likely to detect a hazard in time for successful rescue. Therefore, OSHA has included the Service Employees Union's recommendation in the final rule.

OSHA notes that, if the employer knows what substance or material will be present in the permit space and if a Material Safety Data Sheet for that substance is required to be present at the workplace by the hazard communication standard (§1910.1200) information concerning that substance, including its mode of action, will be readily available at the worksite and accessible to all personnel involved in the permit space entry.

Another commenter (Ex. 14–62) suggested that the rule contain a provision requiring the entrant to know the characteristics of a permit space. They argued that "[o]ne of the key elements of any confined space training program is to ensure the entrants can recognize a confined space before they have to enter one."

OSHA has not made the suggested change. The Agency believes that, given the requirements in paragraphs (c)(2), (g), and (h)(1) of the final rule, such a requirement is not needed. Paragraph (c)(2) requires employers to inform their employees of the existence and location of permit spaces; paragraph (g) requires employees to be trained in the understanding, knowledge, and skills needed to perform their duties safely; and paragraph (h)(1) requires authorized entrants to be trained in the hazards of the permit space to be entered. Additionally, the particular permit space and the purpose of the entry are required to be entered on the permit under paragraph (f). OSHA believes that compliance with these provisions will adequately inform authorized entrants of what a permit space is and how to recognize one.

Paragraph (h)(2) requires that entrants properly use equipment as required by paragraph (d)(4) of the final rule. Paragraph (d)(4) requires employers to provide employees with the equipment necessary for safe entry operations at no cost to employees, to maintain that equipment, and to ensure that the equipment is used properly. The failure to provide and ensure the proper use of personal protective equipment has been a factor in many of the permit space fatalities and injuries documented in the rulemaking record. Therefore, the Agency believes a reference to the requirement for the use of protective and rescue equipment is appropriate to stress the importance of this provision. Additionally, stating the reference under paragraph (h) indicates clearly that it is one of the required duties of an authorized entrant and that it must, therefore, be the subject of training required under paragraph (g) of the final rule.

Paragraph (h)(2) of the final rule has been taken from proposed paragraph (e)(3), which would have required authorized entrants to be aware of the necessary protective equipment, be provided with this equipment, use it properly, and be aware of barriers and of their proper use. The Agency has not carried forward these more detailed provisions from the proposal because they would be redundant with paragraph (d)(4) of the final rule. OSHA believes that it is better to address these provisions in one place in the final standard so as to avoid any misinterpretation that might result from having two requirements that address the same subject matter but that are worded differently.

One commenter (Ex. 14–151) suggested that OSHA require all authorized entrants to wear monitoring devices that detect oxygen deficiency and other atmospheric hazards and that can activate an alarm if conditions within the permit space become hazardous.

OSHA has not adopted this recommendation. Some permit spaces do not pose atmospheric hazards. For example, a permit space could pose only mechanical hazards. In such cases, a monitoring device would serve no useful function. Additionally, the Agency believes that, even where

atmospheric hazards predominate, isolation of the space, testing of the atmosphere, and ventilation can be effective means of controlling those hazards. The successful permit space programs described in the record amply demonstrate this. OSHA believes that personal monitoring devices can be used to facilitate compliance with the requirement for effective communication with attendants; however, there are other effective options for protecting employees from atmospheric hazards.

Paragraph (h)(3) of the final rule requires that the entrant communicate with the attendant as necessary to enable the attendant to monitor entrant status and to enable the attendant to alert them of the need to evacuate the space. OSHA believes that the authorized entrant's communication with the attendant provides information that the attendant needs in order to determine if the entry can be allowed to continue. Depending on the types of atmospheric contaminants that might be present within a permit space, subtle behavioral changes detected in the authorized entrant's speech or deviation from set communication procedures could alert the attendant that it is necessary for the authorized entrant to evacuate the space or be rescued. Additionally, the attendant needs to be able to communicate with authorized entrants to order them to evacuate the space in an emergency.

Paragraph (h)(3) of the final rule is based on paragraph (e)(2) of the proposal. Proposed paragraph (f)(3)(i) contained a corresponding requirement that attendants maintain contact with authorized entrants. Although the two proposed provisions addressed the same topic (albeit from different perspectives), they were not worded consistently. Proposed paragraph (e)(2)(i) required authorized entrants to "[m]aintain contact with the attendant"; paragraph (f)(3)(i) required the attendant to "[m]aintain effective and continuous contact with authorized entrants during entry". Several commenters (Ex. 14–80, 14–94, 14–109, 14–118, 14–150, 14–157, 14–170, 14–188) requested clarification of the two proposed requirements. Two (Ex. 14–80, 14–109) noted the inconsistency in language between the two provisions. Some of these commenters (Ex. 14–80, 14–94, 14–150, 14–188) objected to the word "continuous" in proposed paragraph (f)(3)(i). They argued that this term was unclear, undefined, and impractical. The International Brotherhood of Teamsters suggested that both provisions use the phrase "effective and continuous" to describe the duty involved. They argued that schemes that provide, as the only means of communications, an electronic monitoring devices that transmit a signal at periods up to several minutes do not provide effective communications with the authorized entrants. On the other hand, most of those commenting on the two provisions (Ex. 14–94, 14–118, 14–157, 14–170) recommended that the final rule contain a flexible requirement that recognizes any effective means of communicating with employees in the permit space.

OSHA agrees that the language in the two paragraphs addressing communications between the attendant and the authorized entrants must be consistent. They are, after all, meant to accomplish the same objective, that is, to enable the attendant to monitor entrant status and to alert them of the need to evacuate the space. It is important for the attendant to know whether or not authorized entrants are in danger. At the first signs of impairment of function, the attendant must take steps to alert entrants to the danger involved and to evacuate them from the permit space. Conversely, it is important for the entrants to remain in contact with the attendant. If they recognize any symptoms of exposure to hazardous substances or if they are otherwise in immediate danger, they must be able to contact the attendant as quickly as possible.

To assure these common objectives, OSHA has adopted language in paragraphs (d)(4)(iii), (h)(3), and (i)(5) of the final rule that requires the establishment of communications enabling the attendant to monitor the status of authorized entrants and to alert them of the need to evacuate the space. The language of these provisions is performance oriented, allowing any effective means of accomplishing the goal set by the two paragraphs. Successful permit space programs currently in effect use such systems as two-way radios, television or other continuous electronic monitoring equipment in combination with alarms, and voice contact as effective methods of communication between attendants and authorized entrants. While these types of systems (because they were selected by the employer involved on the basis of experience) are acceptable, the exact type and extent of communication needed to meet paragraph (h)(3) of the final rule are dependent on the hazards that might arise and the operations being performed within the permit space. For example, work that must be performed in IDLH atmospheres (because engineering controls are infeasible) might necessitate the use of continuous monitoring equipment. In contrast, authorized entrants performing work in spaces that pose only mechanical hazards would need a communication system that provides only periodic monitoring.

Paragraph (h)(4) of the final rule requires authorized entrants to alert the attendant when the entrant recognizes any warning sign or symptom of exposure to a dangerous condition or when the entrant detects a prohibited condition. An authorized entrant who recognizes the signs or symptoms of a hazardous condition or who detects a prohibited condition maximizes his or her own chances of evacuating safely in the same permit space by exiting the space in accordance with paragraphs (h)(5)(ii) and (h)(5)(iii). The entrant ensures that other entrants are protected by informing the attendant of the presence of these conditions, which make the space hazardous to other entrants as well.[30]

Paragraph (h)(4) of the final rule is based on proposed paragraph (e)(2)(ii). The proposed provision required simply that the authorized entrant alert the attendant when self- initiating evacuation from a permit space. OSHA has revised the language from the proposed paragraph for consistency with paragraph (h)(5) of the final rule. Paragraphs (h)(5)(ii) and (h)(5)(iii) list the conditions under which authorized attendants are required to exit the permit space (that is, "self-rescue"). The text from these two paragraphs has simply been repeated in paragraph (h)(4) for clarity.

Several commenters (Ex. 14–118, 14–157, 14–161, 14–170) stated that OSHA should emphasize training of authorized entrants to exit permit spaces, because

[30] Alerting other authorized entrants can also improve their changes of escape as well. However, there are several reasons why OSHA is not requiring this. First, the permit space may well be so large that the entrant who detects a hazard cannot quickly or efficiently communicate with other authorized entrants. Under paragraph (i)(5) of the final rule, the attendant is required to have the means of communicating with all authorized entrants in the space. The quickest and most effective means of ordering the evacuation of the space is therefore normally through the attendant. In fact, this is required under paragraph (i)(6) of the final rule. Furthermore, the Agency does not believe that it is appropriate to require one employee to risk injury or death to warn another. While in some cases it may be reasonable for entrants to inform each other of the presence of uncontrolled hazards and in other cases an employee may voluntarily risk injury or death to warn his or her fellow employees, OSHA has determined that the final rule should only require authorized entrants to inform attendants. OSHA notes that the standard does permit entrants to alert other authorized entrants when the presence of prohibited conditions or warning signs or symptoms are detected.

the employer can train an authorized entrant to understand the consequences of exposure to permit space hazards and the need to evacuate but cannot ensure that an authorized entrant will exit a permit space when necessary.

In response, OSHA notes that training is not the only measure an employer can take to ensure that employees follow work rules. Company attitude and policy towards permit space safety can also influence employee behavior. The Agency notes that many of the permit space incidents reported to OSHA occurred because supervisors failed to see that employees complied with the employer's procedures for safe entry. OSHA has determined that it is necessary to set clear requirements which, when followed conscientiously by employers, will minimize the likelihood of permit space incidents.

Paragraph (h)(5) of the final rule requires the entrant to exit from the permit space as quickly as possible whenever the attendant or entry supervisor orders evacuation, whenever the authorized entrant recognizes any warning sign or symptom of exposure to a hazardous substance, whenever the entrant detects a prohibited condition, and whenever an evacuation alarm is activated. Given the speed with which permit space hazards can incapacitate and kill entrants, it is essential that the entrants evacuate permit spaces as soon as any one of the four conditions set out in paragraphs (h)(5)(i) through (h)(5)(iv) exists. As noted in the preamble to the proposal (54 FR 24093), OSHA believes that self-rescue will often provide the entrant's best chance of escaping a permit space when a hazard is present. Additionally, the time lost waiting for someone outside the space to commence rescue could be the difference between life and death. Also, narrowly configured openings of many permit spaces can make it very difficult for personnel outside those spaces to extricate victims of permit space hazards. Therefore, although OSHA recognizes that self-rescue may sometimes be impossible, the Agency stresses the importance of attempting self-rescue as a means of saving lives and minimizing injuries.

Paragraph (h)(5) of the final rule is based on proposed paragraph (e)(4), which would have required authorized entrants to exit the permit space, unless it was physically impossible to do so, whenever: (1) the attendant ordered evacuation; (2) an automatic alarm was activated; or (3) the authorized entrants perceived that they were in danger. OSHA has made some editorial revisions to the language of proposed paragraph (e)(4) in the course of drafting the final rule. For example, the phrase "unless it is physically impossible to do so" has been removed from the introductory text of the proposed provision. With this standard, as is the case with so many other standards, impossibility of compliance will be a factor to be evaluated in enforcement proceedings. Also, the Agency has included the phrase "entry supervisor" in paragraph (h)(5)(i) to reflect the entry supervisor's authority to terminate entry (as provided in paragraph (j)(3) of the final rule). Additionally, OSHA has replaced the word "automatic" with "evacuation" in paragraph (h)(5)(iv), in response to comments (Ex. 14–150, 14–168) noting that a workplace could contain many different automatic alarms, few of which may have anything to do with evacuation from a permit space. Those commenters suggested "evacuation" as a replacement for "automatic".

Several commenters (Ex. 14–161, 14–168, 14–178, 14–193) objected to the phrase "perceive that they are in danger" proposed in paragraph (e)(4)(iii). They stated that this language was too vague and was subject to misinterpretation and possible employee abuse. These commenters recommended that the provision be clarified.

OSHA has accepted this recommendation. Final paragraph (h)(5) sets out two separate conditions (paragraphs (h)(5)(ii) and (h)(5)(iii)) that address the need for evacuation of the permit space when hazards are recognized by authorized entrants. Paragraph (h)(5)(ii) requires authorized entrants to exit the space whenever they recognize "any warning sign or symptom of exposure to a dangerous situation", which they are required to know under paragraph (h)(1) of the final rule. Paragraph (h)(5)(iii) requires them to exit the space whenever they detect a prohibited condition, which, by definition, indicates that acceptable entry conditions are no longer present. The Agency believes that these two provisions in the final rule address the commenters' concerns about proposed paragraph (e)(4)(iii).

Paragraph (i), Duties of attendants.

One of the major problems in permit space entry operations is that, if an entrant within the space is injured or incapacitated, he or she cannot normally be seen from outside the space. For example, if an employee working inside a storage tank were to lose consciousness because of oxygen deficiency, employees working nearby might not see that the entrant is incapacitated, and the unconscious employee would probably die before anyone realized that something was wrong. In fact, many of the accident summaries in the record describe an employee who entered a permit space alone, was overcome by hazards within the space, and was not found until it was too late for rescue. Providing an attendant outside a permit space is a widely accepted method of monitoring the status of authorized entrants within the space, as well as conditions (relative to safety) within the space, and of providing for the summoning of rescue services. The need for an attendant outside permit spaces is recognized by other OSHA standards (for example, §§1910.252(b)(4)(iv), 1910.268(o), 1910.272(g)(3), and 1926.956), by various national consensus standards (for example, ANSI C2, ANSI Z49.1, and ANSI Z117.1), and by permit-required confined space programs currently in use by employers (Ex. 14–4, 14–57, 14–73, 14–88, 14–170, 14–209, 97, 104, 119, 143). As discussed earlier, paragraph (d)(6) of the final rule requires the employer to provide an attendant outside the space to monitor the status of authorized entrants and the conditions within the permit space.

Paragraph (i) of the final rule, which is based, in part, on proposed paragraph (f), sets forth the duties of the attendant. These duties include knowing and watching for the hazards that may be present within the space, monitoring the status of authorized entrants, keeping unauthorized employees out of the space, and evacuating entrants or summoning rescue services in the event of emergency. The introductory text of paragraph (i) requires the employer to ensure that these duties, as set out in paragraphs (i)(1) through (i)(10), are performed. As noted earlier, this is accomplished by means of training, communication of effective work rules, and administration.

Paragraph (i)(1) of the final rule requires the attendant to know the hazards that may be faced during entry, including information on the mode, signs or symptoms, and consequences of exposure. This provision is identical to a corresponding provision for authorized entrants in paragraph (h)(1) and is based on the first part of proposed paragraph (f)(2), which would have required the attendant to know of and to be able to recognize potential permit space hazards and on which OSHA received no substantive comment. For consistency with the corresponding provision in paragraph (h)(1), paragraph (i)(1) simply states that the attendants know the hazards that may be faced. OSHA believes that it is clear that knowing the hazards includes

being able to recognize them (except for being able to detect behavioral effects of hazards, which is addressed in paragraph (i)(2) of the final rule). The Agency has worded paragraphs (h)(1), (i)(1), and (j)(1) of the final rule identically because it is important that attendants, authorized entrants, and entry supervisors receive the same training on hazards and hazard recognition. The language from proposed paragraph (f)(2) addressing monitoring activities inside and outside the space has been placed in paragraph (i)(6) of the final rule.

Paragraph (i)(2) of the final rule requires the attendant to be aware of possible behavioral effects of hazard exposure on authorized entrants. This provision, as noted previously, is based on proposed paragraph (f)(2), which would have required attendants to be able to "recognize potential permit space hazards", and on proposed paragraph (f)(3)(ii)(B), which would have required the attendant to order the evacuation of the space when the attendant detects the behavioral effects of hazard exposure. OSHA believes that setting out the requirement for attendants to be aware of possible behavioral effects of hazard exposure will alert employers and attendants to the importance of this aspect of safe permit space entry operations. As noted earlier, subtle behavioral changes detected in the authorized entrant's speech or deviation from set communication procedures could alert the attendant that it is necessary for the authorized entrant to evacuate the space or be rescued.

Paragraph (i)(3) of the final rule requires the attendant to maintain a continuous accurate count of all authorized entrants in the permit space and to ensure that the means used to identify authorized entrants, under paragraph (f)(4) of the final rule, accurately identifies who is in the space.

This provision is equivalent to proposed paragraph (f)(1), which would have required an attendant to keep an accurate count of all persons within the space. The phrase "all persons" has been changed to "authorized entrants" in the final rule. It is important for the attendant to keep track of authorized entrants as they enter and exit the space. The count and identity of entrants will be necessary during rescue operations for the determination of whether all authorized entrants have been evacuated from the space.

In response to proposed paragraph (f)(1), some commenters (Ex. 14–63, 14–119) recommended that OSHA require some type of check- in, check-out procedure for tracking entrant entry and exit. They were concerned about improperly placing responsibility for this task on employees and about the attendant's being able to maintain an accurate count by memory only.

The employer is required to keeping track of authorized entrants within the space by listing them by name or by identifying them by some other means under paragraph (f)(4) of the final rule, discussed earlier in this section of the preamble. The system identified on the permit is required to enable the attendant to determine quickly and accurately which authorized entrants are inside the permit space. Paragraph (i)(3) of the final rule requires the attendant to ensure that this system is used to accurately identify who is in the permit space.

Paragraph (i)(4) of the final rule requires the attendant to remain outside the permit space during entry operations until he or she is relieved by another authorized attendant. This provision is substantially the same as that contained in the introductory text of proposed paragraph (f). Paragraph (i)(4) of the final rule also provides a note clarifying OSHA's intent concerning the issue of using attendants to perform rescue. It states that attendants may enter a permit space to attempt a rescue if it is allowed by the employer's permit program, if they have been properly equipped and trained, and if they have been relieved by another attendant.

Under paragraph (f)(4) of the proposal, attendants would have been forbidden to enter a permit space to attempt a rescue. The proposed language did not make clear, however, that, once relieved, the individual who had been acting as the attendant would no longer be the attendant for that particular permit space and then would not be precluded from attempting a rescue. Paragraph (f)(4) of the proposed standard mistakenly gave the impression that a person designated as an attendant could never enter a permit space to attempt a rescue.

In Issue 10 of the hearing notice (54 FR 41463), OSHA requested comment on the Agency's proposed prohibition of rescue by confined space attendants. The Agency asked interested parties participating in the rulemaking if circumstances existed where OSHA should permit attendants to enter permit spaces for rescue purposes.

OSHA received considerable comment on this issue (Ex. 14–47, 14–64, 14–69, 14–72, 14–80, 14–88, 14–118, 14–125, 14–143, 14–148, 14–150, 14–151, 14–153, 14–157, 14–170, 14–171, 14–174, 14–177, 14–184, 14–193, 14–200, 14–201, 14–208, 14–210, 14–217). There was also considerable discussion of this issue in the public hearings (Washington Tr. 319, 388, 422–424, 465, 477–481, 517–518, 541–543, 552; Houston Tr. 630, 735–736, 787, 861, 865– 869, 896; Chicago Tr. 179, 191–192, 203–205, 263–264, 372–373, 432, 496, 499, 535, 565–566, 616).

Several commenters (Ex. 14–47, 14–118, 14–125, 14–151, 14–157, 14–170, 14–171) acknowledged that a safety or health hazard exists if OSHA permits untrained, poorly equipped attendants to enter a permit space for rescue. For example, the Monsanto Company (Ex. 14–170) stated:

> We recognize that there have been a number of fatalities from attendants or other would-be rescuers attempting to enter a confined space without the proper protective equipment or training.

The American National Can Company (Ex. 14–47) agreed, stating:

> The high incidence of "rescuer" death is most often from untrained, ill-prepared, emotional response on the part of by-standers, friends, etc.

During discussions about the hazards associated with untrained employees entering spaces to perform rescue (Washington Tr. 543), Mr. Thomas Lawrence, testifying on behalf of the Chemical Manufacturer's Association, stated:

> This is the same kind of thing that happens when attendants get in trouble when they go into spaces willy nilly without any backup or proper equipment or training. That's the whole data situation that we've been talking about, about what happens with attendants going inside.

The American Petroleum Institute (Washington Tr. 735) also shared OSHA's concern about fatalities that occur when unprepared and unqualified personnel attempt rescue.

All of the participants in this rulemaking agreed that entry into permit spaces by untrained, poorly equipped persons, whether they are attendants or not, for any purpose, including rescue, is hazardous and should be prohibited. OSHA agrees with this point. In fact, the major purpose of this rulemaking is to ensure that all employees who enter permit spaces are properly trained and equipped to do so and that they are otherwise protected from the hazards of permit space entry.

One commenter (Ex. 14–153) supported a total prohibition of permit space rescue by any attendant, as follows:

> As stated previously, it is The Heil Co.'s position that attendants should not be permitted to rescue a down entrant.

However, as noted in the following discussion, many rulemaking participants recognized the need to permit some level of limited emergency response by an attendant. They suggested that some rescue response could be provided by a person stationed outside a permit space to monitor the activities of authorized entrants.

Several rulemaking participants (Ex. 14–47, 14–64, 14–69, 14–80, 14–88, 14–111, 14–118, 14–125, 14–143, 14–150, 14–151, 14–157, 14–170, 14–171, 14–184, 14–193, 14–200, 14–201, 14–208, 14–210, 14–217; Washington Tr. 465, 478) understood the importance of having a qualified, properly equipped person available and ready to begin rescue of an entrant impaired by a hazardous atmosphere. Some of the commenters (Ex. 14–47, 14–64, 14–72, 14–88, 14–111, 14–118, 14–125, 14–143, 14–150, 14–151, 14–157, 14–170, 14–171, 14–174, 14–184, 14–193, 14–200, 14–208, 14–210) identified the attendant as being the most readily available, qualified, properly equipped rescuer.

Some rulemaking participants suggested that OSHA permit attendants to perform rescue under certain limited circumstances. Several suggested that OSHA permit rescue entry by attendants once the attendant notifies outside emergency rescue personnel to respond (Ex. 14–148, 14–174, 14–177, 14–200, 14–201, 14–217; Chicago Tr. 372–373, 496, 499).

For example, the GTE Service Corporation (Ex. 14–201) stated:

> With regard to permitted duties for attendants, GTE also believes that attendants should be able to assist with a rescue if they have first summoned help and are trained in rescue procedures.

The Longview Fibre Company (Ex. 14–200) supported this view, as follows:

> Attendants should be allowed to enter permit spaces to perform a rescue under certain conditions where time is a critical factor in obtaining a successful rescue:
> The attendant must first be required to summon additional rescue assistance and be certain help is on the way prior to rescue entry.

Additionally, the National Safety Council (Chicago Tr. 496) testified:

> The employer could use the attendant as rescuer provided that the attendant is properly trained and equipped. Prior to becoming the rescuer, this individual should assure that an emergency notification system has been activated and calls for backup.

Under questioning by Mr. Chappell Pierce of the OSHA panel, Mr. Irvin Etter, representing the National Safety Council (Chicago Tr. 499), further clarified their testimony as follows:

> MR. PIERCE: ... one question on a clarification of Issue No. 10 regarding rescue by the attendant. You advocate that the attendant would be allowed to perform the rescue if he has the training and necessary equipment. Do you also advocate that he be allowed to enter before another attendant is in place?
> MR. ETTER: Yes. This is what we discussed in our deliberation.
> *****
> MR. PIERCE: Okay. I would like clarification on that one point.
> MR. ETTER: Our consideration on this was it's very difficult for the individual, if there's only one attendant on topside, to keep from going in and try to rescue a person and we feel that if the person is properly qualified, he can be making the rescue and possibly save the life if he has the proper equipment and the proper training before other people might be able to get there to perform the rescue.

Other rulemaking participants recommended a more limited rule for attendants attempting rescue, suggesting that OSHA permit a properly trained and equipped attendant to conduct a rescue after a second attendant has arrived and assumed the duties of attendant. Most of them (Ex. 14–88, 14–118, 14–125, 14–143, 14–148, 14–150, 14–170, 14–193; Washington Tr. 541–543, 630, 735–736) recommended that OSHA permit attendants to perform rescue entry after the employer notifies outside emergency responders and after the employer stations another attendant outside the permit space. For example, the Union Carbide Corporation (Ex. 14–88) stated:

> In proposed paragraph (f)(4)(i), the attendant would be prohibited from entering the permit space to attempt rescue of entrants. OSHA should clarify that once another attendant has arrived and been briefed by the first attendant, the first attendant may, if properly trained, change his or her status from attendant to member of rescue team.

The Monsanto Company (Ex. 14–170) agreed, stating:

> However, we recommend that the attendant be permitted to enter the confined space to start rescue so long as he/she is properly trained in rescue techniques *and a new attendant is in place.* In many instances, a properly trained and equipped attendant starting the rescue operation could cut valuable time off the amount of time that would be required to rescue personnel from the confined space if that rescue can begin only after the arrival of the rescue team. [Emphasis was supplied in original.]

Further support for this position came from Mr. Thomas Lawrence, representing the Chemical Manufacturer's Association (Washington Tr. 542), in response to a question from Mr. Thomas Seymour of the OSHA panel, as follows:

> MR. SEYMOUR: Is there really any reason or rationale whether [rescue by attendant] should be permitted?
> MR. LAWRENCE: Our position should be and is that—the discussions we've had is, hey, the attendant can go in and we want him to be able to go in if he has proper training, which he should have ... Number two, has the right equipment, which he should have. That's part of the preparation. And three, there's another person there to back him up, another attendant.

OSHA's expert witness, Ray E. Witter (Houston Tr. 630), also testified in support of allowing attendants to attempt rescue after being relieved, as follows:

> However, attendants should be allowed to enter confined spaces *only* when all of the following requirements have been met. First, the replacement attendant is present, and has been properly briefed. Second, the attendant is properly trained in rescue operations and third, the necessary protective personal equipment is used. [Emphasis was supplied in original.]

Additionally, the American Petroleum Institute (Houston Tr.735, 736) testified, as follows:

> However, an attendant that has been appropriately trained and qualified for entry, and properly equipped with breathing apparatus and protective equipment is an extremely valuable rescue resource. Such an attendant could undoubtedly perform a rescue much more expeditiously than any rescue team.
> For example, after an attendant has determined that an entrant needs assistance and a rescue call has been dispatched, the attendant would first attempt to perform a rescue without entering the permit confined space, using retrieval lines or devices. Should this prove to be ineffective, the attendant would then prepare for entry by donning the appropriate respiratory and personal protective equipment. Upon arrival of another qualified attendant, the original attendant could enter the permit confined space and attempt rescue.

Still other commenters (Ex. 14–47, 14–151, 14–171, 14–174, 14–184, 14–208, 14–210) suggested that OSHA allow attendants to perform rescue without prior notification of outside emergency responders and without assignment of a new attendant. For example, the American National Can Company (Ex. 14–47) stated:

> We believe [that] prohibiting attendant [rescue] is ill- advised. The high incidence of "rescuer" death is most often from untrained, ill-prepared, emotional response on the part of by-standers, friends, etc. The attendant may be in a position to provide the most immediate assistance, if well educated and trained to assess emergency conditions. The attendant may first communicate for assistance and possibly render aid or evaluate conditions prior to help arriving ... time is of the essence.

One commenter (Ex. 14–111) suggested that OSHA permit rescue entry by the attendant as long as the substitute attendant is "enroute" to the permit space.

Based upon the rulemaking record, OSHA has determined that it is necessary for anyone attempting rescue to be properly trained and equipped for rescue. As discussed further under the summary and explanation of paragraph (k), *Rescue and emergency services*, properly equipping a rescuer is important for him or her to enter a permit space safely and to be able to physically remove an incapacitated employee from the space. Proper training is necessary to ensure that the rescuer does not injure himself or herself or others during rescue operations. Therefore, the Agency is applying paragraph (k) to anyone who has rescue duties (indicating that he or she is part of the rescue service).

OSHA also believes that the evidence strongly supports the need for an attendant at all times during entry operations to monitor and protect all entrants. The presence of an attendant outside the permit space at all times during entry operations is important for three reasons:

(1) The attendant must keep unauthorized persons out of the space. This is particularly important in an emergency, when the atmosphere within the space might be IDLH and when bystanders unqualified in permit space entry might otherwise attempt rescue of injured entrants from the space.

(2) The attendant has a duty to other authorized entrants to remain outside the space, to remain alert for hazards, and to be able to assist in their evacuation as necessary. It is possible that an entrant may become incapacitated for reasons other than permit space hazards (for example, because of heart attack). Any other authorized entrants remaining in the space would still be dependent on the attendant for their safety.

(3) The attendant must be available outside the permit space to provide information to the rescue service. The information the attendant can supply the rescue services includes how many authorized entrants are within the space, what the hazards of the space are, and what prompted the emergency in the first place (for example, the injured employee's symptoms).

Therefore, OSHA has determined that the attendant's presence outside the permit space is vital even after an emergency has arisen. Accordingly, the final rule continues to require the presence of an attendant at all times during permit space entry operations.

However, after an attendant is relieved by someone who assumes the attendant's required duties, the original attendant, if trained and equipped as required by §1910.146(k)(1), can safely enter the permit space to begin a rescue attempt. Permission for the relieved attendant to do this is explicitly stated in a note following paragraph (i)(4). Although the language in the note makes no change to what was proposed, it does clarify the status of authorized attendants regarding rescue attempts that involve entry into the permit space.

Paragraph (i)(5) of the final rule requires the attendant to communicate with entrants as necessary to monitor entrant status and to alert authorized entrants of the need to evacuate the space under paragraph (i)(6) of the final rule. OSHA believes that the authorized entrant's communication with the attendant provides information that the attendant needs in order to determine if the entry can be allowed to continue. Subtle behavioral changes detected in the authorized entrant's speech or deviation from set communication procedures could alert the attendant that it is necessary for the authorized entrant to evacuate or be rescued from the space. Additionally, the attendant needs to be able to communicate with authorized entrants to order them to evacuate the space in an emergency. This provision is discussed under the summary and explanation of paragraph (h)(3) of the final rule, which contains a corresponding requirement for authorized entrants.

Paragraph (i)(6) of the final rule requires the attendant to monitor activities inside and outside the permit space to determine if it is safe for entrants to remain in the space. The attendant is also required to order authorized entrants to exit the permit space as quickly as possible whenever the attendant detects a prohibited condition, behavioral effects of hazard exposure in an authorized entrant, or a situation outside the space that could endanger the authorized entrants, or whenever the attendant, for any reason, can no longer perform the duties required under paragraph (i) of the final rule. Given the speed with which permit space hazards can incapacitate and kill entrants, it is essential that the entrants evacuate permit spaces as soon as any one of the four conditions set out in paragraphs (i)(6)(i) through (i)(6)(iv) exists. As noted in the preamble to the proposal (54 FR 24093) and in the summary and explanation of final paragraph (h)(5) earlier in this section of the preamble, OSHA believes that self-rescue will often provide the entrant's best chance of escaping a permit space when a hazard is present. Therefore, although OSHA recognizes that self-rescue may sometimes be impossible, the Agency stresses the importance of attempting self-rescue as a means of saving lives and minimizing injuries.

Paragraph (i)(6) of the final rule is based on proposed paragraph (f)(3)(ii), which would have required attendants to order the evacuation of a space whenever: (1) the attendant observed a condition that was not allowed in the permit, (2) the attendant detected behavioral effects of hazard exposure, (3) the attendant detected a situation outside the space that could endanger the entrants, (4) the attendant detected an uncontrolled hazard within the permit space, (5) the attendant was monitoring entry in more than one permit space and had to focus attention on the rescue of entrants from more than one space, and (6) the attendant had to leave the work station. OSHA has made some editorial revisions to the language of proposed paragraph (f)(3)(ii) in the course of drafting the final rule. For example, the Agency has replaced the phrase "condition which is not allowed in the entry permit" with "prohibited condition". ("Prohibited condition" is defined in the final rule as a condition that is not allowed by the permit.) Additionally, the condition listed in proposed paragraph (f)(3)(ii)(D) (that is, when the attendant detects an uncontrolled hazard) has not been carried forward into the final rule. Uncontrolled hazards are conditions not allowed by entry permits; thus, this condition is already included in the first condition (final paragraph (i)(6)(i)).

All of the substantive comments on proposed paragraph (f)(3)(ii) were in regard to paragraph (f)(3)(ii)(E), which addressed attendants monitoring more than one space at a time. The number of permit space entry operations that an attendant may monitor was the subject of Issue 8 of the hearing notice, which is addressed under the summary and explanation of final paragraph (d)(6) earlier in this section of the preamble. The Agency has decided to allow an attendant to monitor any number of permit space entry operations so long as the attendant continues to comply with the provisions of paragraph (i) of the final rule. Accordingly, OSHA is combining the last two conditions from the proposal (paragraph (f)(3)(ii)(E), when the attendant was monitoring more than one space and had to focus attention on the rescue of entrants from another space, and paragraph (f)(3)(ii)(F), when the attendant had to leave the work station). In accordance

with the Agency resolution of hearing issue 8, paragraph (i)(6)(iv) requires the attendant to order evacuation of the space whenever he or she can no longer perform the duties required under paragraph (i) of the final rule. This performance-oriented approach covers any circumstances in which an attendant cannot effectively monitor a permit space entry operation, such as emergency conditions that distract the attendant's attention [31] and any condition that forces an attendant to leave the work station. Obviously, if another attendant relieves the first one, the latter is no longer considered the attendant and is free to leave.

Paragraph (i)(7) of the final rule requires the attendant to summon rescue and other emergency services as soon as it is determined that an emergency exit from the permit space is necessary.

This provision has been taken from proposed paragraph (f)(3)(iii). Several commenters (Ex. 14–86, 14–143, 14–150, 14–157, 14–174, 14–178, 14–188) objected to the wording of this requirement in the proposal. They argued that the provision would require rescue services to be summoned whether or not they were needed. For example, Pennzoil Company (Ex. 14–150) stated:

> Item (f)(3)(iii) presents unnecessary constraints, since it does not allow the attendant to decide if employees will be able to effect an orderly withdrawal or a self-rescue from the space. Many times when the attendant recognizes cause to evacuate entrants from the space, the entrants can effect an orderly withdrawal or self-rescue. In most of these situations, the summoning of rescue and emergency services will be unnecessary. In order to correct this problem, we propose that item (f)(3)(iii) be revised as follows:
>
> "Summon rescue and other emergency services as soon as the attendant determines that authorized entrants may need assistance to escape from permit space hazards."

OSHA has accepted these recommendations. The Agency agrees that there may be times when authorized entrants can perform self-rescue from the permit space in an emergency. On the other hand, OSHA is believes that help must be summoned if there is any doubt as to whether it will be necessary. Therefore, paragraph (i)(7) of the final rule requires attendants to summon rescue and emergency services if they determines that assistance may be necessary. As long as the attendant is certain that self-rescue can be performed, no rescue summons would be necessary. However, if the attendant has any doubts as to whether an authorized entrant can exit the space under his or her own power, then the attendant is required to summon rescue and emergency services.

Paragraph (i)(8) of the final rule requires that the attendant take the following actions when unauthorized persons approach or enter a permit space while entry is underway:

(1) Warn the unauthorized persons that they must stay out of the permit space;

(2) Advise the unauthorized persons that they must exit immediately if they have entered the permit space; and

(3) Inform the authorized entrants and any other persons specified by the employer if unauthorized persons have entered the permit space.

This provision of the final rule has been taken from proposed paragraph (f)(3)(iv). Some commenters (Ex. 14–86, 14–150, 14–161, 14–170, 14–188) noted that some unauthorized person may have legitimate reasons for being near a permit space. As noted under the summary and explanation of paragraph (j)(5) of the final rule, OSHA agrees and has revised the language of proposed paragraph (f)(3)(iv)(A) so that unauthorized persons are warned to stay out of the space instead of being warned away from the space.

The Agency has also made some editorial changes to the language contained in the proposed paragraph, on which no other substantive comments were received. The changes are not significant, except that paragraph (i)(8)(iii) replaces the term "any other persons designated by the employer" from proposed paragraph (f)(3)(iv)(C) with "entry supervisor". As noted under the summary and explanation of the definition of "entry supervisor", this term is being used throughout the rule to identify the person responsible for overseeing permit space entry operations. This is the person who is responsible for the safety of authorized entrants and who should be informed of the presence of unauthorized persons inside the permit space. (See the summary and explanation of paragraph (j)(5) for a discussion of the duties of an entry supervisor in the event of unauthorized entry.)

Paragraph (i)(9) of the final rule requires the attendant to perform non-entry rescues as specified by the employer's rescue procedure.

This provision has been taken from proposed paragraph (f)(4)(ii), which would have required the attendant to use any rescue equipment provided for his or her use and would have required the attendant to perform any assigned rescue and emergency duties, without entering the space. The only comments addressing this proposed requirement concerned attendant rescue, which was discussed under the summary and explanation of paragraph (i)(4) earlier. As noted in that discussion, a person whose duties as attendant have been assumed by another is allowed to perform rescue entry following the provisions of paragraph (k). Paragraph (i)(9) of the final rule relates only to persons who remain on duty as attendants.

OSHA has not carried forward language from proposed paragraph (f)(4)(ii) relating to the use of equipment. This consideration is addressed in paragraph (d)(4) of the final rule.

OSHA wishes to emphasize that attendants monitoring more than one space must not perform any duties that would distract them from their responsibilities for all the spaces being monitored. The Agency does expect such attendants to be permitted to perform any type of rescue, including non-entry rescue, as long as they are still acting as attendants. As noted earlier, the employer's permit space program must establish procedures to enable the attendant to respond to an emergency affecting one or more of the permit spaces being monitored without distraction from the attendant's responsibilities under paragraph (i) of the final rule.

Paragraph (i)(10) of the final rule prohibits the attendant from performing other duties that may interfere with the attendant's primary duty to monitor and protect the safety of the authorized entrants. OSHA notes that keeping unauthorized persons out of the space protects authorized entrants and that the attendant would not be able to perform tasks that interfere with this duty. As noted previously, paragraph (d)(9) requires the employer to develop and implement procedures for summoning rescue services. These procedures should assist the attendant in complying with paragraph (i)(10) of the final rule.

This provision was not contained in the proposed standard. In Issue 6 of the NPRM, OSHA requested comments on the duties of an individual who would serve as an attendant for a permit-required confined space. Specifically, OSHA asked if the Agency should prohibit attendants from performing any duties other than monitoring the entrants. OSHA also asked if attendants should be permitted to pass tools or other materials to entrants and how much attention, if any, should an

[31] Under paragraph (d)(7) of the final rule, if the attendant monitors more than one space at a time, the employer's permit program must adopt procedures to enable the attendant to respond to emergencies in one space without distraction from his or her responsibilities for all the spaces.

attendant be permitted to spare for other activities.

Many rulemaking participants responded to Issue 6 (Ex. 14–4, 14–27, 14–28, 14–30, 14–35, 14–43, 14–44, 14–57, 14–61, 14–62, 14–63, 14–73, 14–78, 14–81, 14–91, 14–94, 14–98, 14–99, 14–101, 14–109; Houston Tr. 629–630, 925–926; Chicago Tr. 39–42, 643). All of them agreed that it was important that the attendant not be distracted from the primary duties of monitoring and protecting authorized entrants. Some, however, held a stricter view about the types of permitted activities than others.

For example, the National Ready-Mixed Concrete Association (Ex. 14–81) took a limited view of what activities should be permitted, stating:

> Where attendants are required those attendants should not perform any other work that would take away from the attendant's ability to assist a person in trouble in a confined space.

The American Industrial Hygiene Association (Ex. 14–61) suggested that the attendant be limited to such additional tasks as observation and monitoring of the space, as follows:

> The underlying conflict over the attendant's duties stems from what is expected of the attendants, and who the attendant is. Within some organizations, the attendant may be a health and safety professional charged with directing the entry operation. In such a case, duties beyond that directly associated with observing the entrants and monitoring instrumentation may be too distracting.

Another commenter, Marine & Environmental Testing, Inc. (M&ET, Ex. 14–4) argued that the attendant should not be assigned duties that might interfere with the primary duty of watching out for the safety of workers inside of permit spaces.

During the public hearings in Chicago, the Food and Allied Service Trades Union (FAST) testified in opposition to allowing the attendant to perform other duties in responding to questions from Mr. Steve Jones, a member of the OSHA panel (Chicago Tr. 39). A portion of that interchange included the following:

> MR. JONES: In your written comment from October 31, you also express concern about possibility that attendants will be assigned other duties while they are serving as attendants. In fact, I get the impression that you would want the attendant to simply stand by the entire time, is that correct?
>
> MR. MESTRICH: Precisely.
>
> MR. JACKSON: Absolutely.
>
> MR. DONATOO: Can I give an example of that please?
>
> MR. JONES: Please do, Mr. Donatoo.
>
> MR. DONATOO: My duties [are] to be a grain mixer and many times I have been sent down with a man to clean a bin as a watchman. At this time, I may be running grain in. If I happen to get a ring off, or I am to shut the grain off, I have to leave this man. So, he is by himself in a bin for maybe a five minute period. If he would fall or something would crush him, in five minutes time it's too late. [32]

Later in the hearing (Chicago Tr. 41–42), Mr. Jones continued his questioning of the FAST workers:

> MR. JONES: We do have a separate requirement in the proposed standard which would have the attendant maintain continuous communication with the entrant. In fact, we have gotten a great deal of input that infers, that in some cases, that passing the tool or receiving the tool from an entrant is one of the best ways in which to maintain continuous contact.
>
> I guess that's where we are going and what I would be interested in, is if viewed in its totality the requirement for continuous contact and duties which do not interfere with the continuous contact so that you could accept such a provision.
>
> MR. JACKSON: Working with the individual down there in whatever form we would have no problem with; with the individual that he is actually working there with passing tools, or sending down another rope, or whatever. But working with anyone else around the area, that we would have difficulty with.

Other commenters (Ex. 14–27, 14–28, 14–73, 14–78) suggested that OSHA, in some way, permit the attendant to perform other duties. These commenters suggested that OSHA permit attendants to pass tools, machinery or other equipment to the entrant, but emphasized that the attendant must not leave the immediate area of the confined space entrance. For example, Robert J. Cordes & Associates (Ex. 14–28) stated:

> There is nothing wrong with the attendant performing duties which you mentioned (passing tools, etc.). The important thing is that the attendant stay at the opening and not go 100 feet away to get pipe for a job.

Arizona Electric Power Company (AEPCO, Ex. 14–73) agreed, stating:

> AEPCO feels if work inside the space is dangerous enough to require an attendant, that attendant needs to remain at the entrance and devote his attention to the safety of those inside. We see no problem with the attendant passing tools or supplies to those inside provided sight or voice contact remains possible during said duties.

Northwest Pipeline Corporation (NPC, Ex. 14–27) suggested that OSHA not prohibit additional duties by the attendant because other language in the proposal prohibited the attendant from leaving the permit space. NPC stated:

> Paragraph (f) seems clear enough to prohibit the attendant from leaving the permit space, particularly in light of the requirement for keeping accurate count of all entrants, determination of the suitability of the space for continued occupancy and maintenance of effective and continuous communication. Activities directly related to the entry, such as passing tools, should be allowed but the attendants' attention should not be distracted by assignment of unrelated tasks.

Some commenters (Ex. 14–28, 14–78) suggested that OSHA, by allowing the attendant to perform other activities related to attending the space involving contact with the entrants, could even increase entrant safety. For example, Pennwalt Corporation (Ex. 14–78) stated:

> As noted by OSHA, the provisions covering attendants and entrants are designed to complement each other. It is important that the entrant maintain contact with the attendant in order to determine any behavioral changes or changes in work environment. A most effective and practical method of maintaining this contact is for the attendant to pass and receive tools and materials and to discuss the progress of the job with the entrant or entrants. This provides routine contact and alerts the attendant to any change in either behavior or conditions that would require termination of the entry. This allows the attendant, when necessary, to order evacuation and summon rescue teams promptly.

Robert J. Cordes & Associates (Ex. 14–28) also took this position, arguing as follows:

> There is good derived from the attendant keeping active; he does not become as bored with his job, he is aware of the status of the job, and he knows the locations of employees inside the confined space. The attendant should also be certain the atmosphere and working conditions have not changed; he can be the person who conducts tests.

OSHA concludes that it is essential for the attendant to maintain his or her efforts to monitor and protect authorized entrants. The Agency believes that authorized entrants will be endangered if the attendant is distracted from these duties. If an attendant performs tasks that devote his or her attention to jobs that are unrelated to the safety of employees within the permit space, an emergency condition inside or outside the space could go undetected until injury or death results. Those who commented on Issue 6 of the NPRM obviously agree with this conclusion. However, OSHA also recognizes that

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[32] OSHA notes that this testimony implies that the "watchman" identified by Mr. Donatoo is considered an attendant. In this particular case, once the "watchman" entered the confined space, that employee would no longer be considered an attendant. Paragraph (i)(4) of the final rule requires an attendant to be stationed outside the permit space at all times during entry operations. Duties that would require the attendant to enter a confined space to help another employee are not permitted by the final rule. The attendant must not place any portion of his or her body into the permit space. However, tools and equipment may be passed to authorized entrants by means of handlines.

some tasks, particularly those that enhance the attendant's knowledge of conditions in the permit space, can be performed safely by the attendant. Accordingly, in order to protect authorized entrants from unnecessary hazards, OSHA has decided to allow attendants to perform only such duties as will not hinder their primary function of monitoring and protecting authorized entrants. Therefore, paragraph (i)(10) of the final rule prohibits attendants from performing duties that will interfere with this function. Passing tools to authorized entrants and monitoring the atmosphere of the permit space are among the types of duties that would be permitted, provided the attendant does not break the plane of an opening into the space. The repair of equipment, on the other hand, would distract an attendant, so that he or she could not adequately monitor or protect authorized entrants, and would be prohibited.

Paragraph (j), Duties of entry supervisors.

Many of the accidents in the rulemaking record resulted from the employer's lack of enforcement of confined space entry rules. Under the OSH Act, employers bear the primary responsibility for their employees' safety. Employers must take responsibility to ensure that acceptable entry conditions exist before entry begins and during entry operations and to enforce work practices necessary for employee safety. Too many times, a permit space entrant has been made responsible for his or her own safety, even when that employee was dependent on others to ensure the presence of acceptable entry conditions.

In order to place the burden of employee safety on employers, the final rule requires each permit space entry to have an entry supervisor, who has overall accountability for safe entry operations. The final rule requires the entry supervisor to verify the existence of acceptable entry conditions and the presence of rescue and emergency services, to authorize the entry (which is evidenced by his or her signature on the permit), to remove unauthorized persons from the space, and to terminate the entry operation when necessary. OSHA believes that these rules will compel employers to assume responsibility for safety during permit space entry operations.

Paragraph (j) of the final rule, the equivalent of the "duties" portion of paragraph (g) of the proposed rule, enumerates the duties of the entry supervisor. In proposed paragraph (g), the individual responsible for the entry was called the "individual authorizing or in charge of entry". As noted in the summary and explanation of the definition of "entry supervisor" earlier in this section of the preamble, OSHA is using this term in the final rule in place of the proposed term.

Paragraph (j)(1) of the final rule requires the entry supervisor to know the hazards which may be faced during entry.

This provision was not contained in the proposed standard. Some commenters (Ex. 14–174, 14–173) specifically recommended that entry supervisors receive the same training regarding hazard recognition as authorized entrants.

OSHA has accepted these recommendations. As noted in the summary and explanation of final paragraph (g)(1) earlier in this section of the preamble, the rulemaking participants agreed that personnel involved in permit space entry operations should have whatever training is needed to be able to perform duties under the final rule. In paragraphs (h)(1) and (i)(1) of the final rule, authorized entrants and attendants respectively are required to know what hazards may be faced during a permit space entry operation. Since the entry supervisor is responsible for all aspects of the entry operation it is only reasonable that he or she be expected to know at least as much, if not more, than authorized entrants and attendants. Therefore, OSHA has adopted a specific requirement for the entry supervisor to know the hazards which may be faced during entry.

Paragraph (j)(2) of the final rule requires the entry supervisor to verify, by checking that the appropriate entries have been made on the permit, that all tests specified on the permit have been conducted and that all procedures and equipment specified on the permit are in place, before endorsing the permit and allowing entry to begin.

This provision corresponds to proposed paragraphs (g)(1)(i) and (g)(1)(ii), on which no substantive comments were received. These two paragraphs from the proposal have been combined in the final rule to clarify that the entry supervisor is required to check that the permit has been completed and that the entry conditions meet those specified on the permit. The language from the proposal has been modified somewhat to specify precisely what the entry supervisor is require to check. For example, proposed paragraph (g)(1)(i) contained the term "requisite information", and paragraph (g)(1)(ii) contained the term "necessary procedures, practices and equipment". So that it is clear what information is required to be examined, the Agency has substituted the terms "tests specified by the permit" and "procedures and equipment specified by the permit". These clarifications to language of the proposed provisions provide consistency between paragraphs (f) and (j)(2) of the final rule.

Paragraph (j)(3) of the final rule requires the entry supervisor to terminate the entry and cancel the permit as required by paragraph (e)(5) of the final rule. This provision combines the requirements proposed in paragraphs (g)(1)(iv) and (g)(1)(v), on which no significant comments were received. The substantive portion of the proposed provisions (that, is when these actions are required) has been placed in paragraph (e)(5) of the final rule, discussed earlier.

Paragraph (j)(4) of the final rule requires the entry supervisor to verify that rescue services are available and that the means for summoning them are operable. The proposed rule did not contain a corresponding provision explicitly imposing this duty on the entry supervisor. Proposed paragraph (h), however, would have required the employer to have an in-plant rescue team or an arrangement under which an outside rescue team would respond in an emergency. Additionally, OSHA proposed (in paragraph (c)(8)) that employers implement and provide the procedures and equipment necessary to rescue entrants from permit spaces and (in paragraph (g)(1)(ii)) that the entry supervisor determine that the necessary procedures, practices, and equipment for safe entry are in effect. OSHA believes that the inclusion of paragraph (j)(4) in the final rule will emphasize the need for the entry supervisor to assure that rescue and emergency services are indeed readily available before entry. Since the employer delegates responsibility for safe permit entry to the entry supervisor, it is reasonable and consistent with the rescue provisions in the permit program to specify that the entry supervisor verify the availability of rescue services and the operability of the means for summoning them.

Paragraph (j)(5) of the final rule requires the entry supervisor to remove unauthorized individuals who enter or who attempt to enter the permit space during entry operations.

This provision is based on proposed paragraph (g)(2), which would have required the entry supervisor to remove "unauthorized personnel who are in or near entry permit spaces." This provision of the proposal was criticized by some commenters (Ex. 14–86, 14–150, 14–161, 14–170, 14–188) as being

too vague or too restrictive. They argued that the proposal would preclude the presence "near" permit spaces of employees who have legitimate duties there. Some of these commenters recommended that OSHA require the removal of unauthorized persons who enter or attempt to enter the space.

The Agency recognizes that some persons near a permit space may have legitimate reasons for being there. These persons will have been warned by the attendant (under paragraph (i)(8)(i)) to stay out of the permit space. They will know of the danger involved and, under the observation of the attendant, can safely remain near the space. Therefore, OSHA has incorporated the recommendation of these commenters in paragraph (j)(5) of the final rule.

Paragraph (j)(6) of the final requires the entry supervisor to determine, whenever responsibility for a permit space entry operation is transferred and at intervals dictated by the hazards and operations performed within the space, that entry operations remain consistent with terms of the entry permit and that acceptable entry conditions are maintained.

This provision is based on paragraph (g)(1)(iii) of the proposal, which would have required reevaluation of the conditions within the space at "appropriate intervals". As noted under the summary and explanation of final paragraph (e)(4) earlier in this section of the preamble, several commenters (Ex. 14–28, 14–57, 14–63, 14–80, 14–109, 14–116, 14–151, 14–161) pointed out that conditions within the space could change over time and that the hazards within the space would have to be reevaluated. One of them (Ex. 14–109) specifically recommended limiting the duration of the permit to the length of a work shift.

Although OSHA has not accepted this latter recommendation, the Agency agrees that the conditions within the space need to be reevaluated at regular intervals. For entries lasting more than one work shift, the original entry supervisor will normally have to be relieved at the end of his or her shift. The responsibilities of the entry supervisor will then be passed on to someone else. OSHA believes that it is important for the new entry supervisor to review the permit and to determine that acceptable entry conditions have been maintained. The Agency also believes that guidance, beyond that of transfer of responsibility, must be given as to what "appropriate intervals" might be. In order to accomplish these goals, paragraph (j)(6) final rule specifies that reevaluation of conditions within the space must occur whenever responsibility for a permit space entry operation is transferred and at intervals dictated by the hazards and operations performed within the space.

Paragraph (k), Rescue services.

Most of the requirements of the permit-required confined space standard are in place to ensure that employees can safely enter and work inside permit spaces. The hazards within the space must be eliminated or controlled before entry is allowed. Testing and monitoring must be performed in order to ensure that entry conditions are acceptable before entry and that they remain so during the entire entry operation. Authorized entrants, attendants, entry supervisors, and others with duties performed under §1910.146 must be trained to perform those duties safely and to recognize permit space hazards if they arise. Attendants must be stationed outside the space to keep unauthorized persons out of the space and to monitor the status of entrants to ensure (among other things) that hazards do not arise and that employees are evacuated quickly if they do.

Unfortunately, in spite of all these precautions, hazards may arise so quickly or unexpectedly that authorized entrants are unable to escape from the permit space without assistance. Paragraph (k) of the final rule addresses the rescue and emergency services needed in such an event.

Paragraph (k) of the final rule, which is based on proposed paragraph (h), sets requirements for the rescue and emergency services provided to comply with paragraph (d)(9) of the final rule. Compliance with these provisions will enable an employer to extricate authorized entrants from permit spaces where uncontrolled hazards have arisen and will maximize the likelihood that any extricated personnel are not killed or permanently injured by exposure to permit space hazards. The Agency recognizes that an employer whose permit space program complies with this section may never need to have authorized entrants rescued. However, there are permit space hazards that could arise in permit spaces during entry operations against which the other elements of the permit space program do not provide sufficient protection. This could occur in several ways—because of extraordinary circumstances that appear suddenly without warning or because of some deficiency in the permit space program. Accordingly, the Agency has determined that employers must include in their permit program the means to rescue authorized entrants.

In an emergency, rescue personnel would either enter a permit space to remove authorized entrants or would remain outside the permit space and pull out authorized entrants with retrieval lines attached to chest or full body harnesses worn by the entrants. OSHA requires simply that, whatever means are chosen, the employer arrange for the necessary rescue and emergency services. As noted earlier, the Agency anticipates that employers will choose between entry and non-entry rescue as part of compliance with paragraph (d)(9) of the final rule.

The introductory text of paragraph (k) requires employers to arrange for rescue and emergency services. Some employers may prefer to establish an on-site rescue service. The on-site service normally provides the fastest response in an emergency. Other employers may prefer to rely on off-site rescue services, perhaps because they believe that they do not have the resources to train employees to perform rescue or because the ready availability of an adequate off-site rescue service makes an on- site capability unnecessary. The final rule allows employers to make arrangements for either on-site or off-site services.

Paragraph (h) of the proposal was entitled "Rescue team". As noted by several rulemaking participants (Washington Tr. 68; Chicago Tr. 496, 564–566; Houston Tr. 952–953), rescue of entrants from permit spaces also involves provisions of emergency medical services after (and sometimes before) an entrant is removed from a permit space. Additionally, proposed paragraph (h)(1)(iv) addressed the emergency, as opposed to rescue, training that the in-plant rescue team was to have. To eliminate any ambiguity, paragraph (k) of the final rule explicitly covers emergency services provided after a rescue and is titled "Rescue and emergency services".

Proposed paragraph (h) set requirements for rescue services, which were called "rescue teams" in the proposal. The introductory language of the proposed paragraph would have required employers to have either an "in-plant" rescue team or an arrangement under which an "outside" rescue team would respond to a request for rescue services. Some commenters (Ex. 14–118, 14–123, 14–161, 14–168, 14–170) stated that the proposed term "in-plant rescue team" was too restrictive and possibly misleading. For example, Atlantic Richfield Company (ARCO, Ex. 14–123) stated:

> "In plant rescue" is too restrictive a term. In some cases the rescue team is not "in plant" but "on site", and in other cases, such as at remote operations it is difficult to define

the confined space entry as being in a "plant".

Also, the Service Employees Industrial Union (Ex. 14–148) stated that the term "rescue crew" should be used because "Many confined space workers do not work in a plant setting." Additionally, the American Petroleum Institute (Ex. 14–168) stated:

> API requests this term be changed to "site rescue capability", since some member companies have expert employee rescue personnel available on call (not necessarily in-plant) that can provide rescue as rapidly as an independent outside rescue team.
>
> * * * * *
>
> In addition, the definition should be expanded to recognize that the rescue capability may comprise other workers (outside the permit space) who have been trained to perform rescues in the particular type of permit space. At issue is the best way to provide rescue capability at the small, remote installations where outside rescue teams do not exist.

OSHA agrees with these comments. Also, the term "rescue team" is a misnomer, because there could be cases, such as when non-entry rescue systems are used, in which one person will be responsible for the rescue of authorized entrants. As discussed under the summary and explanation of paragraph (k)(1) of the final rule, OSHA is treating all rescue services alike, whether they are provided by the employer whose permit space is being entered or by another employer and whether they are stationed on- site or off-site. Therefore, the Agency has adopted the term "rescue service" to refer to all rescue personnel provided to remove injured entrants from permit spaces.

The introductory language of proposed paragraph (h) treated "in-plant" and "outside" rescue teams as equally acceptable options for employers. In the prehearing comment period, OSHA received several comments (Ex. 14–41, 14–45, 14–54, 14–63, 14–94) contending that employers should take into account the response time for rescuers when choosing between the use of in-plant and outside rescue services. In particular, these commenters were concerned that authorized entrants who were not rescued from a hazardous atmosphere within 4 to 6 minutes would be incapacitated or killed. For example, one of the commenters (Ex. 14–41) stated:

> The outside rescue team is a fine choice for small employers but fails to consider response times involved (the time [interval] between calling the rescue squad for help and the time they arrive on the scene.) A person can only go four to six minutes without oxygen before brain damage begins. After six minutes the [likelihood] of the victim recovering from the lack of oxygen is minimal. Therefore an outside rescue team needs to be able to arrive within four minutes in order to do the victim any good.

Another commenter (Ex. 14–54) expressed the following concerns about the response times of outside rescue services:

> The fourth point is on Page 24094 as to employers who choose to use outside rescue services.
>
> There is no mention of *Response Times*. If they cannot get there in 4 to 6 minutes, they will not be doing rescue! They will be doing body recovery!
>
> Your Proposed Standard should read: "Employers who choose to use outside rescue services should evaluate realistic response times, and training and equipment that the outside rescue service has available." Then have the outside rescue service train and practice at various locations throughout your facility. Only then can you make a sensible decision to use an outside rescue team or form your own in-house team. [Emphasis was supplied in original.]

Still another commenter (Ex. 14–94) noted the ANSI recommendation on response times, as follows:

> ANSI Z117 advises that treatment/rescue of a person suffering cardio/pulmonary arrest in a confined space should begin within four minutes for the victim to have the best chance of full recovery.

Some commenters recommended that OSHA not permit the use of outside rescue teams. For example, the Tennessee Valley Authority (Ex. 14–36) stated:

> We recommend that employees should not have the option of having either an in-plant rescue team or an outside rescue team because accidents associated with confined spaces require an immediate response and rescue efforts [to] begin quickly.

The International Brotherhood of Teamsters (Ex. 14–109) argued that outside rescue services could not respond quickly enough, as follows:

> Keeping in mind the risk of asphyxiation, we object to Section (h)(2) which allows the employer to use outside rescue services. In confined space emergencies, outside rescue teams will very rarely be able to respond quickly enough. As NIOSH points out on p. 40 of the *Citation Document on Working in Confined Spaces*, "Since irreversible brain damage can occur in approximately 4 minutes in an oxygen deficient atmosphere, it is essential that resuscitation attempts occur within that time." In two fatality cases involving entry into tanker trucks where we have information on response time by outside emergency responders, the time it took to retrieve the victims from the cargo tanks was more than 20 minutes, and approximately 30 minutes. (See NIOSH FACE–87–27–11, and the case file on OSHA Inspection 101314110.) [Emphasis was supplied in original.]

The Quaker Oats Company (Ex. 14–173) presented several reasons why OSHA should not allow outside rescue services to be used, as follows:

> The employer has an option of either using outside rescue services or forming an in-plant rescue team. This option poses at least three problems:
>
> 1. Response time of an outside team may be quite lengthy and unpredictable.
>
> 2. Capabilities of an outside rescue team cannot be assured without extensive evaluation on a local basis.
>
> 3. Outside rescue teams will likely lack the additional preparation time needed to identify and develop entry procedures for the multitude of confined spaces to which they will be exposed?
>
> Our recommendation would be to place primary responsibility for rescue on the employer. An in-house rescue team has a lower response time, can be better equipped, and has specific knowledge about the confined space they will be entering.

On the other hand, some of the comments argued that, if the outside rescuer's response time was reasonable, employers should be allowed to use outside rescue services in lieu of an in-house team. For example, AMOCO Corporation (Ex. 14–124) stated:

> The term "in plant" implies that OSHA intends for the rescue team to be physically present in the plant during the entire time an entrant is inside of a permit required confined space. An "in plant" rescue team is not required in the proposed rule and employers may [choose] to use an outside rescue team instead. Clearly, response time is a critical factor in determining whether an off site rescue team is sufficient to protect the entrants. Certainly, the response time for an employee response team which is on call could be comparable to an outside team. Therefore, we believe that OSHA should allow the employer to decide for which conditions or spaces, the rescue team could be on call.

The American Feed Industry Association (Ex. 14–160) also supported the flexibility set out in the proposal, stating:

> AFIA supports OSHA's basic approach of permitting the use of either an in-plant rescue team or an outside rescue team. This flexibility allows individual employers to adopt the approach that is best for their needs.

In response to these comments, the Agency solicited testimony and comments regarding the use of outside rescue teams in Issue 12 of the hearing notice. In the hearing notice (54 FR 41463), OSHA noted that atmospheric hazards which deprive authorized entrants of a safe air supply generally pose life- threatening situations after about five minutes, though some hazards incapacitate or kill even faster.

Some hearing participants testified against the use of outside rescue teams.

For example, Mr. Eric Frumin, representing the Amalgamated Clothing and Textile Workers Union (Washington Tr. 580–581), testified at the Washington hearing as follows:

I'd like to just make one followup comment as to what brother Walker stated regarding the question of rescue teams, outside rescue teams. He mentioned a necessity of establishing some sort of time to travel requirement and the whole notion of how far away can a rescue team legitimately be.

I went through an experience recently of trying to get fire insurance on a house in a relatively rural area. And if you have ever done that, you'll discover that if you're a certain number of miles from a fire house, you can forget getting fire insurance. And the insurance industry understands quite well what it means to establish strict criteria, quantitative criteria, to determine distance when those distances make all the difference in preserving property. And we think that OSHA should recognize the importance of reasonable and protective quantitative criteria for the acceptability of outside rescue teams regarding time to travel.

Otherwise, we are going to have a lot of outside rescue teams who are basically nothing more than an ambulance squad that take[s] people to the morgue.

Additionally, Ms. Diane Factor, representing the AFL-CIO (Chicago Tr. 318–319), testified:

The employer should be required to have an in-plant rescue team whenever possible. The team needs to be available within three minutes of an emergency to begin rescue. An outside rescue team can never be as effective as a well-trained in-plant team. Drills should be mandated as part of the standard to ensure that rescue skills are up-to-date. An outside team should only be used it is absolutely impossible to prepare an in-plant team. This option should be available to employers upon request using the variance procedure.

Mr. Corley, representing the National Association of Manufacturers (Chicago Tr. 124), testified as follows when asked what the appropriate response time would be for an outside rescue service:

I don't mean to be cute when I say this, but the only answer I can come up with is as quickly as possible. I don't know what the appropriate time is for people who don't have trained first-aiders, but who have a nearby medical facility. I don't know [what] that time is. In general, if the rescue capability takes more than five minutes it's generally too late.

On the other hand, some hearing participants recognized the problems faced by small employers in training and maintaining on- site rescue teams (Ex. 69, 106; Washington Tr. 286, 480–481; Chicago Tr. 318–319, 536). They argued that it was not always practical for such employers to train employees at the worksite in rescue techniques. For example, Dow Chemical Company (Ex. 69) discussed the problems involved, as follows:

We require the best effort possible to prevent or minimize any hazard prior to the entry of personnel. Our experience indicates that this provides the best results no rescues necessary. However, we recognize that the potential need for rescue exist[s] so we expect our locations to develop an on site rescue plan which will include where appropriate an off site rescue (fire department ... emergency response team, etc.) team. The three previous witnesses have a site rescue team at their respect[ive] locations that have special training. However, we have several locations that don't have the frequency of confined space entry or the resources to have dedicated rescue teams that would meet the criteria mentioned on issue eleven [rescue team qualifications and training] so they [coordinate] efforts with the local emergency effort, e.g. 15 person operation in Columbus, Ohio. And as previous testimony indicated even an [on-]site team can not always respond within four minutes of the first perceived problem with an entrant.

The American Society of Safety Engineers (ASSE, Chicago Tr. 617) argued that the important factor was whether or not an employee could be rescued quickly enough. On behalf of ASSE, Mr. Jack Dobson testified as follows:

Regarding Issue No. 12, the criteria to be used should be the safe removal of an entrant in time to save a life. If a life can be saved by outside rescue teams, then they should be allowed. In an immediately dangerous to life and health atmosphere or asphyxiation, time should be the parameter for decision making. The explanatory paragraph in the ANSI Standard in Section 14.1.2 addresses emergency treatment beginning within four minutes for persons with cardiopulmonary arrest.

Several witnesses (Chicago Tr. 537; Houston 869, 956, 1009) related the response times of their on-site rescue teams. Only half of these teams could always respond in under 4 minutes, and the times included only that necessary to arrive at the permit space. Additional time would be necessary to enter the space and remove the entrant. Other witnesses (Ex. 14–208; Washington Tr. 427, 480–481, 576) stated that no rescue team could adequately respond within 4 minutes.

OSHA believes that the need to respond as quickly as possible to an emergency within a permit spaces indicates a preference for on-site rescue teams wherever it is practical for the employer to provide a rescue capability. The response times of on-site rescuers will usually be much shorter than those for typical off- site rescue and emergency services. Unfortunately, the response of on-site teams is not always sufficient to ensure to rescue of entrants within the 4-minute time period acknowledged as the goal for successful rescue of entrants overcome by oxygen deficiency.[33] Additionally, the Agency realizes that some employers (small business employers in particular) will not be able to provide the type of in-house rescue expertise required by the final standard. Furthermore, because they are dedicated to responding to all types of medical emergencies, off-site rescue services are typically better equipped to treat injured employees.

In light of the fact that even the best rescue methods can barely respond to an emergency or retrieve an incapacitated employee from a permit space within 4 minutes and that many cannot respond that quickly, OSHA believes that it is simply not reasonable for the Agency to require employers to develop capability to provide rescue within 4 minutes of an emergency alert, regardless of cost or practicality. More importantly, OSHA is concerned that requiring employers to provide any set response time would encourage the attempted rescue of entrants before all precautions necessary to ensure the safety of rescue personnel were taken. The Agency believes that emergency conditions may induce rescuers (especially those who are not full time rescuers) to rush into the permit space, in spite of the training required under the final rule. Considering that the incident data in the record document that most of those killed in permit space entries are would-be rescuers, the Agency believes that the final rule should stress non-entry rescue methods and provisions for the safety of rescue personnel rather than the time for such personnel enter a permit space and to remove an entrant.

For these reasons, OSHA has taken several actions.

(1) The Agency has carried forward the proposal's acceptance of both on-site and off-site rescue services. The employer whose employees enter permit spaces must arrange for rescue and emergency services to be provided.

(2) The final rule incorporates a provision (discussed under the summary and explanation of paragraph (k)(1) later in this section of the preamble) for employers providing rescue services to equip and train the rescue personnel properly. This

[33] OSHA realizes that oxygen deficiency is not the only hazard faced by authorized entrants, though, as noted earlier, it is the leading cause of death of permit space entrants. Some hazards will require a quicker response in order to save the entrant, other hazards need not be responded to as quickly. OSHA does believe that a 4-minute time limit on removing an incapacitated entrant from a permit space should be the goal of every rescue plan.

provision applies equally to employers who provide rescue services for their own entrants and to employers who provide rescue services for other employers' authorized entrants.

(3) OSHA has incorporated a provision (discussed under the summary and explanation of paragraph (k)(3) later in this section of the preamble) requiring employers to provide retrieval systems or methods whenever an authorized entrant enters a permit space, unless the employer can demonstrate that the retrieval equipment would increase the overall risks of entry or that it would not contribute to the rescue of the entrant.

The Agency believes that these actions will help to ensure the safe and effective rescue of injured employees and will also provide flexibility for employers to choose the type of rescue service that best meets the demands of the workplace. OSHA acknowledges that the rescue provisions of the final rule will not ensure that all incapacitated entrants will be successfully rescued from permit spaces. However, OSHA believes that prevention of emergencies in permit spaces is the most effective approach to this problem. The basic thrust of this final rule is to require the employer to plan for entries into permit spaces and to provide for acceptable entry conditions, in order to minimize the chances that emergency conditions will arise during entry. OSHA further believes that when rescue is necessary, the rescue provisions of the final rule ensure the safety of employees performing rescue duties. This is particularly important in light of the accident data in Exhibit 13–16, which indicate that more would-be rescuers have been killed than entrants. (This point was noted in the preamble to the proposal, 54 FR 24082.)

Paragraph (k)(1) of the final rule, which is based on proposed paragraph (h)(1), sets requirements for rescue services. These provisions apply to any employer who has employees enter permit spaces to perform rescue duties.

Proposed paragraph (h)(1) would have applied only to in-plant rescue teams. Several rulemaking participants (Ex. 14–54, 14–61, 14–63, 14–148, 14–213; Washington Tr. 250–251; Chicago Tr. 374; Houston Tr. 880) recommended that the capabilities of outside rescue services be addressed as well. For example, the American Industrial Hygiene Association (Ex. 14–61) stated:

> Minimum qualifications for outside rescue teams should also be specified. These teams should comply with the same training requirements as the in-plant teams.

The commenters who objected to the term "in-plant rescue team" (Ex. 14–118, 14–123, 14–161, 14–168, 14–170) recommended using the term rescue capability so that the regulation would treat all rescue services alike.

Additionally, Mr. Dick Monczka of the International Union, United Automobile and Agricultural Implement Workers of America - UAW, testified (Chicago Tr. 374) as follows:

> If an outside rescue team is utilized by the plant, there must be provisions in the standard to require the outside rescue service to review all confined space at least on an annual basis. The outside team must also review on at least a bi-annual basis all previously issued confined space permits so they understand the type of work performed and the hazards encountered. In addition, a written rescue plan must be developed by the outside rescue service and made part of the company's confined space program. Practice sessions must occur at least annually.

Mr. Jerry Walker of Chevron was questioned by Mr. Thomas H. Seymour of the OSHA panel in the Houston public hearing. The discussion (Houston Tr. 880) went as follows:

> SEYMOUR: You mentioned about outside rescue teams or off-site rescue teams, and the employers are going to rely on them. What kinds of criteria do you think is appropriate that the employer should utilize if he is going to rely on such an outside unit to determine whether they, in fact, can be relied upon. What kind of questions or evaluations a prudent employer make in finally determine this part of his program to rely on those outside services?
>
> WALKER: Well, typically that should be trained to the level of what we have as a low-level emergency medical technician training which we call rescue training. And we would expect that the people that we would contract with or that we would have respond would [meet] that low-level of rescue training that we have put together.
>
> SEYMOUR: Would you think it would be appropriate for the host employer who is going to rely on this outside service would make available possibly training assistance that they can come in and actually see what kinds of space that they may be called upon to render assistance in and so on, as part of their orientation or possible training?
>
> WALKER: Yes. And we have done that.
>
> SEYMOUR: Would that be a normal practice? Should that be a normal practice?
>
> WALKER: I am not prepared to say that. I am saying that we would do that.
>
> SEYMOUR: I am speaking in the Chevron orientation, not say speaking for Shell or anybody else. From Chevron's point of view is that considered a normal practice, and they would do that if they were going to rely on outside people for assistance?
>
> WALKER: Right. Yes.

Mr. John Moran, OSHA's expert witness, noted the need for training of all rescuers (Washington Tr. 68), as follows:

> Rescue. In none of the confined space events previously analyzed was rescue planned. Where impromptu rescue efforts occurred, they were largely unsuccessful and often resulted in additional fatalities. Indeed, of the cases, 40 percent of the victims were would be rescuers. NIOSH's estimate is somewhat higher than that. Workers within confined spaces who are exposed to oxygen deficient, asphyxiating and similar atmospheres can often be saved, if rescue is prompt and appropriate emergency medical care is provided within four minutes. This argues for continuous communication, appropriate and timely removal from the space and prompt proper emergency medical care, including, at a minimum, CPR and first aid skills application. Rescue attempts resulting in the death of rescuers have been conducted by untrained on-site fellow workers and by rescue or police personnel from the local community. Where local community responders attempt rescues in confined spaces, they are in great jeopardy, unless they have had confined spaces rescue training and are aware of the hazards presented by the specific space they are entering. When such rescuers die, the tragedy of a confined space event is extended to the community as well, which is all [too] often already operating with scarce resources and marginal fire and rescue coverage.

As noted earlier, OSHA believes that it is important to protect employees who enter permit spaces to perform rescue duties regardless of who their employer is. The proposal did address the safety of rescue personnel in paragraph (h)(1); however, those requirements would have applied only to in-plant rescue teams. The proposal did not explicitly address the safety of rescuers of outside rescue providers. In the final rule, OSHA is applying provisions corresponding to proposed paragraph (h)(1) [final §1910.146(k)(1)] to all employers providing rescue services. The Agency has determined that this action is necessary to provide protection for employees of outside rescue services as well as those of in-plant rescue teams.

Paragraph (k)(1)(i) requires the employer to ensure that personnel assigned as rescuers are equipped with, and trained to use, all personal protective equipment and rescue equipment necessary to enable them to enter and perform rescue operations in the employer's permit required confined spaces. This provision is basically the same as proposed paragraph (h)(1)(i), on which no substantive comments were received. OSHA has made some editorial changes to the language contained in the proposal. For example, as noted earlier, the final rule uses the term "rescue service" in place of the proposed term "in-plant rescue team".

Paragraph (k)(1)(ii) requires the members of the rescue service to be

trained to perform their assigned rescue duties. They are also required to receive the training required of authorized entrants under paragraph (g) of the final rule. This is basically the same as proposed paragraph (h)(1)(ii), on which no substantive comments were received. OSHA made editorial changes to the language contained in the proposal in order to correct the syntax.

Paragraph (k)(1)(iii) of the final rule requires rescuers to practice making permit space rescues at least once every 12 months, by means of simulated rescue operations in which they remove dummies, manikins or actual persons from the actual permit spaces or from representative permit spaces. Representative permit spaces must, with respect to opening size, configuration, and accessibility, simulate the types of permit spaces from which rescue is to be performed.

This provision is based on proposed paragraph (h)(1)(iii). Some commenters (Ex. 14–45, 14–63) supported the proposed paragraph. They regarded rescue practice as an essential part of a successful entry system. They pointed out that the practice readies the rescue team for emergencies and highlights deficiencies in rescue procedures. For example, one commenter (Ex. 14–63) stated:

> Simulated rescue practices are strongly endorsed. The employer may find the respirators provided cannot fit through the entry/exit. Maryland employers and firefighters have had this unfortunate experience, resulting in fatalities. Such simulations should be practiced every six months.

On the other hand, ARCO (14–123) stated:

> [T]he requirement for practice rescues that would be representative of a rescue is again, not written as a performance standard. Rescue teams at some facilities may be called upon for a rescue in a very wide range of different confined space situations, and it is unclear how they could determine a confined space with representative size, configuration, and accessibility. ARCO recommends modifying this requirement to train rescue teams simply to be able to meet their goal, which is performing rescues quickly and competently.

Another commenter (Ex. 14–160) was concerned that this requirement was too burdensome and that the phrase "representative openings and portals whose size, configuration and accessibility closely approximate those of the permit spaces" could be interpreted to require different practice sessions over the course of the year if many different size openings were found at the workplace. This commenter recommended the elimination of the word "closely" from the text.

The Agency agrees that the language of the proposal did not account for the wide diversity of types of rescue services covered by the final rule. While some rescue services have ready access to the actual permit spaces or to exact replicas of the permit spaces for practice, others do not. OSHA does not believe that it is always appropriate for employers to make the actual permit spaces safe for entry simply to allow the rescue service to practice. (Of course, if the space must be made safe for entry for other reasons, practice could be scheduled as part of the entry operation.) On the other hand, OSHA has determined that rescue service personnel must develop and maintain familiarity with the types of permit spaces from which rescue may be required.

For these reasons, OSHA has revised the language of paragraph (h)(1)(iii) so that the final rule recognizes practice in actual permit spaces or in representative spaces that simulate (rather than "closely approximate") the permit spaces to be entered. In this way, the rule would not require multiple practice sessions for different permit spaces with similarly sized and configured openings. The rule anticipates that there will be variations between similar permit space openings. Additionally, the rule allows outside rescue services to practice in representative spaces that simulate the permit spaces they might have to enter. Thus, these services would not be required to visit every permit space every year, as long as practice rescue are conducted in representative spaces sometime during the year. It is important that the practice openings resemble those of the actual spaces, especially in means of access and egress. Otherwise, as noted earlier, the rescue service members may find that they have trouble getting into the space wearing personal protective equipment and carrying rescue equipment. In applying this rule, the Agency expects employers to conduct practice sessions using representations of the types of permit spaces the rescue service is expected to enter if the actual spaces are not available for entry. The final rule facilitates practice by outside rescue services by requiring the "host" employer to provide access to the permit spaces for planning and practice purposes.

OSHA disagrees with the commenter (Ex. 14–123) who stated that it was sufficient to require simply that employers train rescue teams to meet their goals. The Agency believes that the training requirements in paragraphs (k)(1)(i) and (k)(1)(ii) of the final rule do not, on their own, adequately ensure that the personnel assigned to perform rescues can function properly. OSHA believes that a periodic demonstration of the on-site rescue service's ability to extract authorized entrants from permit spaces will provide the necessary feedback regarding the adequacy of the rescue equipment, the rescue procedures and the training provided for performance of rescue from permit spaces.

The language incorporated in paragraph (k)(1)(iii) allows the satisfactory performance of one or more actual rescues during the 12-month period to substitute for a practice rescue from a given space. (Practices in other types of spaces would still be required.) OSHA has previously recognized in other standards (such as §1910.120, *Hazardous waste operations and emergency response*) that actual experience at a particular task is at least as valuable as a practice session or other type of training. It should be noted that the unsatisfactory performance of a rescue indicates the need for further training and does not substitute for a practice rescue. The intent of this exception is that if the rescuers performed their assigned tasks in a satisfactory manner, they need not perform a practice rescue for that 12-month period, regardless of the outcome of the rescue attempt. OSHA also notes that a rescue can be performed in a satisfactory manner and the entrants, through factors beyond the rescuers' control, still not survive.

Paragraph (k)(1)(iv) requires all members of a rescue service to be trained in basic first-aid and in cardiopulmonary resuscitation (CPR). In addition, at least one of the members on site during rescue operations must hold current certification in first-aid and in CPR.

This provision is based on proposed paragraph (h)(1)(iv), which would have required simply that at least one member of each rescue team hold current certification in first-aid and CPR. S. C. Johnson and Son, Inc. (Ex. 14–45), suggested that at least two members of each rescue team be trained in first aid and be CPR certified, that entry not be allowed unless the in-house rescue is at full strength, and that an in-plant rescue team "should not be credited as available" if either member trained in first aid and CPR is unavailable. Noting S. C. Johnson and Son's comment, OSHA requested information regarding the resources needed and available to comply with proposed paragraph (h)(1)(iv) in Issue 11 of the hearing notice (54 FR 41463).

The Agency also asked what criteria should be set to indicate what a rescue team must do in order to function effectively.

Many commenters called for more training of rescue personnel (Ex. 14–54, 14–61, 14–63, 14–111). For example, one of these commenters (Ex. 14–63) suggested that all members of the rescue team be trained in first-aid and CPR. Another (Ex. 14–54) suggested that the member of the rescue team designated to provide CPR and first-aid "should be First Responder and preferably EMT [emergency medical technician]," because this training is needed to extricate an injured employee from a permit space without exacerbating his or her injuries.

Several hearing participants also responded to this issue. (Washington Tr. 226, 251, 385; Chicago Tr. 383, 387, 434–435, 536; Houston Tr. 952–953). Some called for more training for rescuers (Washington Tr. 226, 251; Chicago Tr. 383, 387; Houston Tr. 952–953). For example, representatives of the Communications Workers of America (Washington Tr. 226, 251) testified that all members of the rescue team should be trained in first aid and CPR. Additionally, the UAW testified (Chicago Tr. 383, 387) in support of additional training requirements, as follows:

> We recommend extensive training in CPR, use, care and inspection of breathing and ventilation gear, emergency evacuation equipment, use of two-way radios and fire fighting equipment.
>
> * * * * *
>
> There is still a need for a more comprehensive training for rescue teams, the person in charge of the testing and, most importantly, the individuals who will enter these confined spaces. We recommend that every worker receive training and that individuals who may be participating in rescue teams receive additional training.

Mr. Jack Dobson, testifying on behalf of ASSE (Chicago Tr. 616–617), recommended the use of ANSI language dealing with training of emergency response personnel. Section 15.4 of ANSI Z117.1–1989 (Ex. 129) reads as follows:

> 15.4 *Training for Emergency Response Personnel.* Training shall include:
>
> 15.4.1 the rescue plan and procedures developed for each type of confined space they are anticipated to encounter;
>
> 15.4.2 use of emergency rescue equipment;
>
> 15.4.3 first aid and cardiopulmonary resuscitation (CPR) techniques;
>
> 15.4.4 work location and confined space configuration to minimize response time.

Rohm and Haas, Texas, testified (Houston Tr. 952–953) on the utility of having some advanced emergency responder medical training, as follows:

> All of them are what, in the State of Texas, is called ECA, their ECA minimum, Emergency Care Attendant. Minimum, which is about one or two levels below a paramedic. It is higher than first aid and CPR, however. It requires 40 hours of training and a State-administered exam.

On the other hand, some rulemaking participants questioned the need for the rescue personnel to be certified in CPR (Ex. 14–86, 14–160, 14–221; Chicago Tr. 536). They argued that the initial CPR course would suffice and that the annual refresher training required to maintain current certification would be burdensome. For example, the A. E. Staley Manufacturing Co. (Ex. 14–221) stated:

> OSHA has proposed requiring in-plant or outside rescue teams. (54 FR 24095 and 24105 as well as 54 FR 4163) Staley submits that formal rescue teams may not be necessary under many specific situations such as those covered by the low hazard classification.
>
> In situations where a hazard team is appropriate, greater flexibility in structuring the team should be given e.g. OSHA should consider changing the wording of proposed paragraph 1910.146 (h)(1)(iv) to allow greater program flexibility by not requiring one person to be trained in both first-aid and CPR. Equal or better treatment could be given by two people each trained in one of the two skills.

OSHA believes that rescue personnel need instruction in first aid and CPR. It is recognized (Ex. 14–45; Washington Tr. 226; Houston Tr. 953) that yearly recertification is needed to maintain one's proficiency. Therefore, the Agency has carried forward the requirement for at least one member to be certified in CPR. OSHA has not, however, extended the provision to require medical training more advanced than that proposed. Although other forms of medical training (such as for an emergency care attendant or an emergency responder) may be beneficial, such training is not necessary because the medical capabilities resulting from this training is very likely to be available from other emergency responders who will be treating the entrant after he or she is removed from the permit space. In fact, paragraph (d)(9) requires the employer to ensure the availability of necessary emergency services (such as paramedic services).

In light of the evidence on this issue, the Agency has concluded that a requirement for a lone person certified in first aid and CPR is not sufficient protection for injured permit space entrants. If that one rescuer were to depart after entry has begun or were to become incapacitated during rescue, there would be no one to render this all important first treatment in an emergency. For this reason, OSHA has incorporated into the final rule a requirement for all rescue team members to be trained in first aid and CPR (§1910.146(k)(1)(iv)). Only one member of the rescue service needs to have a current CPR and first aid certification, however.

Paragraph (k)(2) of the final rule, which is based on proposed paragraph (h)(2), sets requirements for employers who retain outside rescue services to enter permit spaces for rescue of entrants.

Proposed paragraph (h)(2) required that employers who retain outside rescue teams ensure that the designated rescuers are aware of the hazards they may confront when called on to perform rescues, so that the outside rescue team can equip, train, and conduct itself appropriately. Virtually all of the comments regarding proposed (h)(2) addressed the advisability of permitting the use of off-site rescuers. Those comments have already been addressed in the discussion of the introductory language to paragraph (k).

The requirement proposed in paragraph (h)(2) that employers inform outside rescue services of the hazards that may be faced during entry has been retained as paragraph (k)(2)(i). The language from the proposed rule has been modified for consistency with the terminology of the final rule.

The AFIA (Ex. 14–160) stated "In the interest of eliminating possible confusion, AFIA requests that OSHA confirm in the final rule itself that an employer has no equipment and training obligations with respect to an outside rescue team." The Agency acknowledges that an employer is not required to train or equip off-site rescuers. This does not mean, however, that the employer who retains an off-site rescue service has no responsibility for the adequacy of the rescue services provided. OSHA notes that both the proposal, through proposed paragraphs (c)(8) and (h)(2), and the final rule, through paragraphs (d)(9) and (k)(2), require the employer to take measures to enable the rescue of injured entrants.

Paragraph (k)(2)(ii) of the final rule requires an employer who retains off-site rescue services to provide the designated rescuers with access to permit spaces as necessary for those rescuers to develop an appropriate rescue plan and as necessary for the designated rescuers to practice rescue procedures in permit spaces whose features approximate those of the permit

spaces from which rescue may be necessary.

This provision had no counterpart in the proposal. As noted in the summary and explanation of paragraphs (k)(1)(iii) and (k)(1)(iv), earlier, several comments suggested that all rescuers have the training and the practice necessary for the performance of their duties. OSHA agrees with those commenters. A rescue service needs to know the location, configuration and other circumstances of a permit space in order to develop and practice effective rescue procedures. OSHA has determined that the off- site rescuer's need for information on the permit spaces and for opportunities to perform practice rescues can be satisfied only through access to permit spaces whose size, configuration, and accessibility approximate those of the permit spaces from which rescue may be required. The Agency believes that compliance with this requirement, while minimally disrupting an employer's operations, will greatly increase the effectiveness of off-site rescue services. It should be noted that this provision does not require the outside rescue service to actually use the permit spaces for practice; paragraph (k)(2)(ii) simply requires that the host employer provide access to the space. In performing practice rescues, the outside service may use any representative permit spaces that replicate those from which rescue may be performed, in accordance with paragraph (k)(1)(iii) of the final rule.

Paragraph (k)(3) of the final rule sets requirements for non- entry rescue systems. OSHA has incorporated this provision into the final rule so that employers will have guidance regarding the proper use of harnesses and retrieval lines in non-entry rescue.

The performance-oriented language of proposed paragraph (c)(7) required employers to provide, maintain and ensure the proper use of the equipment, including personal protective equipment, necessary for safe entry. OSHA notes that proposed paragraph (d)(2)(ix) included retrieval lines among the examples of the personal protective equipment required to be listed in the checklist portion of the permit. In addition, proposed paragraph (c)(8) required employers to ensure that the procedures and equipment necessary to rescue authorized entrants from permit spaces were implemented and provided, and proposed paragraph (d)(2)(vii) required listing of the rescue equipment provided in the checklist portion of the permit. In the proposal, OSHA anticipated that many employers would use retrieval lines for rescue of entrants. However, the Agency also understood that some employers might use other rescue methods, particularly when retrieval lines would pose an entanglement hazard. In Issue 12 of the NPRM (54 FR 24087), OSHA requested information on retrieval lines and other types of non-entry rescue methods.

Many rulemaking participants responded to this issue. Some of them stated that retrieval lines are the most appropriate form of rescue equipment, especially when connected to a powered winch or a device with a mechanical advantage (Ex. 14–30, 14–35, 14–43, 14–61, 14–162, 14–166, 14–182; Washington Tr. 394–395). Most advocates of retrieval lines based their support on successful experience with the devices. For example, Wisconsin Natural Gas Company (Ex. 14–185) stated it "has only used retrieval lines. Records of cost or effectiveness are not maintained. Performance history, however, indicates that our procedures are effective."

At the Chicago hearing, the AFL-CIO supplied information regarding near misses (Chicago Tr. 311–312). This information regarded employees who, while wearing retrieval lines, entered a space that used baffles. The employees were overcome, but were rescued using the retrieval lines.

The use of a full body harness was also recommended by some of these commenters (Ex. 14–61, 14–63, 14–68, 14–182).

Other rulemaking participants stated that retrieval lines are not always appropriate and that the use of retrieval lines should not be required under every circumstance (Ex. 14–28, 14–62, 14–73, 14–99, 14–153, 14–183, 14–187; Houston Tr. 730–731, 862; Chicago Tr. 96–97). Some pointed out that these lines pose an entanglement hazard in certain types of confined spaces, especially if air lines and electric cords are run into the same space. Most of these commenters supported OSHA's performance- oriented approach and suggested that retrieval lines only be required where they are appropriate. For example, Mr. Roger Corley, representing the National Association of Manufacturers (Chicago Tr. 96–97), testified:

> ... it appears in this section that a retrieval line is required in each and every confined space entry situation. There are situation[s] where retrievable lines are ineffective, or inappropriate, or simply not required. As a brief example in a large steam boiler, for example, which is a common piece of equipment, the steam drum or mud drum often are horizontal cylinders of less than 24 inches in diameter. When people enter those cylinders to inspect the inner surface and perhaps their feet never enter the steam drum - their feet are extended. But that's treated as a confined space entry that a standby person and all of those arrangements are there, but obviously a retrieval line would serve no purpose there.
>
> In other instances the configuration of the interior of a distillation column or more complex vessel will make a retrieval line inappropriate. In that case, we recommend language that would say retrieval line is a standard piece of equipment for a confined space entry unless it's somehow or other rendered ineffective or inappropriate by the configuration of the space being entered.

Frank Rapp of the UAW also testified (Chicago Tr. 439) that wristlets were sometimes used where the configuration of permit space prevented the use of body harness.

Although information on other non-entry rescue methods was requested, no commenters or witnesses identified such other methods. (OSHA did receive comments regarding the proposed definition of "retrieval line". These are addressed under the summary and explanation of paragraph (b), earlier in this preamble.)

OSHA believes that retrieval lines can be very effective in assisting in the rescue of an unconscious employee from a confined space. Their other major advantage in rescue is that it is not necessary for a rescuer to be placed at risk in entering the permit space to help remove an injured entrant. The effectiveness of retrieval lines in rescue is amply demonstrated by the experience of employers currently using this equipment for confined space entries. On the other hand, the Agency realizes that many spaces do not readily or safely accommodate the use of retrieval lines. As the rulemaking participants noted, obstructions can snag the retrieval line or the entrant, and air lines and electric cords within the space can pose entanglement hazards. In order to provide the greatest degree of safety while recognizing these problems, the final rule requires the use of retrieval systems or methods whenever an authorized entrant enters a permit space, except in situations, such as those described in the record, in which the retrieval equipment would increase the overall risk of entry or would not contribute to the rescue. This is the approach taken in ANSI Z117.1. OSHA believes that adopting the ANSI requirement will provide the most effective protection for employees, with due regard for situations in which retrieval systems should not be used.

In enforcing this provision, OSHA will inspect the permit space to determine whether or not a retrieval system would contribute to a rescue without increasing the overall risk of

entry. The Agency will use the following guidelines to make this determination:

(1) A permit space with obstructions or turns that prevent pull on the retrieval line from being transmitted to the entrant does not require the use of a retrieval system.

(2) A permit space from which an employee being rescued with the retrieval system would be injured because of forceful contact with projections in the space does not require the use of a retrieval system.

(3) A permit space that was entered by an entrant using an air supplied respirator does not require the use of a retrieval system if the retrieval line could not be controlled so as to prevent entanglement hazards with the air line.

Paragraphs (k)(3)(i) and (k)(3)(ii) set forth requirements for the proper use of retrieval systems. Paragraph (k)(3)(i) requires the authorized entrants to wear a chest or full body harness with retrieval line attached. The point of attachment of the retrieval line must be at the center of the entrant's back, near shoulder level, or above the entrant's head so that the entrant will present the smallest possible profile during removal, in case a rescue becomes necessary. The use of wristlets in place of the full body harness is recognized, if their use is appropriate (that is, if a full body harness cannot be used because of the configuration of the space).

Paragraph (k)(3)(ii) requires the outside end of the retrieval line to be attached to a fixed point or a lifting (or other retrieval) device in such a manner that rescue can begin as soon as the rescuer (in most cases the attendant) becomes aware that rescue is necessary. (As noted earlier, the attendant is only allowed to participate actively in non-entry rescue.) A mechanical device is required for vertical permit spaces more than 5 feet deep.

Some commenters (Ex. 14–62, 14–182) suggested that the retrieval line be attached to a mechanical lifting device. Another commenter (Ex. 14–63) focused on the need for mechanical systems "whenever practical" to remove entrants from permit spaces. That commenter stated:

> Securing the line to an anchor point does not afford the entrant an equal level of protection. It is difficult to move dead weight without mechanical assistance.

S.C. Johnson and Son, Inc. (Ex. 14–99) provided a summary of conclusions based on their near miss experiences. Their experiences showed that mechanical assistance, though difficult to provide, was necessary for retrieval.They stated:

> We found that using a simple pulley was not "sufficient" to lift anyone from inside a vertical entry confined space. An attendant did not, by himself, have sufficient strength to "remove" anyone from such a space.... Providing such mechanical assistance is complicated by a general lack of room to position such equipment above the entry point of such spaces and the need to keep that entryway "cleared" for the attendant to "observe" the entrants while they are working.

Additionally, some commenters addressed the advisability of using powered winches to remove authorized entrants from permit spaces. One commenter (Ex. 14–54) stated:

> Used powered winches, overhead cranes, etc. is the easiest way to impale victims, tear off limbs and retrieve pieces and parts of victims. The word "Rescue" means to remove a victim from danger to safety, not to add danger.

Also, Caterpillar, Inc. (Ex. 14–137) commented:

> Power [winches] will not be used where additional harm to employees may occur.

Another commenter (Ex. 14–166) stated:

> Powered retrieval winches should be recommended where depths exceed 50 ft and should be equipped with torque limiters of approx. 450 lbs to avoid damaging the incapacitated person.

Frank Rapp of the UAW testified (Chicago Tr. 440):

> Some plants we usually [use a] fork truck, attach the lifeline onto the fork over a pit and lift them up by fork truck. You can do an extreme amount of damage to that person as they're ricocheting off a wall coming up.

ANSI Z117.1, Section 12.2.1 requires a mechanical device to be available to retrieve personnel from vertical type permit spaces greater than 5 feet in depth (Ex. 129).

OSHA believes that there are circumstances where the attachment of a retrieval line to a fixed point would enable the attendant or other rescue personnel to safely extract an entrant without the need to enter the space. OSHA further recognizes that a mechanical device will usually be necessary to enable rescuers outside the space to lift entrants out of vertical permit spaces. Therefore, the OSHA has adopted the ANSI approach requiring a mechanical device to be available, if a retrieval system is used, during entry operations involving vertical type permit spaces more than 5 feet deep. (Any permit space whose opening is above the entrant is considered to be a "vertical- type permit space".) The mechanical device used should be appropriate for rescue service. The employer should not use any mechanical device, such as a fork lift, that could injure the entrant during rescue.

In response to a comment (Ex. 14–11), OSHA raised Issue 15 of the hearing notice (54 FR 41463). This issue requested testimony and evidence regarding the need to require that the applicable Material Safety Data Sheet (MSDS) accompany an injured employee to the hospital if the injury was caused by a hazardous substance and regarding the need to require the permit to contain the names and phone numbers of persons who would make important decisions regarding rescue operations in a permit space.

OSHA received a comment (Ex. 14–210) on this issue which indicated that an MSDS would be of limited usefulness to emergency services, and that the administrative burden associated with tracking and locating the MSDS would be excessive. This commenter wrote:

> While providing [an] MSDS to accompany an injured entrant to the hospital may help in some cases, the injury may not be related to a chemical. The administrative burden of constantly tracking which chemical or gas the entrant is exposed to during a repair would be onerous. Emergency information can be provided promptly to the hospital without specifically requiring it in the proposed regulation.

OSHA also received testimony on Issue 15 at the hearings (Washington Tr. 896–897; Houston Tr. 909–910, 981; Chicago Tr. 168–170, 368, 497, 539, 617–618).

For example, one witness (Chicago Tr. 368) testified that while an MSDS was important, its usefulness might be limited, stating:

> Hazardous chemicals go unlisted by the companies [or they] fail to research other sources of data as required by the standard, such as RTECS. Unfortunately, much of the material found in confined spaces is waste material and is not covered by 1910.1200 Hazard Communication Standard.
>
> The availability of MSDSs is an important issue and the individual who authorized entry must assure to themselves that this information is available during the evaluation. MSDSs must also be available for any necessary emergency treatment provided at the job site or at least a list of chemicals that are involved in the confined space entry.

Other commenters at the public hearings expressed the same views. A commenter (Houston Tr. 896–897) at the hearings in Houston, Texas, said:

> Issue No. 15, access to material safety data sheets and other information. We recommend that the supplying of the appropriate MSDSs to accompany an injured employee to medical attention should only be required where it is clear which substance or substances caused the injury and as long as

a timely card to obtain the MSDSs does not delay the medical attention for the injured employee.

This is an area that must be dealt with very carefully. It is highly likely that in the course of an accident, an incorrect MSDS or an incomplete set of MSDSs in the case of exposure to more than one chemical, may accompany an employee to medical attention.Should medical professionals change their diagnosis or treatment procedures based on incorrect or incomplete MSDSs, the results could be tragic.

We recommend that unless those conditions can be met, OSHA should not require that a MSDS accompany an injured [employee].

Another hearing participant (Chicago Tr. 539) also testified that methods other than providing MSDS's were available to provide medical personnel with information on chemical exposures. This witness stated:

Issue 14 [sic] regards chemical information, MSDSs, be communicated to the emergency medical treatment personnel treating an injured employee. We encourage our facilities to identify local medical treatment centers where employees may be taken or that may be impacted by local emergency responses and establish a communication method appropriate for their system, and whenever an employee—what we do is even our small sites go out and identify the hospital or medical treatment area, review with those emergency people the chemicals or hazards that our employees may be exposed to or our contractors, and then give them a list and review and provide access, and also, we have a policy that any time an employee is injured on the site, that a company representative will travel with that employee to the treatment area.

The Agency believes that the identification of, and the means to notify a responsible person during rescue operations is a necessary part of rescue planning. Compliance with paragraph (d)(9) of the final rule, which requires employers to implement proper procedures for rescuing employees from a permit space, will necessarily involve provision for proper notification of the appropriate management personnel.

In addition to the comments and testimony, OSHA notes that the Superfund Amendments and Reauthorization Act of 1986 (SARA) (Subtitle B, Section 311) requires employers who produce, use, or store hazardous chemicals (as defined in 29 CFR §1910.1200) in excess of Environmental Protection Agency (EPA) limits to provide MSDSs to the state emergency planning commission, the local emergency planning committee, and the local fire department. OSHA notes that hospitals are represented on the local emergency planning committee and therefore should be aware of the types of chemicals in the community. OSHA also recognizes that in some cases an existing procedure, not involving MSDS's, may exist which provides an equal or more effective means of providing chemical exposure data to medical personnel.

A proper analysis of the hazards in a permit space under paragraph (d)(2) of the final rule will provide a list of possible chemical exposures, which will be included on the permit. Therefore, employers should be able to determine whether an MSDS is available for any substance to which an employee is likely to be exposed.

OSHA believes that it is important to ensure that medical treatment facilities are provided with any available information concerning the substances to which entrants have been exposed. While OSHA recognizes that while such information may already be available to medical facilities from other sources (such as state emergency planning commissions), and that MSDS's or similar written information may not be available at all in some instances, the Agency believes, based upon the comment and testimony received in response to issue 15 of the hearing notice, that it would be reasonable and prudent to require an employer to provide MSDS's or other written information to a treating medical facility when such MSDS's or other similar written information is already required to be kept at the worksite. The employer would only have to provide the information under the following conditions:

(1) If the MSDS or other written information is already required to be kept at the worksite by other applicable Federal (such as §1910.1200, *Hazard communication*) or state regulation, and

(2) If there exists an MSDS or other written information for the specific substance or substances to which the entrant has been exposed.

Accordingly, OSHA has included paragraph (k)(4) in the final rule to requires that, if an injured entrant is exposed to a substance for which an MSDS or other similar written information is already required to be kept at the worksite, the MSDS or other written information be provided to the treating medical facility. Employers can comply with this provision by having that information accompany the employee to the medical facility or by providing it to the facility as soon as practicable after the employee's arrival there. *Appendices*

OSHA is including five non-mandatory appendices (Appendix A—Decision flow chart, Appendix B—Procedures for atmospheric testing, Appendix C—Examples of permit programs, Appendix D—Sample permits, and Appendix E—Recommended procedures for sewer entry) with the final standard.

In Issue 13 of the NPRM (54 FR 24087), public comment was requested on the use of an appendix to the confined space standard as a source of general guidance for employers in understanding and complying with the standard. OSHA asked for specific recommendations and suggestions of subjects, such as personal protective equipment or rescue procedures, that commenters thought should be added to such an appendix. The Agency, in Issue 14 of the proposal and Issue 5 of the hearing notice, also requested information on industries which might be unable to develop permit programs because of their size. OSHA received many comments on these issues. Many rulemaking participants submitted sample procedures or permits (Ex. 14–4, 14–49, 14–57, 14–73, 14–88, 14–170, 14–171, 14–183, 14–209, 57, 58, 97, 98, 99, 101, 104, 105, 106, 118, 119, 127, 128, 131, 132, 143).

Some commenters (Ex. 14–81, 14–95, 14–219) offered brief statements of support for the use of an appendix as a source of general guidance. For example, the American Industrial Hygiene Association (AIHA, Ex. 14–61) in its response to Issue 1 in the proposal said that:

...there should at the very least be guidance to the employer in an appendix to the standard, as how to evaluate a potential confined space. In that manner, the small employer in particular would derive much needed direction from the agency on how to protect their employees.

AIHA maintained that information was especially needed on the subjects of hazard recognition and emergency planning.

A comment from the National Fire Protection Association (Ex. 14–42) recommended the use of national consensus standards in the formulation of appendix material, as follows:

If the American National Standards Institute issues the revised ANSI Z117, reference to it may be helpful, since it contains mandatory and explanatory guidance. The regulations should include a model confined space program, with samples of permits which are being used.

Another commenter (Ex. 14–44) noted that an appendix could provide valuable information to employers who do not have experience in permit space programs, as follows:

There are a number of items which would be helpful in an appendix as a source of general guidance. Due to the broad industrial application of this document the information

will have to be rather generic in nature, but could still be helpful in guiding the uninitiated in developing a good program. This information could include: types of protective equipment; types of retrieval equipment; types of acceptable lighting and electrical equipment; types of detection equipment; types of acceptable communications; typical permits and modifications; basic entry procedure; etc.

The State of Maryland Occupational Safety and Health Program (Ex. 14–63) responded at length to the importance of using appendices, stating, in part:

As an absolute minimum, Maryland would recommend an Appendix providing guidance in each of the [following] areas[:] hazard identification procedures, the monitoring and evaluation procedures, personal protective equipment requirements, rescue equipment and procedures and training of personnel. OSHA notes, on p. 24092 of the preamble, "That employers have not been sufficiently careful about authorizing permit space entry, and believes that only a systematic approach will ensure that entrants receive the necessary protection." If this is true in industries already using permit entry, it is more important to offer guidance through a series of systematic steps to employers who will encounter these requirements for the first time and who may have little competence in this area.

* * * * *

There should be a training section or an Appendix incorporated into the standard, which offers an outline or a lesson plan which addresses each item to be covered, such as reading instruments, monitoring, ventilation, rescue, etc.

* * * * *

Since most confined space fatalities are multiple fatalities created by the attempts of rescuers, improperly trained and equipped, to bring the fallen employee out of the space, this is one of the crucial factors in the training. If an *appendix* is prepared with a training outline, this should be stressed. [Emphasis was supplied in original.]

Maryland also suggested that the appendix be used to address the requirements in proposed paragraph (d)(4) relating to hot-work permits. In their statement directed specifically at NPRM Issue 13, they remarked that the appendices should explain each individual paragraph of the standard and provide additional information on them. They also listed the following suggested subjects: Permit vs. non-permit spaces, approaches to ventilation, instrumentation, isolation, lockout and tagging, draining and flushing, testing, personal protective equipment, check in and out, attendants, rescue, and training.

In their comments addressing proposed paragraphs (d)(2)(i) through (v), relating to information to be placed on the permit, Organization Resources Counselors, Inc. (Ex. 14–143), recommended that OSHA make the standard addressing these elements as short as possible and that OSHA put the details of these provisions in the appendix. ORC specifically endorsed the use of an appendix, stating:

ORC supports the publication of non-mandatory appendices which contain information and additional guidance on compliance with the standard. Samples of specific procedures, examples of permits, etc., might be quite useful to employers who do not have permit programs now and wish to understand the type of information that they will need to evaluate and the type of program they will have to implement to be in compliance with the standard.

Other commenters (Ex. 14–170, 14–195) supported the view that the appendices could be used to assist employers in their efforts to comply with the standard. Still another commenter (Ex. 14–208) stated that additional guidance was needed concerning the content of the permit, as follows:

To further assist employers in complying with the standard, CWA District 1 recommends that OSHA require employers to adopt the sort of checklist that has been developed by NIOSH in its *Guide to Confined Spaces*. The NIOSH checklist or its equivalent could be made an additional appendix to 1910.146. [Emphasis was supplied in original.]

By contrast, Edison Electric Institute (Ex. 14–171) was concerned that the sample permits found in the proposed appendix would pose compliance problems for employers who did not follow them exactly, stating:

EEI is concerned with the use of the forms listed in the non-mandatory appendix C to the proposal. Although they are advisory in nature, failure of an employer to include all of the suggested points could be considered as evidence of a violation or negligence. Although OSHA could not base a citation on the appendix, it could be used by a claimant to establish a standard of care in a third party lawsuit initiated after an accident.

Some of the participants in the public hearings also addressed appendices. For example, Keith Mestrich, on behalf of the Food and Allied Service Trades - AFL-CIO, recommended that OSHA include sample permits in an appendix (Chicago Tr. 42). John Nicol, testifying for the Chemical Manufacturers Association, recommended that OSHA include a sample training program in the appendix (Chicago Tr. 142).

Two commenters (Ex. 14–14, 14–98) responded specifically to Issue 14 in the proposal, suggesting that the rendering industry and the wastewater industry may not have sufficient resources to develop their own permit programs.

OSHA believes that non-mandatory appendices are a valuable tool to convey helpful information to assist employers in complying with the standard. OSHA does not agree with the view that the information in these non-mandatory appendices will be used for enforcement of the standard by the Agency's compliance staff. Based on the needs of employers and employees as described in the record, OSHA has carried forward two of the proposed appendices (the decision flowchart and the sample permit), has not carried forward one (the list of references) and has incorporated three others not included in the proposal (the procedures for atmospheric testing, the examples of permit programs and the recommended procedures for sewer entry).

Appendix A, *Permit-required Confined Space Decision Flowchart*, has been updated to be consistent with the final standard's provisions. The information in the flowchart is based on the Agency's analysis of how the requirements of the final rule would be applied to any given workplace.

Appendix B, *Procedures for Atmospheric Testing*, has been included in the final rule. It contains detailed recommendations on the purpose and types of atmospheric testing. Information of this type, though vital to an employer's permit program, is too lengthy and detailed to be placed within the regulatory text. OSHA has therefore incorporated Appendix B into the final rule. The information in this appendix is based on the many actual permit space programs submitted to the record.

Appendix C, *Examples of Permit-required Confined Space Programs*, has been incorporated into the final rule. OSHA believes it would be helpful to provide sample permit programs as well as samples of permits. The information in this appendix is based on the many actual permit space programs submitted to the record.

Appendix D contains sample permits. OSHA, responding to comments concerning proposed Appendix C, which also contained sample permits, has improved and upgraded the examples from the proposal. The information in this appendix is based on the many actual permit space programs submitted to the record.

Appendix E, *Sewer System Entry*, has been included in the final rule. Sewer entry differs in several respects from most other types of permit entry. (The appendix itself discusses these differences.) OSHA believes that these differences, while not so great so as to require separate treatment in the standard's regulatory text, do dictate at least a detailed discussion in a non-mandatory appendix.

Proposed Appendix B, which contained references for further information, has not been carried forward into the final rule. OSHA believes that the inclusion of this list in the actual standard is unnecessary. Much of the information from these references is already outdated, and the remainder will likely become outdated in a few years. OSHA has, however, presented a list of references for interested parties in Section IV, *References*, later in this preamble.

Discussion of Issues

The NPRM (54 FR at 24086) set out 18 issues regarding which OSHA sought information. The hearing notice (54 FR 41461) set out 15 issues, based on the NPRM comments, on which the Agency requested testimony, evidence, and additional comments. Most of the NPRM and hearing notice issues related to particular provisions of the proposed rule. The comments, evidence, and testimony received in response to those issues are covered in the Summary and Explanation discussion for the pertinent provisions of the final rule. The rest of the issues requested information that would assist OSHA in evaluating the impact of the proposed rule. The comments and testimony received in response to those issues are discussed in the following paragraphs and in Section VI, *Summary of the Final Regulatory Impact Analysis and Regulatory Flexibility Analysis*, later in this preamble.

Issue 7 of the NPRM (54 FR 24087) noted the proposed rule's emphasis on engineering and work practice controls for atmospheric hazards and asked what provisions OSHA should add to address nipping or crushing hazards. Several commenters (Ex. 14–4, 14–30, 14–35, 14–50, 14–57, 14–62, 14–63, 14–71, 14–81, 14–88, 14–94, 14–110, 14–111, 14–118, 14–131, 14–137, 14–157, 14–161, 14–162, 14–170, 14–179, 14–182, 14–187, 14–193, 14–199, 14–219) responded to this issue. The great majority of these commenters were of the opinion that mechanical hazards, such as nipping or crushing, would be best handled by other standards, such as §1910.147, *Control of hazardous energy sources (lockout/tagout*, already in existence. For example, The Shipbuilders Council of America (Ex. 14–62) said:

> Confined space standards should address those hazards peculiar to confined spaces, and not address all of the hazards to which entrants could be exposed. SCA believes that other safety hazards, such as heights, falls, surfaces, lighting, machine guarding, tagout/lock-out, etc. should be governed by their respective standards.

Likewise, the Kerr-McGee Corporation (Ex. 14–161) expressed the view that other standards should address mechanical and physical hazards, stating:

> OSHA asks what additional provisions would be appropriate to protect employees against physical and mechanical hazards. Kerr-McGee believes that adequate protection against such hazards is already provided by other OSHA standards including, but not limited to, Subpart O and the new lockout/tagout rule, 1910.147, effective October 31, 1989. While permit entries *may* require control of hazardous energy sources (lockout/tagout), OSHA should keep the two rules separate by referencing, rather than incorporating portions of one rule in the other. [Emphasis was supplied in original.]

Some commenters (Ex. 14–4, 14–35, 14–50), while not exclusively addressing physical hazards, did provide examples of specific equipment or procedures that would be involved with hazards other than atmospheric. Some of the equipment listed in these comments were non-sparking tools and various explosion- proof devices. One commenter (Ex. 14–50) mentioned that permit spaces should be evaluated for excessive temperature and noise, in addition to proper levels of lighting.Another commenter (Ex. 14–63) believed that these hazards needed to be addressed in the final standard.

Under most conditions, the lockout/tagout standard in §1910.147 properly addresses the control of hazardous energy sources within permit spaces. In fact, employers must deenergize and lock out or tag energy sources for machinery within a permit space with §1910.147, in addition to taking other measures required by final §1910.146, whenever servicing and maintenance is performed on that equipment. However, even if servicing and maintenance is not being performed (in which case §1910.147 would not apply), §1910.146 requires the employer to isolate hazards within the space to protect employees from any mechanical or other energy sources that may be present in the permit space. This approach is not only performance oriented, but it also avoids placing unnecessary details in the Permit-Required Confined Space final rule. The Agency has addressed the hazards associated with energy sources in paragraph (d)(3)(ii), which requires the employer to take measures to isolate the space, and in paragraph (f)(8), which requires the permit to list the measures used to isolate the space. OSHA believes that these requirements will ensure that employers have considered the energy-related hazards that may be found in permit spaces and that employers have taken measures to eliminate or control those hazards before employees enter those spaces.

The proposed rule took a performance-oriented approach to regulating employee safety in permit space entry operations. In the preamble to the proposal (54 FR 24087), OSHA explained that this approach was chosen to provide employers with maximum flexibility in determining how to protect their employees and raised Issue 9 of the NPRM, in which public comment was requested on whether or not this approach was appropriate and on what proposed provisions should be revised to use specification language. Additionally, OSHA asked if there were any provisions that used specification-type language where performance-oriented language should be substituted.

A substantial number of the commenters who responded to this issue (Ex. 14–27, 14–28, 14–30, 14–35, 14–43, 14–47, 14–50, 14–57, 14–73, 14–98, 14–161, 14–170, 14–183) expressed overall agreement with the use of performance language. Many supported the use of performance language with a few brief words. For example, Transco Energy Company (Ex. 14–35) stated:

> [Performance language] is desirable and will allow employers maximum flexibility in establishing their safe work practices and procedures.

In the same vein, the American National Can Company (Ex. 14–47) stated:

> Generally, we endorse the performance-oriented style of the proposed standard and support its intent and objective. We believe it represents a professional effort to produce a constructive framework for reducing the national casualty rate associated with the entry of confined spaces.

Another commenter (Ex. 14–50) expressed his opinions, as follows:

> ... it is better to provide performance language for many of these items as opposed to specific non-flexible requirements.

Monsanto Company (Ex. 14–170) offered support for the use of performance-oriented language in OSHA standards, but recommended that the rule provide clarification with respect to what is expected of the employer in terms of compliance, as follows:

> The standard should have clarity of language supported by examples so that employers can understand the range of methods for acceptable compliance.

The GATX Terminals Corporation (Ex. 14–183) stated their reasons for supporting performance language, as follows:

I concur with your performance-oriented, systematic approach and highly recommend that the flexibility that you are trying to build into the program remains a viable part of the final rule. I [emphasize] this due to the fact that confined space 'hazards' vary from one extreme to the other and the characteristics of each are directly contingent on site-specific hardware and the individual [company's] standard operating procedures. If companies do not have the flexibility to develop what they feel to be the priorities, the 'real' hazards may continue to exist. On the same note, employees who are involved with confined space entry (CSE) are already required (and sometimes frustrated) to follow a variety of procedures. If additional procedures are required in the future and they are perceived to be redundant or unnecessary by the workforce, an attitude of non- importance may develop—which is the last thing that OSHA or industry wants to happen when addressing this subject.

The National Fire Protection Association (Ex. 14–42) also agreed that the proposal's performance approach was appropriate, stating:

The accident statistics indicate for the most part that it is the failure of management to actively identify confined spaces and hazards in their workplace and provide adequate awareness training for all employees. Accidents have not occurred because the wrong hazards are identified or because the wrong atmospheric exposure levels were applied. No, accidents have occurred because no one even bothers to identify and evaluate the hazards.

It should be the function of this regulation to provide the framework for management to use to develop individual systems for recognition, evaluation and control of hazards associated with confined spaces which their workers will enter. The system should be in the form of a written safe work practice and should include designation of testers (professional and qualified as necessary). The system should include performance evaluation of the testers and workers. The system should also address non-routine entry, such as emergency or rescue.

Another commenter (Ex. 14–28) noted the difficulty of applying specification-type standards to industries with widely varying circumstances, as follows:

The performance oriented approach is appropriate. I've been involved with two ANSI standards and find that what is fine for one industry is impractical for another. I did not note any language problems, i.e., performance versus specification.

The comment and testimony received in response to Issue 9 in the NPRM serve to confirm OSHA's belief that performance, rather than specification type standards, best serve the purpose of protecting employees from the hazards of permit space entry while allowing employers to choose the best methods and procedures available to them for carrying out their responsibilities under the permit-required confined space standard. OSHA has therefore carried forward to the final rule the approach of using performance language whenever possible.

In spite of their support for the performance-oriented language contained in the proposal, some rulemaking participants (Ex. 14–62, 14–118, 14–143, 14–150, 14–168) found certain proposed requirements to be too specification oriented. For example, the Chemical Manufacturers Association (Ex. 14–118) supported the performance-oriented approach of the proposal. However, they did object to proposed §1910.146(c)(1), stating:

... the hazard identification and employee information sections do not adhere to the performance philosophy. This departure from that approach compromises the overall effectiveness of the standard.

The Shipbuilders Council of America (Ex. 14–62) argued that proposed paragraph (i) was not sufficiently performance oriented, as follows:

OSHA should modify paragraph (i) [Special permits for entry into low-hazard permit spaces] to provide more performance-oriented language...

Organization Resources Counselors, Inc. (Ex. 14–143) offered two examples of regulatory language they believed to be too detailed and inconsistent with a performance standard approach, as follows:

Paragraph (d)(2)(iii) states that "procedures for purging, inerting, ventilating and flushing..." should be included on the permit. Further, paragraph (d)(2)(v) calls for "testing and monitoring equipment and procedures..." to be included in the permit. Procedures for these items can be extensive. They are part of the preparation for entry, and their accomplishment should be addressed by the checklist, but the procedures themselves should not be part of the permit.

The Pennzoil Company (Ex. 14–150) echoed the same concern about permit systems addressed in proposed paragraph (d)(2). They stated:

[We] believe that the specifications listed include too much detail to be consistent with a performance- oriented approach, and are not achievable in some instances. An excellent example is [paragraph (d)(2)(iii)] which requires "...procedures for purging, inerting, ventilating, and flushing..." These procedures are very extensive, and are part of the preparation, not part of the *permit*. The entry permit approval process will ensure completion of these steps. We believe that [paragraph (d)(2)(iii)] should simply state "...the measures used to remove or control potential hazards." [Emphasis was supplied in original.]

Similar concerns about permit systems as addressed in proposed §1910.146(d)(2), (d)(3) and performance language were raised by the American Petroleum Institute (Ex. 14–168). In discussing proposed paragraph (d)(2), API stated:

While agreeing in concept, the specifications listed in this section are far too detailed, inconsistent with the desired performance approach, and in some cases simply are not achievable.

OSHA has taken these and all other comments, testimony, and evidence into consideration in the promulgation of the individual requirements of the final rule. OSHA believes that the final rule is written in terms of performance to be achieved rather than in terms of how to achieve the desired performance to the greatest extent consistent with effective employee protection from the hazards of permit space entry. Comments on the individual provision of the proposal that were thought to be too detailed are discussed under the summary and explanation of the corresponding provision of the final rule.

OSHA recognizes that the hazards associated with particular permit spaces differ in nature and degree according to the type of space being entered. In the notice of proposed rulemaking, the Agency proposed to allow employers the flexibility to tailor their permit space programs so that the particular conditions encountered are taken into account. However, the preamble to the proposal noted that the relative cost effectiveness of the rule (as calculated in the preliminary regulatory analysis) varied greatly from SIC to SIC. If this analysis were correct, the rule as proposed would have been much more cost effective in some industries than in other industries.

To ensure the greatest cost effectiveness for the final rule, OSHA posed, in Issue 17 of the NPRM (54 FR 24087), a series of questions related to minimizing the burden of the rule on employers while maximizing safety for employees. Commenters were requested to identify areas where the hazards posed by the spaces involved were not as great as those anticipated by the standard and, alternatively, areas where the hazards were more serious.

Interested parties responding to this issue identified several types of spaces that they claimed were covered by proposed §1910.146(i) but that were not hazardous enough to be regulated as permit-required confined spaces. Some of these commenters identified open trenches, ditches, excavations, and diked areas as examples of such spaces (Ex. 14–35, 14–43, 14–126, 14–183, 14–184). The commenters noted the lack of full enclosure of the spaces'

atmospheres (the tops of the spaces are open) and the relative ease of egress from these areas. Because of this, they maintained that trenches, ditches, excavations, and diked areas do not pose sufficient hazards to warrant regulation as permit-required confined spaces.

OSHA agrees with these comments. The Agency believes that these areas will not normally meet the definition of "permit- required confined space" and will not, therefore, usually be subject to final §1910.146. A detailed discussion of issues related to proposed paragraph (i) is contained in the summary and explanation of paragraph (c)(5) of the final rule.

Many other commenters argued that telecommunication manholes and vaults did not warrant all the procedures required under proposed §1910.146 (Ex. 14–104, 14–106, 14–108, 14–110, 14–139, 14–142, 14–162, 14–167, 14–187, 14–194, 14–195, 14–207). They maintained that such manholes and vaults were adequately covered by existing §1910.268(o) and argued that accident experience under the telecommunication standard clearly demonstrated that employees working in these manholes and vaults were adequately protected without further regulation. These commenters also pointed out that manhole entry posed limited hazards in comparison to entry into permit-required confined spaces, especially when all the requirements of §1910.268 are followed.

OSHA also agrees with these commenters. In fact, under the final rule, employee entry into telecommunications manholes and vaults will normally be covered under §1910.268 rather than §1910.146. (This was also true under the proposal, although it may not have been clear.) For additional information regarding the application of §1910.146 to the telecommunications work, see the discussion of final §1910.146(a) earlier in this preamble.

With regard to the question of why the cost effectiveness of §1910.146 varied widely from SIC to SIC, very few commenters had concrete answers. Three respondents doubted the accuracy of the underlying data (Ex. 14–62, 14–63, 14–172). For example, the State of Maryland's Occupational Safety and Health program stated:

> MOSH would certainly question the data collection of several of the industries for which there appear to be no fatalities on the chart provided. It is hard to believe that in agriculture (silos), textile mill products (process vessels, bleaching vats), tobacco manufacturing (mixers, vats), printing and publishing (tanks for inks and solvents) that there have been no confined space fatalities, especially since MOSH recalls articles on such, although no specifics are readily available.

Most commenters argued that the best way to handle the problem of maximizing the cost effectiveness of the rule was to promulgate a performance-oriented standard that provides the employer with the flexibility to adapt his or her confined space entry program to the hazards posed by the spaces found in the workplace (Ex. 14–35, 14–43, 14–57, 14–73, 14–81, 14–137, 14–161, 14–170, 14–193). In this manner, they contended, the employer assumes the responsibility for employee safety and has the freedom to choose the least costly method for adequately protecting his or her employees. One of these commenters, Mr. Gerald Beaumont of Beaumont and Associates (Ex. 14–57), recognized that, even with the wide range of hazards posed by confined spaces, there are certain common dangers:

> It is appropriate to allow trained supervisors and safety professionals to apply their judgement in protecting employees within the structure of this proposed standard. Some industries may not have confined space fatalities listed because of limited exposure to confined spaces. However, the hazards of oxygen deficiency and naturally generated toxic gases are potentially present in all confined spaces along with the possible release of flammable or toxic materials by the work activity, and thus should be evaluated prior to authorizing entry.

OSHA agrees that a performance-oriented standard is the most cost effective approach to regulation. The Agency took this approach in proposing §1910.146 and has refined it in the final rule. The final rule permits employers to specify whatever procedures he or she believes will best protect his or her employees. However, OSHA is requiring certain precautions to be taken for all permit-required confined space entries, because, as noted by Mr. Beaumont and as conclusively demonstrated by the many accident descriptions in the record, certain hazards are common to all regulated spaces. There is no evidence in the record that spaces regulated by the final rule are safer in any one industry than in another. The Agency strongly believes that this final rule will prove to be cost effective in preventing the deaths of and injuries to employees from the hazards posed by confined spaces.

IV. References

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V. Statutory Considerations

A. Introduction.

OSHA has described the hazards confronted by employees who enter permit spaces and the measures required to protect affected employees from those hazards in Section I, *Background*, and Section III, *Summary and Explanation of the Standard*, respectively, earlier in this preamble. The Agency is providing the following discussion of the statutory mandate for OSHA rulemaking activity to explain the legal basis for its determination that the permit space standard, as promulgated, is reasonably necessary to protect affected employees from significant risks of injury and death.

Section 2(b)(3) of the Occupational Safety and Health Act authorizes "the Secretary of Labor to set mandatory *occupational safety and health standards* applicable to businesses affecting interstate commerce", and section 5(a)(2) provides that "[e]ach employer shall comply with *occupational safety and health standards* promulgated under this Act" (emphasis added). Section 3(8) of the OSH Act (29 U.S.C. § 652(8)) provides that "the term 'occupational safety and health standard' means a standard which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment and places of employment."

In two recent cases, reviewing courts have expressed concern that OSHA's interpretation of these provisions of the OSH Act, particularly of section 3(8) as it pertains to safety rulemaking, could lead to overly costly or under-protective safety standards. In *International Union, UAW v. OSHA*, 938 F.2d 1310 (D.C. Cir. 1991), the District of Columbia Circuit rejected substantive challenges to OSHA's lockout/tagout standard and denied a request that enforcement of that standard be stayed, but it also expressed concern that OSHA's interpretation of the OSH Act could lead to safety standards that are very costly and only minimally protective. In *National Grain & Feed Ass'n v. OSHA*, 866 F.2d 717 (5th Cir. 1989), the Fifth Circuit concluded that Congress gave OSHA considerable discretion in structuring the costs and benefits of safety standards but, concerned that the grain dust standard might be under-protective, directed OSHA to consider adding a provision that might further reduce significant risk of fire and explosion.

It is, of course, beyond doubt that OSHA rulemakings involve a significant degree of agency expertise and policy-making discretion to which reviewing courts must defer. (See for example, *Building & Constr. Trades Dep't, AFL-CIO v. Brock*, 838 F.2d 1258, 1266 (D.C. Cir. 1988); *Industrial Union Dep't, AFL-CIO v. American Petroleum Inst.*, 448 U.S. 607, 655 n. 62 (1980).) At the same time, the agency's technical expertise and policy-making authority must be exercised within discernable parameters. The lockout/tagout and grain handling standard decisions sought from OSHA more clarification on the agency's view of the scope of those parameters. In light of those decisions, OSHA believes it would be useful to include in the preamble to this safety standard a statement of its view of the limits of its safety rulemaking authority and to explain why it is confident that its interpretive views have in the past avoided regulatory extremes and continue to do so in this rule.

Stated briefly, the OSH Act requires that, before promulgating any occupational safety standard, OSHA demonstrate based on substantial evidence in the record as a whole that: (1) the proposed standard will substantially reduce a significant risk of material harm; (2) compliance is technologically feasible in the sense that the protective measures being required already exist, can be brought into existence with available technology, or can be created with technology that can reasonably be developed; (3) compliance is economically feasible in the sense that industry can absorb or pass on the costs without major dislocation or threat of instability; and (4) the standard is cost effective in that it employs the least expensive protective measures capable of reducing or eliminating significant risk. Additionally, proposed safety standards must be compatible with prior agency action, must be responsive to significant comment in the record, and, to the extent allowed by statute, must be consistent with applicable Executive Orders. These elements limit OSHA's regulatory discretion for safety rulemaking and provide a decision-making framework for developing a rule within their parameters.

B. Congress concluded that OSHA regulations are necessary to protect workers from occupational hazards and that employers should be required to reduce or eliminate significant workplace health and safety threats.

At section 2(a) of the OSH Act (29 U.S.C. § 651(a)), Congress announced its determination that occupational injury and illness should be eliminated as much as possible: "The Congress finds that occupational injury and illness arising out of work situations impose a substantial burden upon, and are a hindrance to, interstate commerce in terms of lost production, wage loss, medical expenses, and disability compensation payments." Congress therefore declared "it to be its purpose and policy ... to assure so far as possible every working man and woman in the Nation safe ... working conditions [29 U.S.C. § 651(b)]."

To that end, Congress instructed the Secretary of Labor to adopt existing federal and consensus standards during the first two years after the OSH Act became effective and, in the event of conflict among any such standards, to "promulgate the standard which assures the greatest protection of the safety or health of the affected employees [29 U.S.C. § 655(a)]." Congress also directed the Secretary to set mandatory occupational safety standards [29 U.S.C. § 651(b)(3)], based on a rulemaking record and substantial evidence [29 U.S.C. § 655(b)(2)], that are "reasonably necessary or appropriate to provide safe ... employment and places of employment." When promulgating permanent safety or health standards that differ from existing national consensus standards, the Secretary must explain "why the rule as adopted will better effectuate the purposes of this Act than the national consensus standard [29 U.S.C. § 655(b)(8)]." Correspondingly, every employer must comply with OSHA standards and, in addition, "furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees [29 U.S.C. § 654(a)]."

"Congress understood that the Act would create substantial costs for

employers, yet intended to impose such costs when necessary to create a safe and healthful working environment. Congress viewed the costs of health and safety as a cost of doing business.... Indeed, Congress thought that the *financial costs* of health and safety problems in the workplace were as large as or larger than the *financial costs* of eliminating these problems [*American Textile Mfrs. Inst. Inc. v. Donovan*, 452 U.S. 490, 519–522 (1981) (*ATMI*); emphasis was supplied in original]." "[T]he fundamental objective of the Act [is] to prevent occupational deaths and serious injuries [*Whirlpool Corp. v. Marshall*, 445 U.S. 1, 11 (1980)]." "We know the costs would be put into consumer goods but that is the price we should pay for the 80 million workers in America [S. Rep. No. 91–1282, 91st Cong., 2d Sess. (1970); H.R. Rep. No. 91–1291; 91st Cong., 2d Sess. (1970), *reprinted in* Senate Committee on Labor and Public Welfare, *Legislative History of the Occupational Safety and Health Act of 1970*, (Committee Print 1971) ("Leg. Hist.") at 444 (Senator Yarborough)]." "Of course, it will cost a little more per item to produce a washing machine. Those of us who use washing machines will pay for the increased cost, but it is worth it, to stop the terrible death and injury rate in this country [*Id.* at 324; see also 510-511, 517]."

> [T]he vitality of the Nation's economy will be enhanced by the greater productivity realized through saved lives and useful years of labor.
>
> When one man is injured or disabled by an industrial accident or disease, it is he and his family who suffer the most immediate and personal loss. However, that tragic loss also affects each of us. As a result of occupational accidents and disease, over $1.5 billion in wages is lost each year [1970 dollars], and the annual loss to the gross national product is estimated to be over $8 billion. Vast resources that could be available for productive use are siphoned off to pay workmen's compensation and medical expenses....
>
> Only through a comprehensive approach can we hope to effect a significant reduction in these job death and casualty figures. [*Id.* at 518–19 (Senator Cranston)]

Congress considered uniform enforcement crucial because it would reduce or eliminate the disadvantage that a conscientious employer might experience where inter-industry or intra-industry competition is present. Moreover, "many employers—particularly smaller ones—simply cannot make the necessary investment in health and safety, and survive competitively, unless all are compelled to do so [Leg. Hist. at 144, 854, 1188, 1201]."

Thus, the statutory text and legislative history make clear that Congress conclusively determined that OSHA regulation is necessary to protect workers from occupational hazards and that employers should be required to reduce or eliminate significant workplace health and safety threats.

C. As construed by the courts and by OSHA, the OSH Act sets a threshold and a ceiling for safety rulemaking that provide clear and reasonable parameters for agency action.

OSHA has long followed the teaching that section 3(8) of the OSH Act requires that, before it promulgates "*any* permanent health or safety standard, [it must] make a threshold finding that a place of employment is unsafe—in the sense that significant risks are present and can be eliminated or lessened by a change in practices [*Industrial Union Dep't, AFL-CIO v. American Petroleum Inst.*, 448 U.S. 607, 642 (1980) (plurality) (*Benzene*); emphasis was supplied in original]." When, as frequently happens in safety rulemaking, OSHA promulgates standards that differ from existing national consensus standards, it must explain "why the rule as adopted will better effectuate the purposes of this Act than the national consensus standard [29 U.S.C. § 655(b)(8)]." Thus, national consensus and existing federal standards that Congress instructed OSHA to adopt summarily within two years of the OSH Act's inception provide reference points concerning the least an OSHA standard should achieve (29 U.S.C. §§ 655(a)).

As a result, OSHA is precluded from regulating insignificant safety risks or from issuing safety standards that do not at least lessen risk in a significant way.

The OSH Act also limits OSHA's discretion to issue overly burdensome rules, as the agency also has long recognized that "any standard that was not economically or technologically feasible would *a fortiori* not be 'reasonably necessary or appropriate' under the Act. See *Industrial Union Dep't v. Hodgson*, [499 F.2d 467, 478 (D.C. Cir. 1974)] ('Congress does not appear to have intended to protect employees by putting their employers out of business.') [*American Textile Mfrs. Inst. Inc.*, 452 U.S. at 513 n. 31 (a standard is economically feasible even if it portends 'disaster for some marginal firms,' but it is economically infeasible if it 'threaten[s] massive dislocation to, or imperil[s] the existence of,' the industry)]."

By stating the test in terms of "threat" and "peril," the Supreme Court made clear in *ATMI* that economic infeasibility begins short of industry-wide bankruptcy. OSHA itself has placed the line considerably below this level. (See for example, *ATMI*, 452 U.S. at 527 n. 50; 43 FR 27,360 (June 23, 1978). Proposed 200 µg/m3 PEL for cotton dust did not raise serious possibility of industry-wide bankruptcy, but impact on weaving sector would be severe, possibly requiring reconstruction of 90 percent of all weave rooms. OSHA concluded that the 200 µg/m3 level was not feasible for weaving and that 750 µg/m3 was all that could reasonably be required). See also 54 FR 29,245–246 (July 11, 1989); *American Iron & Steel Institute*, 939 F.2d at 1003. OSHA raised engineering control level for lead in small nonferrous foundries to avoid the possibility of bankruptcy for about half of small foundries even though the industry as a whole could have survived the loss of small firms.) Although the cotton dust and lead rulemakings involved health standards, the economic feasibility ceiling established therein applies equally to safety standards. Indeed, because feasibility is a necessary element of a "reasonably necessary or appropriate" standard, this ceiling boundary is the same for health and safety rulemaking since it comes from section 3(8), which governs all permanent OSHA standards.

All OSHA standards must also be cost-effective in the sense that the protective measures being required must be the least expensive measures capable of achieving the desired end (*ATMI*, at 514 n. 32; *Building and Constr. Trades Dep't AFL-CIO v. Brock*, 838 F.2d 1258, 1269 (D.C. Cir. 1988)). OSHA gives additional consideration to financial impact in setting the period of time that should be allowed for compliance, allowing as much as ten years for compliance phase-in. (See *United Steelworkers of Am. v. Marshall*, 647 F.2d 1189, 1278 (D.C. Cir. 1980), *cert. denied*, 453 U.S. 913 (1981).) Additionally, OSHA's enforcement policy takes account of financial hardship on an individualized basis. OSHA's Field Operations Manual provides that, based on an employer's economic situation, OSHA may extend the period within which a violation must be corrected after issuance of a citation (CPL. 2.45B, Chapter III, paragraph E6d(3)(a), Dec. 31, 1990).

To reach the necessary findings and conclusions that a safety standard substantially reduces a significant risk of harm, is both technologically and economically feasible, and is cost effective, OSHA must conduct rulemaking in accord with the requirements of section 6 of the OSH

Act. The regulatory proceeding allows it to determine the qualitative and, if possible, the quantitative nature of the risk with and without regulation, the technological feasibility of compliance, the availability of capital to the industry and the extent to which that capital is required for other purposes, the industry's profit history, the industry's ability to absorb costs or pass them on to the consumer, the impact of higher costs on demand, and the impact on competition with substitutes and imports. (See *ATMI* at 2501–2503; *American Iron & Steel Institute* generally.) Section 6(f) of the OSH Act further provides that, if the validity of a standard is challenged, OSHA must support its conclusions with "substantial evidence in the record considered as a whole," a standard that courts have determined requires fairly close scrutiny of agency action and the explanation of that action. (See *Steelworkers*, 647 F.2d at 1206–1207.)

OSHA's powers are further circumscribed by the independent Occupational Safety and Health Review Commission, which provides a neutral forum for employer contests of citations issued by OSHA for noncompliance with health and safety standards (29 U.S.C. §§ 659–661; noted as an additional constraint in *Benzene* at 652 n. 59). OSHA must also respond rationally to similarities and differences among industries or industry sectors. (See *Building and Constr. Trades Dep't, AFL-CIO v. Brock*, 838 F.2d 1258, 1272–73 (D.C. Cir. 1988).)

Finally, it is axiomatic that significant departures from prior practice must be justified (*International Union, UAW v. Pendergrass*, 878 F.2d 389, 400 (D.C. 1989)). In the twenty years since enactment of the OSH Act, OSHA has promulgated numerous safety standards—standards that provide benchmarks for judging risks, benefits, and feasibility of compliance in subsequent rulemakings. (OSHA's Hazardous Waste Operations and Emergency Response Standard, for example, required use of existing technology and well accepted safety practices to eliminate at least 32 deaths and 18,700 lost workday injuries at a cost of about $153 million per year (54 FR 9311–9312; March 6, 1989). The Excavation standard also drew on existing technology and recognized safety practices to save 74 lives and over 800 lost workday injuries annually at a cost of about $306 million. (54 FR 45,954; Oct. 31, 1989). OSHA's Grain Handling Facilities standard relied primarily on simple housekeeping measures to save 18 lives and 394 injuries annually, at a total net cost of $5.9 to $33.4 million (52 FR 49,622; Dec. 31, 1991).)

OSHA safety rulemaking is thus constrained first by the need to demonstrate that the standard will substantially reduce a significant risk of material harm, and then by the requirement that compliance is technologically capable of being done and not so expensive as to threaten economic instability or dislocation for the industry. Within these parameters, further constraints such as the need to find cost-effective measures and to respond rationally to all meaningful comment militate against regulatory extremes.

D. The Permit-Required Confined Space standard complies with the statutory criteria described above and is not subject to the additional constraints applicable to section 6(b)(5) standards.

As explained in Section I, *Background*, and Section III, *Summary and Explanation of the Standard*, earlier in this preamble, and in Section VI, *Summary of the Final Regulatory Impact Analysis and Regulatory Flexibility Analysis*, later in this preamble, OSHA has determined that permit spaces pose significant risks to employees (62 fatalities and 12,643 injuries and illnesses annually) and estimates that compliance with the Permit-Required Confined Space standard will reduce the risk of permit space hazards by 85 percent (preventing 53 fatalities and 10,746 injuries and illnesses annually). This constitutes a substantial reduction of significant risk of material harm. The Agency believes that compliance is technologically feasible because the rulemaking record indicates that the hazard control measures required by the standard have already been implemented, to some extent, at all the types of spaces covered by the standard. Additionally, OSHA believes that compliance is economically feasible, because, as documented by the Regulatory Impact Analysis, all regulated sectors can readily absorb or pass on compliance costs during the standard's first five years, and economic benefits will exceed compliance costs thereafter.

The standard's costs, benefits, and compliance requirements are reasonable, amounting to approximately $202.4 million annually, preventing 53 fatalities and 10,746 injuries and illnesses per year. These amounts are consistent with those of other OSHA safety standards. OSHA considered and responded to all substantive comments regarding the proposed rule on their merits. In particular, OSHA evaluated all suggested changes in terms of their impact on worker safety, their feasibility, their cost effectiveness, and their consonance with the OSH Act.

Further, the additional constraint found in section 6(b)(5) of the OSH Act, that standards dealing with employee exposure to "toxic materials or harmful physical agents" must also assure, "to the extent feasible ... that no employee will suffer material impairment of health or functional capacity even if [he is exposed] to the hazard dealt with by the standard for the period of his working life," does not apply to this rule. Standards subject to section 6(b)(5), which regulate insidious hazards that are frequently undetectable because they are subtle or develop slowly or after long latency periods, are frequently referred to as "health" standards, while those that regulate hazards, like explosions or electrocution, that cause immediately noticeable physical harm, are called "safety" standards. (See *National Grain & Feed Ass'n v. OSHA (NGFA II)*, 866 F.2d 717, 731, 733 (5th Cir. 1989). Section 6(b)(5) applies only to substances that take their toll over time or "whose deleterious effect is not readily apparent, such as a carcinogen or a harmful physical agent such as noise," not to "hazards such as explosives, that are every bit as lethal but whose impact is immediate").

The OSH Act and its legislative history clearly indicate that Congress intended this distinction between safety standards and health standards. For example in section 2(b)(6) of the OSH Act, Congress declared that the goal of assuring safe and healthful working conditions and preserving human resources would be achieved, in part:

> ... by exploring ways to discover latent diseases, establishing causal connections between diseases and work in environmental conditions, and conducting other research relating to health problems, in recognition of the fact that occupational health standards present problems often different from those involved in occupational safety.

The legislative history makes this distinction even clearer:

> [The Secretary] should take into account that anyone working in toxic agents and physical agents which might be harmful may be subjected to such conditions for the rest of his working life, so that we can get at something which might not be toxic now, if he works in it a short time, but if he works in it the rest of his life might be very dangerous; and we want to make sure that such things are taken into consideration in establishing standards. [*Leg. Hist.* at 502–503 (Sen. Dominick), quoted in *Benzene* at 648–49]

Additionally, Representative Daniels distinguished between "insidious 'silent

killers' such as toxic fumes, bases, acids, and chemicals" and "violent physical injury causing immediate visible physical harm" (*Leg. Hist.* at 1003), and Representative Udall contrasted insidious hazards like carcinogens with "the more visible and well-known question of industrial accidents and on-the-job injury" (*Leg. Hist.* at 1004). (See also, for example, S.Rep. No. 1282, 91st Cong., 2d Sess 2–3 (1970), U.S. Code Cong. & Admin. News 1970, pp. 5177, 5179, reprinted in Leg. Hist. at 142–43, discussing 1967 Surgeon General study that found that 65 percent of employees in industrial plants "were potentially exposed to harmful physical agents, *such as severe noise or vibration*, or to toxic materials"; Leg. Hist at 412; *id.* at 446; *id.* at 516; *id.* at 845; *International Union, UAW* at 1315.)

Congress addressed this concern that insidious, long term hazards might not receive sufficient protection through section 6(b)(5), which requires OSHA to set "the most protective standard consistent with feasibility" (*Benzene* at 643 n. 48). As Justice Stevens observed:

> The reason that Congress drafted a special section for these substances ... was because Congress recognized that there were special problems in regulating health risks as opposed to safety risks. In the latter case, the risks are generally immediate and obvious, while in the former, the risks may not be evident until a worker has been exposed for long periods of time to particular substances. [*Benzene*, at 649 n. 54.]

The permit space standard addresses hazards, such as asphyxiation, explosion, and engulfment, that are immediately dangerous to life or health, not the longer term, less obvious hazards subject to section 6(b)(5). The definition of "immediately dangerous to life or health" in paragraph (b) of the final rule covers conditions that pose immediate or delayed threats to life, would cause irreversible adverse health effects or would interfere with an individual's ability to escape unaided from a permit space. The definition contemplates that any "delayed" health effects would arise within 72 hours of exposure to a permit space hazard. Accordingly, the mention of delayed effects simply reflects OSHA's recognition that some acute health effects may not manifest themselves at the very same time as the permit space incidents which trigger them. While some of the materials, particularly the air contaminants, that have been detected in permit spaces could also have long-term adverse effects on employees, those long-term effects are not addressed by the permit space standard.

Challenges to the grain dust and lockout/tagout standards included assertions that grain dust in explosive quantities and uncontrolled energy releases that could expose employees to crushing, cutting burning or explosion hazards were harmful physical agents so that OSHA was required to apply the criteria of section 6(b)(5) when determining how to protect employees from those hazards. Reviewing courts have uniformly rejected such assertions. For example, the Court in *International Union, UAW v. OSHA*, 938 F.2d 1310 (D.C. Cir. 1991) rejected the view that section 6(b)(5) provided the statutory criteria for regulation of uncontrolled energy, holding that such a "reading would obliterate a distinction that Congress drew between 'health' and 'safety' risks." The Court also noted that the language of the OSH Act and the legislative history supported the OSHA position (*International Union, UAW* at 1314). Additionally, the Court stated: "We accord considerable weight to an agency's construction of a statutory scheme it is entrusted to administer, rejecting it only if unreasonable" (*International Union, UAW* at 1313, citing *Chevron U.S.A., Inc. v. NRDC*, 467 U.S. 837, 843 (1984)).

The Court reviewing the grain dust standard also deferred to OSHA's reasonable view that the Agency was not subject to the feasibility mandate of section 6(b)(5) in regulating explosive quantities of grain dust (*National Grain & Feed Association v. OSHA (NGFA II)*, 866 F.2d 717, 733 (5th Cir. 1989)). It therefore applied the criteria of section 3(8), requiring the Agency to establish that the standard is "reasonably necessary or appropriate" to protect employee safety.

OSHA has determined that the permit space standard, like other safety standards, is subject to the constraints of section 3(8) of the OSH Act, that it be "reasonably necessary or appropriate to provide safe or healthful employment and places of employment." But the standard is not subject to the section 6(b)(5) requirement that it limit significant risk "to the extent feasible."

The Agency believes that permit spaces pose significant risks and that the provisions of the final rule are reasonably necessary to protect affected employees from those risks. It has also determined that compliance with the permit space standard is technologically feasible because the rulemaking record indicates that the hazard control measures required by the standard have already been implemented, to some extent, at all the types of spaces covered by the standard. In addition, OSHA believes that compliance is economically feasible, because, as documented by the "*Final Regulatory Impact Analysis and Regulatory Flexibility Analysis of the Final Permit-Required Confined Space Standard*",[34] all regulated sectors can readily absorb or pass on compliance costs during the standard's first five years, and economic benefits will exceed compliance costs thereafter. In particular, the Agency believes that compliance with the permit space standard will result in substantial cost savings and productivity gains at manufacturing facilities that might otherwise be disrupted by permit space incidents.

As detailed in Section VI, *Summary of the Final Regulatory Impact Analysis and Regulatory Flexibility Analysis*, later in this preamble, the standard's costs, benefits, and compliance requirements are consistent with those of other OSHA safety standards. For example, the Hazardous Waste Operations and Emergency Response standard (29 CFR 1910.120) requires the use of existing technology and well accepted safety practices to eliminate at least 32 deaths and 18,700 lost workday injuries at a cost of about $153 million per year (54 FR 9311–9312; March 6, 1989). The Excavations standard (29 CFR 1926, Subpart P) also drew on existing technology and recognized safety practices to save 74 lives and over 800 lost workday injuries annually at a cost of about $306 million (54 FR 45,954; Oct. 31, 1989). Additionally, the Grain Handling Facilities standard (29 CFR 1910.272) relied primarily on simple housekeeping measures to save 18 lives and 394 injuries annually, at a total net cost of between $5.9 million and $33.4 million (52 FR 49,622; Dec. 31, 1987). Also, compliance with the planning, work practice, and training provisions of the Process Safety Management standard (29 CFR 1910.119) will reduce the risk of catastrophic fire and explosion (330 fatalities and 1917 injuries and illnesses annually) by 80 percent, at an annualized cost of $888.7 million in the first five years and at an annualized cost of $470.8 million in the following five years.

OSHA has considered and responded to all substantive comments regarding the proposed permit space standard on their merits in the Section III, *Summary and Explanation of the Standard*, earlier in this preamble. In particular, OSHA evaluated all suggested changes to the

[34] This document is available for inspection and copying in Docket S–019 in the Docket Office, Rm. N2634, U.S. Department of Labor, Occupational Safety and Health Administration, 200 Constitution Ave., NW, Washington, DC 20210; telephone: 202–219–7894.

proposed rule in terms of their impact on worker safety, their feasibility, their cost effectiveness, and their consonance with the OSH Act.

E. The permit space standard is necessary to address the significant risks of material harm posed by permit spaces.

OSHA believes that Section , *Background*, Section II, *Hazards*, and Section III, *Summary and Explanation of the Standard*, earlier in this preamble have clearly and comprehensively set out the Agency's bases for concluding that permit spaces pose significant risks and that the provisions of the final rule are reasonably necessary to protect affected employees from those risks. In particular, as detailed in Section VI, *Summary of the Final Regulatory Impact Analysis and Regulatory Flexibility Analysis*, later in this preamble, OSHA estimates that exposure to permit spaces hazards causes at least 62 fatalities and 12,643 injuries and illnesses annually and that compliance with the Permit-Required Confined Space standard will reduce the risk of permit space hazards by 85 percent (preventing 53 fatalities and 10,746 injuries and illnesses annually). This constitutes a substantial reduction of a significant risk of material harm to the exposed population of approximately 1,629,000 permit space entrants.

OSHA emphasizes that its risk assessment is based on employee exposure to the particular hazard of permit-required confined spaces, a hazard that exists in a large range of industries. Although Section VI, *Summary of the Final Regulatory Impact Analysis and Regulatory Flexibility Analysis*, later in this preamble, presents OSHA's estimate of the costs and benefits of the permit space standard in terms of the Standard Industrial Classification (SIC) codes for the industries regulated, OSHA does not believe that the risk associated with this hazard varies according to what SIC code a particular space may be found in. Thus, some of the industry categories within the scope of the final rule which will have compliance costs have had few or no documented permit space-related injuries or fatalities during the period covered by the RIA. In this case, OSHA has defined the scope of the rule to cover those situations it has determined to be hazardous. As explained more fully below, OSHA has determined that the lack of prior documented injuries and deaths in some SIC Codes does not indicate that the employees in those industries are not exposed to significant risks from permit spaces and permit space entry.

As the summary of the RIA explains in detail, OSHA has determined that it is appropriate to include those industries within the scope of the permit space standard because employees in those industries are exposed to the same kinds of hazards as employees in industries for which there are reported injuries and fatalities. For example, employers classified in SIC 391 (Jewelry, Silverware and Plated Ware) and in SIC 3949 (Sporting and Athletic Goods) have employees enter tanks, pits, and dust collectors that meet the permit space definition, but that have not caused any documented injuries or fatalities during the 5-year time period covered by the RIA tables. The Agency has found, however, that the permit spaces identified in SIC 391 and SIC 3949 are closely analogous, and in many cases virtually identical, to permit spaces in other SIC categories (such as SIC 28, Chemicals & Allied Products) where OSHA has documented injuries and fatalities.

As regards the other SICs for which injury and fatality data are not available, OSHA has set out the bases for concluding that permit spaces in those SICs pose significant risk of material harm in Table III–5 and the accompanying text of Chapter III of the "*Final Regulatory Impact Analysis and Regulatory Flexibility Analysis of the Final Permit-Required Confined Space Standard*". Even in industry sectors in which no injuries or fatalities have been reported, the Agency believes there is sufficient information for OSHA to determine that employees who enter permit spaces in those sectors face significant risks, based on analysis of the elements of the hazards identified and based on the similarity of hazard elements between industry sectors. Therefore, the Agency has determined that all employees who enter permit spaces face a significant risk of material harm and that compliance with the permit space standard is reasonably necessary to protect affected employees from that risk, regardless of the number of permit space incidents reported for the SIC code to which the employer has been assigned.

Also, because of the difficulties the Agency has experienced in compiling a database for permit space incidents, injuries or fatalities may have occurred in industries, including those for which no incidents have been documented, without being recorded. For example, as noted in Table I–7 of the "*Final Regulatory Impact Analysis and Regulatory Flexibility Analysis of the Final Permit-Required Confined Space Standard*", 7 of the 53 permit space fatalities (nearly 15 percent) OSHA believes will be prevented each year through compliance with the permit space standard could not be classified with a particular 2-digit SIC classification. The frequent use of contractors for permit space entry operations raises further questions regarding the reliability of incident data organized according to SIC code, because a fatality report will usually include the SIC code for the employer whose employee was killed but not necessarily the SIC code for the workplace where the permit space fatality occurred.

In addition, the SIC code-based organization of incident data may mask actual or potential permit space hazards because, while a business is classified for SIC purposes according to its principal activity, the workplace may also contain permit spaces, entered for "secondary" purposes, that have caused permit space-related injuries or fatalities. For example, a permit space incident in the utility room boiler at a new car dealer would be classified under the new car dealer SIC, even though the hazard and the incident had nothing to do with selling new cars. Therefore, OSHA believes, based on the limitations of the incident data and the circumstantial nature of many permit space incidents, that it is appropriate to require that employers protect affected employees from permit space hazards in all workplaces where permit spaces have been identified, rather than to characterize workplaces according to the injury or fatality experience of the SIC codes in which they have been classified.

The Agency also notes that, as discussed in the NPRM (54 FR 24082, 24086), permit space injuries and "near misses" are underreported, because the data collection system has focused on documenting fatalities and because the employees often "recover" without hospitalization or seeking medical attention. Based on these considerations, OSHA believes it is reasonable to conclude that permit space injuries and some of the unclassified permit space fatalities occurred in SIC categories that have no documented permit space injuries or fatalities.

Finally, it is well established in the OSH Act enforcement context that the lack of injuries or deaths to a particular employer's employees does not establish that the employees are not exposed to a hazard. In a frequently quoted passage, the Fifth Circuit long ago observed that "the goal of the Act is to prevent the first accident, not to

serve as a source of consolation for the first victim or his survivors" (*Mineral Industries & Heavy Construction Group v. OSHRC*, 639 F.2d 1289, 1294 (5th Cir. 1981)). This principle applies to regulatory actions as well. Once the agency determines that exposure to a particular condition constitutes a significant risk, it need not repeat that analysis for every situation or type of workplace in which the condition is found.

For all of the foregoing reasons, OSHA has determined that it is inappropriate to exclude any of the SICs merely because they have not recently had documented permit space injuries or fatalities, insofar as those SICs contain confined spaces which meet the configuration and hazard criteria to qualify as permit spaces.

VI. Summary of the Final Regulatory Impact Analysis and Regulatory Flexibility Analysis

A. Introduction

The Occupational Safety and Health Administration (OSHA) has determined that there is a significant risk to the health and safety of workers who enter certain types of confined spaces. To protect workers from the hazards encountered in these unique work environments, OSHA is issuing this final permit-required confined space standard (29 CFR §1910.146). This comprehensive standard supplements the existing OSHA standards that address permit space hazards in particular work settings.

Executive Order 12291 (46 FR 13197) requires that a regulatory analysis be conducted for any rule having major economic consequences on the national economy, individual industries, geographical regions, or levels of government. In addition, the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) requires federal agencies to determine whether a regulation will have a significant economic impact on a substantial number of small entities.

Consistent with these requirements, OSHA has prepared a Regulatory Impact and Regulatory Flexibility Analysis for the standard on permit spaces, the full body of which is available in OSHA Docket S–019. This summary of the analysis includes an overview of affected industries and employees, estimated benefits, the technological feasibility of the standard, estimated compliance costs, economic and environmental impacts, and a discussion of the nonregulatory alternatives to this final standard.

B. Industries and Employees Affected by the Standard

Based on a report prepared under contract to OSHA by CONSAD Research Corporation (CONSAD) [1], OSHA estimates that the standard will have cost impacts in 34 two-digit Standard Industrial Classification industry groups. Affected industries are found in Agricultural Services, Oil and Gas Extraction, Manufacturing, Transportation and Utilities, Wholesale Trade, Retail Trade, and Miscellaneous Services.

Permit-required confined spaces (or permit spaces, for short), as defined in §1910.146(b), vary in size, configuration, process use and hazard across industries where the risks are present. In Manufacturing, permit spaces include storage vessels, furnaces, tank degreasers and other types of equipment requiring human entry for maintenance and repair. Permit space hazards can also appear during production itself, such as in the manufacture of railroad tank cars and aircraft parts. Examples of permit spaces found elsewhere in industry include manholes serviced in SIC 49, Electric, Gas, and Sanitary Services, and cooking vessels cleaned in SIC 70, Hotels, Rooming Houses, Camps, and Other Lodging Places.

Employees encounter a variety of hazards while working in permit spaces, chief among these being asphyxiation and poisoning from toxic atmospheres. Explosions and fires caused by a sudden exposure to a flammable source or by a dangerous reaction among volatile chemicals have also caused a number of fatalities and injuries. In some environments, worker engulfment by fine particulate, such as grain or sawdust, have resulted in deaths and injuries. When an employee is overcome by the atmosphere in a permit space, fellow employees sometimes enter in a rescue attempt. Often these would-be rescuers are unaware of or not equipped for the hazard and are overcome along with the original victim.

Many permit spaces are infrequently entered to inspect, clean, or repair equipment. Where products become permit spaces as they are built, entries during the manufacturing process can be frequent and routine. The risk associated with each entry in workplaces with frequently entered spaces may, however, be lower than in workplaces with infrequent entries. Degree of risk in this context depends more on atmospheric conditions in the space rather than on frequency of entry.

Table 3 presents, for each two-digit industry affected by the permit space standard, the number of establishments with permit spaces, the number of permit spaces, the number of employees and the number of scheduled entrants. Not all establishments in affected industries contain permit spaces. OSHA estimates that 238,853 establishments employing 12.2 million workers, have permit spaces. At these establishments, there are about 1.6 million workers, including contractors, who enter approximately 4.8 million permit spaces annually.

Table 3—Profile of Affected Establishments Employees

SIC	Industry	Number of Establishments with Permit Spaces	Number of Permit Spaces	Number of Employees	Number of Permit Space Entrants
07	Agricultural Services	10,864	79,821	62,990	25,748
13	Oil & Gas Extraction	10,000	12,477	155,660	11,239
20	Food and Kindred Products	10,236	142,727	805,247	99,420
21	Tobacco Products	69	776	37,845	2,007
22	Textile Mill Products	1,491	17,062	186,752	27,831
24	Wood Products (except furniture)	10,290	39,409	146,042	31,035
25	Furniture and Fixtures	5,254	26,012	224,589	35,424
26	Paper Products	4,397	95,533	475,171	46,208
27	Printing and Publishing	47	206	2,196	94
28	Chemicals & Allied Products	8,098	170,982	593,738	71,962
29	Petroleum Refining	1,844	93,700	104,704	15,560
30	Rubber Products	6,282	143,818	319,262	143,522

Table 3—Profile of Affected Establishments Employees—Continued

SIC	Industry	Number of Establishments with Permit Spaces	Number of Permit Spaces	Number of Employees	Number of Permit Space Entrants
31	Leather and Leather Products	151	514	6,395	1,055
32	Stone, Clay, Glass & Concrete	12,290	116,708	366,454	110,568
33	Primary Metals Industry	2,788	35,521	463,942	56,669
34	Fabricated Metal Products	8,441	88,507	346,800	33,959
35	Machinery, Except Electrical	4,330	34,670	437,200	116,987
36	Electric/Electronic Equipment	6,610	176,895	892,336	111,087
37	Transportation Equipment	3,302	1,085,966	1,043,403	31,706
38	Instruments & Related Products	64	901	7,296	514
39	Miscellaneous Manufacturing	885	31,267	18,926	5,744
42	Motor Freight Transportation	14,583	201,680	201,679	40,336
49	Electric, Gas, Sanitary Services	28,444	1,575,170	410,290	263,217
50	Wholesale Trade/Durables	2,753	3,965	36,485	3,359
51	Wholesale Trade/Nondurables	36,913	411,095	358,647	194,454
54	Food Stores	10,073	10,073	318,010	10,073
59	Miscellaneous Retail	7,149	28,201	57,923	10,694
65	Real Estate (Commercial)	13,582	45,190	391,923	12,442
70	Hotels and Other Lodging	5,099	77,672	163,323	80,442
72	Personal Services	3,577	24,604	198,447	7,154
76	Miscellaneous Repair Services	752	802	3,718	752
78	Motion Pictures	11	33	16,500	66
80	Health Services	8,252	71,709	3,357,391	27,308
84	Museums, Botanical Gardens, Zoos	130	1,183	7,338	781
	TOTAL	238,853	4,844,849	12,218,622	1,629,201

Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis, based on CONSAD [1]
[1] Includes contractors.

C. Benefits

OSHA searched its Fatality/Catastrophe database [5] over the period 1986–1990 to identify accidents associated with permit- required confined spaces. Based on its review of OSHA accident reports and injury data from the Bureau of Labor Statistics, OSHA estimates that 63 fatalities, 5,931 lost-workday cases and 6,951 non-lost-workday cases occur annually in workplaces affected by the standard.

The final standard mandates a comprehensive approach for the control of permit space hazards. Included in the standard are provisions for entry permits, training, hazard recognition, isolation procedures, atmospheric testing, mechanical ventilation, and personal protective equipment. OSHA estimates that compliance with all requirements in the standard will result in an 85 percent reduction in baseline fatalities, injuries, and illnesses associated with permit spaces. Applying this safety effectiveness rate to the baseline accident statistics given earlier, OSHA predicts that 54 fatalities, 5,041 lost-workday cases and 5,908 non-lost-workday cases will be prevented as a result of the standard. Benefits by industry group are shown in Table 4.

Table 4—Annual Fatalities, Injuries, and Illnesses Preventable by the Permit Space Standard

SIC	Industry	Fatalities			Injuries					
					Lost-Workday			Non-Lost-Workday		
		Large	Small	Total	Large	Small	Total	Large	Small	Total
07	Agricultural Services	0.0	0.3	0.3	-[1]	18	18	-	17	17
13	Oil & Gas Extraction	3.1	3.7	6.8	73	89	163	54	66	120
20	Food and Kindred Products	2.0	0.7	2.7	303	101	404	384	128	513
21	Tobacco Products	0.3	0.0	0.3	51	-	51	64	-	64
22	Textile Mill Products	0.3	0.0	0.3	51	-	51	64	-	64
24	Wood Products (except furniture)	1.0	0.0	1.0	152	-	152	192	-	192
25	Furniture and Fixtures	0.0	0.0	0.0[2]	-	-	-	-	-	-
26	Paper Products	0.7	0.0	0.7	101	-	101	128	-	128
27	Printing and Publishing	0.0	0.0	0.0	-	-	-	-	-	-
28	Chemicals & Allied Products	3.4	0.7	4.1	506	101	607	641	128	769
29	Petroleum Refining	0.0	0.0	0.0[3]	-	-	-	-	-	-
30	Rubber Products	0.7	0.0	0.7	101	-	101	128	-	128
31	Leather and Leather Products	1.0	0.0	1.0	152	-	152	192	-	192
32	Stone, Clay, Glass & Concrete	0.7	0.0	0.7	101	-	101	128	-	128
33	Primary Metals Industry	2.0	0.0	2.0	303	-	303	384	-	384
34	Fabricated Metal Products	4.4	0.7	5.1	657	101	758	833	128	961
35	Machinery, Except Electrical	1.0	0.0	1.0	152	-	152	192	-	192
36	Electric/Electronic Equipment	0.0	0.0	0.0[4]	-	-	-[5]	-	-	-
37	Transportation Equipment	2.0	0.0	2.0	303	-	303	384	-	384

Table 4—Annual Fatalities, Injuries, and Illnesses Preventable by the Permit Space Standard—Continued

SIC	Industry	Fatalities			Injuries					
		Large	Small	Total	Lost-Workday			Non-Lost-Workday		
					Large	Small	Total	Large	Small	Total
38	Instruments & Related Products	0.3	0.0	0.3	51	-	51	64	-	64
39	Miscellaneous Manufacturing	0.3	0.0	0.3	51	-	51	64	-	64
42	Motor Freight Transportation	2.7	2.4	5.1	119	104	223	87	76	163
49	Electric, Gas, Sanitary Services	3.1	3.7	6.8	134	163	297	98	119	217
50	Wholesale Trade/Durables	0.0	0.3	0.3	-	42	42	-	48	48
51	Wholesale Trade/Nondurables	0.3	0.7	1.0	42	83	125	48	97	145
54	Food Stores	0.0	0.0	0.0[6]	-	-	-[7]	-	-	-
59	Miscellaneous Retail	0.0	0.3	0.3	-	42	42	-	48	48
65	Real Estate (Commercial)	0.0	0.0	0.0[8]	-	-	-	-	-	-
70	Hotels and Other Lodging	0.0	0.0	0.0[9]	-	-	-	-	-	-
72	Personal Services	0.0	0.0	0.0	-	-	-	-	-	-
76	Miscellaneous Repair Services	0.0	3.1	3.1	-	374	374	-	436	436
78	Motion Pictures	0.0	0.0	0.0	-	-	-	-	-	-
80	Health Services	0.0	0.3	0.3	-	42	42	-	48	48
84	Museums, Botanical, Zoos	0.0	0.0	0.0	-	-	-	-	-	-
	Host Employer Unidentified	3.1	4.1	7.1	229	151	380	265	171	436
	TOTAL[11]	32.6	21.1	53.7	3,630	1,411	5,041	4,396	1,512	5,908

Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis

[1] Dashes indicate that prevented injuries could not be estimated utilizing injury/fatality factor (see Table III–3 in the Regulatory Analysis) due to the absence of reported fatalities during the investigated period.

[2] One pre-1986 fatality in SIC 25 reported by NIOSH [2], and one post-1990 fatality in SIC 25 reported by OSHA [5].

[3] Ten fatalities prior to 1986 reported for SIC 29 by OSHA [3], [4] and NIOSH [2].

[4] One fatality and three injuries prior to 1986 reported for SIC 36 by NIOSH [2].

[5] Twelve hospitalized injuries prior to 1986 reported for SIC 36 by OSHA [5].

[6] Three fatalities prior to 1986 reported for SIC 54 by NIOSH [2] and OSHA [5].

[7] Two hospitalized injuries prior to 1986 reported for SIC 54 by OSHA [5].

[8] One fatality and one injury reported prior to 1986 for SIC 65 by NIOSH [2].

[9] Three fatalities reported prior to 1986 for SIC 70 by OSHA [4] and NIOSH [2].

[10] Includes contractors and other service employers whose host employer at the time of the accident could not be identified in the OSHA abstracts.

[11] Row and column totals may not equal the sum of the data due to rounding.

For some affected sectors, there were no recorded accidents in the OSHA database for the five-year period ending in 1990. However, accidents in a number of these sectors were identified in other databases for earlier time periods (see, for example, [2], [3], [4]) and the same types of hazards related to permit space entry continue to be present in all of these industries. In addition, for those industries for which fatalities and injuries have not been recorded during the 1986–1990 period, OSHA has determined that the permit spaces in those industries have configurations and hazards that are closely analogous to those of permit spaces in industries for which fatality and injury data are available. The basis for this determination is presented in Table III–5 and in the accompanying text of Chapter III of the Regulatory Analysis. In some sectors, the absence of accident records for the reference period may also indicate, for example, that employers in those sectors have begun implementing protective measures for permit space entry. OSHA has determined that compliance with this final standard will protect employees from significant risks associated with entry into permit spaces throughout general industry.

D. Technological Feasibility

To assess the feasibility of complying with the final standard using applicable technologies and work practices, OSHA reviewed the rulemaking record and the compliance profile developed by CONSAD [1]. OSHA believes that the final standard will cause some firms to adopt technologies and work practices that are readily available but in limited use today. While not specifically mandated, the standard should also encourage technological innovation to achieve compliance, as well as to reduce the need to enter spaces. As reported by CONSAD [1], technologies such as atmospheric testing instruments, ventilation equipment, respirators and retrieval devices, are already in widespread use throughout industry.

Application of permit space technologies will vary according to configuration and circumstance. Where a particular piece of equipment may not be appropriate, alternative control devices can be employed effectively. For example, in spaces where atmospheric hazards may be present and ventilation is not practical, respirators are required. In entry situations in which the use of retrieval lines is counterproductive, the standard provides for entry rescue by properly equipped rescue personnel. In general, although some situations might limit the use of a particular technology, use of other pieces of equipment or work practices is permitted.

Therefore, on the basis of testimony in the record and OSHA's assessment of current industry practice for protecting workers in permit spaces, OSHA has determined that the final standard is technologically feasible.

E. Costs of Compliance

OSHA estimated compliance costs of the standard by combining the industry profile information summarized above with data on current compliance rates, unit costs for required equipment, and hourly compensation of labor. For each provision of the standard, OSHA estimated initial costs and ongoing costs. Initial costs represent up-front expenditures for program development and equipment; these costs were annualized over the expected life of the resource in order to show such costs on an annual basis. Other ongoing expenditures incurred annually include refresher training and equipment maintenance. OSHA summed annualized initial costs and ongoing costs to estimate total annual costs.

OSHA estimates that the annual cost of compliance for the permit spaces standard will total $202.4 million. Table

5 presents annual compliance costs by provision. The largest compliance expenditures are associated with atmospheric testing ($46.6 million), respiratory protection ($38.6 million), and the provision for attendants ($37.3).

Table 5—Summary of Annual Compliance Costs

Provision	Annual Costs
Establish Permit Entry Program/System	$10,955,165
Training	9,204,484
Inform Non-Entrants	7,968,174
Isolation Procedures	1,752,744
Mechanical Ventilation	27,541,362
Respiratory Protection	38,615,993
Atmospheric Testing	46,573,456
Vehicle/Pedestrian Barriers	128,233
Attendant	37,284,569
Retrieval Devices	3,185,009
Issue Permits	17,800,417
Rescue Teams	1,360,141
TOTAL	$202,369,752

Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis

The final permit-required confined space standard strives to prescribe the appropriate level of safeguards for the level of risk encountered in a given confined space situation. As an extension of its general performance-oriented nature, the standard sets up a hierarchy in which some provisions, such as the requirement for attendants, are reserved for only situations in which an entrant may encounter a hazardous atmosphere. As shown in Table 6, the number of applicable requirements and cost of compliance per space rises with the level of hazard encountered. Most permit spaces fall under exemptions provided under paragraph (c)(5) of the standard.

Table 6—Cost of Complying With the Permit Space Standard by Type of Space

Type of Space	Provision	Cost	Number of Spaces (Millions)	Incremental Cost per Space[1]
Non-Entry Permit Spaces	Inventory Spaces	$1,095,517	1.5	$0.73
Spaces Declassifiable [(c)(7)(i)]	Inventory Spaces/Establish Program	328,655		
	Inform Non-Entrants	318,727		
	Isolation Procedures	70,110		
	Vehicle/Pedestrian Barriers	5,129		
	TOTAL	$722,621	0.2	$3.61
Tested and Ventilated [(c)(5)]	Establish Permit Entry Program/System	5,148,928		
	Training	5,259,705		
	Inform Non-Entrants	4,462,178		
	Isolation Procedures	981,537		
	Mechanical Ventilation	21,639,642		
	Respiratory Protection	2,325,535		
	Atmospheric Testing	26,613,404		
	Vehicle/Pedestrian Barriers	71,811		
	Certification of Conditions	4,450,104		
	TOTAL	$70,952,843	2.7	$26.28
Full Permit-Required Spaces	Establish Permit Entry Program/System	4,382,066		
	Training	3,944,779		
	Inform Non-Entrants	3,187,270		
	Isolation Procedures	701,098		
	Mechanical Ventilation	5,901,721		
	Respiratory Protection	36,290,459		
	Atmospheric Testing	19,960,053		
	Vehicle/Pedestrian Barriers	51,293		
	Attendant	37,284,569		
	Retrieval Devices	31,185,009		
	Issue Permits	13,350,313		
	Rescue Teams	1,360,142		
	TOTAL	$129,598,771	1.9	$68.21

Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis.
[1]Figures in this column represent the annualized cost of coming into compliance with the standards, for average establishment, given current compliance.

OSHA also estimated compliance costs by industry, shown in Table 7. Electric, gas and sanitary services (SIC 49) are estimated to incur costs of $72.6 million, primarily in public water and sewer utilities. The relatively large number of permit spaces and permit space entrants in this sector contributes to the magnitude of their compliance

costs. Most affected sectors will incur compliance costs under $10 million.

Table 7—Summary of Annual Compliance Costs of the permit Space Standard by Industry

SIC	Industry	Total Annual Compliance Costs (Thousands of Dollars)
07	Agricultural Services	7,881
13	Oil & Gas Extraction	85
20	Food and Kindred Products	12,472
21	Tobacco Products	32
22	Textile Mill Products	263
24	Wood Products (except furniture)	1,740
25	Furniture and Fixtures	750
26	Paper Products	4,028
27	Printing and Publishing	--[1]
28	Chemicals & Allied Products	1,581
29	Petroleum Refining	2,418
30	Rubber Products	6,910
31	Leather and Leather Products	37
32	Stone, Clay, Glass & Concrete	12,150
33	Primary Metals Industry	5,801
34	Fabricated Metal Products	13,490
35	Machinery, Except Electrical	2,999
36	Electric/Electronic Equipment.	13,354
37	Transportation Equipment	6,946
38	Instruments & Related Products	6
39	Miscellaneous Manufacturing	1,197
42	Motor Freight Transportation	12,958
49	Electric, Gas, Sanitary Services	72,636
50	Wholesale Trade/Durables	263
51	Wholesale Trade/Nondurables	15,792
54	Food Stores	244
59	Miscellaneous Retail	18
65	Real Estate (Commercial)	1,561
70	Hotels and Other Lodging	831
72	Personal Services	311
76	Miscellaneous Repair Services	6
78	Motion Pictures	—
80	Health Services	3,603
84	Museums, Botanical Gardens, Zoos	5
	TOTAL	$202,370

Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis

[1] Hyphens denote compliance costs of under $1,000.

OSHA believes that direct compliance costs will be offset by a reduction in administrative costs associated with permit space accidents. These costs usually involve such activities as preparing insurance claims, completing accident reports, and hiring and training replacement workers. In addition, OSHA anticipates that improved worker productivity as a result of the standard will help to lower production costs and contribute to higher quality output. Although OSHA did not quantify these cost offsets, the Agency believes they will be substantial.

F. Economic Impact and Regulatory Flexibility Analysis

OSHA assessed the potential economic impact of the final standard on affected two-digit industry sectors and has determined that impacts on prices, profits, and sales will be modest for most industries. If affected establishments added the entire cost of compliance to the price of their final goods, OSHA estimates that the average price increase would not exceed 0.01 percent, based on the ratio of compliance cost to average establishment revenue. The maximum price increase in any industry sector would be 0.23 percent (SIC 07, Agricultural Services).

OSHA assessed the impact on firm profits (Table 8) under the assumption that costs would be fully absorbed internally and are not passed forward to consumers. Computing the ratio of costs to pre-tax profits, OSHA determined that the percentage of profits represented by compliance costs in this worst-case scenario would average 0.17 percent. In only two industry sectors are average profit impacts expected to exceed 1 percent, assuming zero cost pass-through. Therefore, on the basis of these results, OSHA concludes that the standard is economically feasible.

Table 8—Cost Impact by Industry

SIC	Industry	Number of Affected Firms	Number of Permit Spaces Total	Total Annual Compliance Costs	Average Cost of Rule		Cost As A Percent of Profit	
					Large Firms	Small Firms	Large Firms	Small Firms
07	Agricultural Services	10,864	79,821	$7.880.523	$3,102	$607	1.08%	4.99%
13	Oil & Gas Extraction	10,000	12,477	84,509	20	7	0.00%	0.01%
20	Food and Kindred Products	10,236	142,727	12,472,105	1,620	843	0.06%	0.53%
21	Tobacco Products	69	776	32,215	442	542	0.00%	0.00%
22	Textile Mill Products	1,491	17,062	262,733	195	104	0.02%	0.05%
24	Wood Products (except furniture)	10,290	39,409	1,739,695	161	175	0.04%	0.60%
25	Furniture and Fixtures	5,254	26,012	749,673	267	31	0.04%	0.07%
26	Paper Products	4,397	95,533	4,028,205	1,265	118	0.05%	0.04%
27	Printing and Publishing	47	206	618	14	11	0.00%	0.04%
28	Chemicals & Allied Products	8,098	170,982	1,581,380	399	26	0.01%	0.01%
29	Petroleum Refining	1,644	93,700	2,418,236	4,040	262	0.01%	0.02%
30	Rubber Products	6,282	143,818	6,910,246	1,411	725	0.15%	0.61%
31	Leather and Leather Products	151	514	36,948	603	3	0.13%	0.00%
32	Stone, Clay, Glass & Concrete	12,290	116,708	12,149,864	1,407	799	0.17%	1.17%
33	Primary Metals Industry	2,788	35,521	5,801,382	2,228	95	0.09%	0.02%
34	Fabricated Metal Products	8,441	88,507	13,490,158	2,942	604	0.41%	0.97%
35	Machinery, Except Electrical	4,330	34,670	2,999,427	1,182	303	0.04%	0.20%
36	Electric/Electronic Equipment	6,610	176,895	13,354,277	2,126	1,901	0.14%	2.10%
37	Transportation Equipment	3,302	1,085,966	6,945,783	5,097	153	0.05%	0.05%
38	Instruments & Related Products	64	901	6,262	268	2	0.00%	0.00%

Table 8—Cost Impact by Industry—Continued

SIC	Industry	Number of Affected Firms	Number of Permit Spaces Total	Total Annual Compliance Costs	Average Cost of Rule		Cost As A Percent of Profit	
					Large Firms	Small Firms	Large Firms	Small Firms
39	Miscellaneous Manufacturing	885	31,267	1,196,552	1,556	1,017	0.13%	2.67%
42	Motor Freight Transportation	14,583	201,680	12,958,195	1,038	839	0.30%	4.07%
49	Electric, Gas, Sanitary Services	28,444	1,575,170	72,636,019	10,250	3,943	0.06%	1.00%
50	Wholesale Trade/Durables	2,753	3,965	262,586	204	65	0.03%	0.12%
51	Wholesale Trade/Nondurables	36,913	411,095	15,792,089	627	407	0.04%	0.51%
54	Food Stores	10,073	10,073	243,950	38	13	0.01%	0.07%
59	Miscellaneous Retail	7,149	28,201	18,286	12	2	0.00%	0.01%
65	Real Estate (Commercial)	13,582	45,190	1,561,156	256	79	0.03%	0.19%
70	Hotels and Other Lodging	5,099	77,672	831,454	213	128	0.05%	0.47%
72	Personal Services	3,577	24,604	310,564	87	0	0.05%	0.00%
76	Miscellaneous Repair Services	752	802	6,173	25	7	0.02%	0.10%
78	Motion Pictures	11	33	26	2	0	0.00%	0.00%
80	Health Services	8,252	71,709	3,603,226	566	35	0.04%	0.04%
84	Museums, Botanical Gardens, Zoos	130	1,183	5,238	40	0	0.01%	0.00%
	TOTAL	238,853	4,844,849	$202,369,752	$1,272			
	$655	0.05%	0.75%					

Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis

As required by the Regulatory Flexibility Act of 1980, OSHA assessed the economic burden faced by small establishments. Assuming inelastic demand and full cost pass-through, price impacts would average 0.04 percent for firms with 19 or fewer employees. Profit impacts under the opposite assumption of zero cost pass-through would average 0.75 percent. Profit impacts would be less than 5 percent for small firms in all sectors. In two sectors (agricultural services and motor freight transportation), costs will exceed 4 percent of profits, but in only three other industries will costs exceed 1 percent of profits. These profit impacts depict worst-case, perfectly elastic demand conditions. OSHA anticipates that given imperfectly elastic demand conditions found in most markets, and the negligible price increases necessary to offset cost increases, impacts on net earnings will be minimal due to the ability of firms to pass some of the costs forward to buyers. Therefore, OSHA has determined that the final standard is economically feasible for small establishments.

G. Industry-Specific Hazard Analysis

For affected industry sectors, OSHA compared the fatalities, injuries and illnesses avoided with cost of compliance, to assess the benefit-to-cost relationship. Annual benefits and costs of the standard are shown in Table 9. In general, employee benefits are correlated with compliance costs: industries with relatively higher total costs or costs per establishment are expected to experience a relatively greater reduction in permit-space fatalities, injuries, and illnesses.

Table 9—Annual Benefits and Cost of the Permit Space Standard

SIC	Industry	Fatalities Avoided Total[1]	Injuries and Illnesses Avoided		Compliance Costs (Thousands of Dollars) Total	Cost per Establ. (Dollars) Total
			Lost-Workday Total[1]	Non-Lost-Workday Total[1]		
07	Agricultural Services	0.3	18	17	$7,880.5	$752.4
13	Oil & Gas Extraction	6.8	163	120	84.5	8.5
20	Food and Kindred Products	2.7	404	513	12,472.1	1,218.5
21	Tobacco Products	0.3	51	64	32.2	467.8
22	Textile Mill Products	0.3	51	64	262.7	176.2
24	Wood Products (except furniture)	1.0	152	192	1,739.7	169.1
25	Furniture and Fixtures	0.0[2]	-[3]	-	749.7	142.7
26	Paper Products	0.7	101	128	4,028.2	916.0
27	Printing and Publishing	0.0	-	-	0.6	13.2
28	Chemicals & Allied Products	4.1	607	709	1,581.4	195.3
29	Petroleum Refining	0.0[2]	-	-	2,418.2	1,470.0
30	Rubber Products	0.7	101	128	6,910.2	1,099.9
31	Leather and Leather Products	1.0	152	192	36.9	245.2
32	Stone, Clay, Glass & Concrete	0.7	101	128	12,149.9	988.6
33	Primary Metals Industry	2.0	303	384	5,801.4	2,080.8
34	Fabricated Metal Products	5.1	758	961	13,490.2	1,598.1
35	Machinery, Except Electrical	1.0	152	192	2,999.4	692.7
36	Electric/Electronic Equipment	0.0[2]	-[2]	-	13,354.3	2,020.2
37	Transportation Equipment	2.0	303	384	6,945.8	2,103.6
38	Instruments & Related Products	0.3	51	64	6.3	97.8

Table 9—Annual Benefits and Cost of the Permit Space Standard—Continued

SIC	Industry	Fatalities Avoided Total[1]	Injuries and Illnesses Avoided		Compliance Costs (Thousands of Dollars) Total	Cost per Establ. (Dollars) Total
			Lost-Workday Total[1]	Non-Lost-Workday Total[1]		
39	Miscellaneous Manufacturing	0.3	51	64	1,196.6	1,351.8
42	Motor Freight Transportation	5.1	223	163	12,958.2	888.6
49	Electric, Gas, Sanitary Services	6.8	297	217	72,636.0	2,553.6
50	Wholesale Trade/Durables	0.3	42	48	262.6	95.4
51	Wholesale Trade/Nondurables	1.0	125	145	15,792.1	427.8
54	Food Stores	0.0[2]	-[2]	-	243.9	24.2
59	Miscellaneous Retail	0.3	42	48	18.3	2.6
65	Real Estate (Commercial)	0.0[2]	-	-	1,561.2	114.9
70	Hotels and Other Lodging	0.0[2]	-	-	831.5	163.0
72	Personal Services	0.0	-	-	310.6	86.8
76	Miscellaneous Repair Services	3.1	374	436	6.2	8.2
78	Motion Pictures	0.0	-	-	0.0	2.4
80	Health Services	0.3	42	48	3,603.2	436.6
84	Museums, Botanical Gardens, Zoos	0.0	-	-	5.2	40.2
	Host Employer Unidentified[4]	7.1	380	436		
	TOTAL $695.0	53.7	5,041	5,908	$202,369.8	

Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis
[1] Assumes that projected permit space incidents would be distributed in the same SICs in which incidents were reported from 1986–1990.
[2] Fatalities, injuries or illnesses were reported prior to 1986 or after 1990 by OSHA [3], [4], [5] or NIOSH [2].
[3] Dashes indicate that prevented injuries could not be estimated utilizing an injury/fatality factor (see Chapter III, Benefits, of the Regulatory Analysis, Table III–3) due to the absence of reported fatalities during the investigated period.
[4] Includes contractors and other service employers whose host employer at the time of the accident could not be identified in the OSHA abstracts.

For four industries where accidents could not be identified in either OSHA or NIOSH databases, OSHA notes that costs per establishment are significantly below the overall industry average of $695. OSHA's analysis of these affected industries in Chapter III of the Regulatory Analysis indicates that they contain the same spaces and hazards as other industries with recorded accidents.

H. International Trade

In accordance with Executive Order 12291, OSHA assessed the effects of the final standard on international trade. The standard is expected to affect a wide range of industrial and commercial enterprises, many of whom compete against foreign competitors in both foreign markets and the U.S. markets. If the OSHA regulation significantly increased the price of products and services of domestic producers, foreign producers could benefit. OSHA believes, however, that price impacts from this standard will be minor and have little effect on American trade overseas and on domestic sales.

I. Environmental Impact

The permit-required confined spaces standard has been reviewed in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 et seq.), the regulations of the Council on Environmental Quality (CEQ, 40 CFR Part 1500), and DOL NEPA Procedures (29 CFR Part 11). OSHA anticipates that greater use of mechanical ventilation to reduce atmospheric hazards in permit spaces may result in additional release of hazardous substances to the air. Incremental release quantities related to the permit space standard are not determinable at present, but are expected to be minor relative to current overall releases. Releases of substances regulated under EPA's SARA Title III or EPA NESHAP standards are subject to reporting and control requirements in those rules.

J. Nonregulatory Alternatives

The primary objective of OSHA's standard for permit spaces is to reduce the number of employee fatalities and injuries associated with catastrophic releases of hazardous substances. OSHA believes the standard will eliminate to a considerable degree the worker risk experienced in the confined spaces falling within the scope of the rule.

The Agency examined the nonregulatory approaches for promoting the implementation of permit space programs, including (1) economic forces generated by the private market system, (2) incentives created by workers' compensation programs or the threat of private suits, and (3) related activities of private agencies. Following this review, OSHA determined that the need for government regulation arises from the significant risk of job-related injury or death caused by inadequate permit space safety programs. Private markets fail to provide enough safety and health resources due to the lack of information on risk, immobility of labor, and externalization of part of the social cost of worker injuries and deaths. Workers compensation systems do not offer an adequate remedy because premiums do not reflect specific workplace risk and liability claims are restricted by statutes preventing employees from suing their employers. While certain voluntary industry standards exist, as well as rules and recommended procedures in a limited number of states, their scope and approach fail to provide adequate protection for all workers. Thus, OSHA has determined that a federal standard is necessary.

K. References

1. CONSAD Research Corporation. "Development of Industry Profile Data for OSHA's Draft Proposed Standard for Permit Entry Confined Spaces", prepared for the U.S. Department of Labor, Occupational Safety and Health Administration under Contract No. J–9–F–0024. Pittsburgh, May 20, 1988 (Ex. 16).

2. U.S. Department of Health, Education, and Welfare. Public Health Service. Center for Disease Control. National Institute for Occupational Safety and Health. "Criteria for a Recommended Standard ... Working in Confined Spaces", DHEW (NIOSH) Publication No. 80–106. Cincinnati: NIOSH, December 1979 (Ex. 13–9).

3. U.S. Department of Labor. Occupational Safety and Health Administration. Directorate of Policy. "Selected Occupational Fatalities Related to Toxic and Asphyxiating Atmospheres in Confined Work Spaces as

Found in Reports of OSHA Fatality/Catastrophe Investigations", Washington, D.C., July 1985 (Ex. 13–15).

4. U.S. Department of Labor. Occupational Safety and Health Administration. Directorate of Technical Support. "Selected Occupational Fatalities Related to Fire and/or Explosion in Confined Work Spaces as Found in Reports of OSHA Fatality/Catastrophe Investigations", Washington, D.C., April 1982 (Ex. 13–10).

5. OSHA Integrated Management Information System, Fatality/Catastrophe Database. OSHA Office of Management Data Systems.

VII. Federalism

This regulation has been reviewed in accordance with Executive Order 12612 regarding Federalism. This order requires that agencies, to the extent possible, refrain from limiting state policy options and consult with states prior to taking any action. Agencies may act only when there is clear constitutional authority and the presence of a problem of national scope. The order provides for preemption of state law only if there is a clear congressional intent for the Agency to do so. Any such preemption is to be limited to the extent possible.

Section 18 of the Occupational Safety and Health Act of 1970 expresses Congress' clear intent to preempt state laws relating to issues on which Federal OSHA has promulgated occupational safety and health standards. Under the OSH Act, a state can avoid preemption only if it submits, and obtains Federal approval of, a plan for the development of such standards and their enforcement. Occupational safety and health standards developed by such Plan-States must, among other things, be at least as effective in providing safe and healthful employment and places of employment as Federal Standards. Where such standards are applicable to products distributed or used in interstate commerce, they may not unduly burden commerce and must be justified by compelling local conditions (See Section 18(c)(2) of the OSH Act).

This regulation is drafted so that employees in every state would be protected by general, performance-oriented standards. To the extent that there are state or regional peculiarities caused by the terrain, the climate or other factors, states would be able, under the OSH Act, to develop their own state standards to deal with any special problems. And, under the Act, if a state develops an approved state program, it could make additional requirements in its standards. Moreover, the performance nature of this standard, of and by itself, allows for flexibility by states and employers to provide as much safety as possible using varying methods consonant with conditions in each state.

In short, there is a clear national problem related to occupational safety and health concerning entry into confined spaces. Those states which elect to participate under the statute would not be preempted by this regulation and would be able to address special, local conditions within the framework provided by this performance-oriented standard.

OSHA notes that California, Kentucky, Maryland, Michigan, New Jersey, and Virginia currently have regulations dealing with confined space entry. Of these six state regulations, none would be preempted. New Jersey is not a state-plan state, but their confined space standard applies only to public (state and local government) employees. An analysis of state confined space rules and procedures is contained in Section VI, Summary of the Final Regulatory Impact Analysis and Regulatory Flexibility Analysis, earlier in this preamble.

VIII. State Plan States

The 25 states and territories with their own OSHA-approved occupational safety and health plans must adopt a comparable standard within six months of the publication date of this final standard. These 25 states are: Alaska, Arizona, California, Connecticut (for state and local government employees only), Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, New York (for state and local government employees only), North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington and Wyoming. Until such time as a state standard is promulgated, Federal OSHA will provide interim enforcement assistance, as appropriate, in these states.

List of Subjects in 29 CFR Part 1910

Attendant, Confined Spaces, Entry permit system, Hazardous atmospheres, Hazardous materials, Incorporation by reference, Monitoring, Occupational safety and health, Permits, Personal protective equipment, Rescue equipment, Respiratory protection, Retrieval lines, Safety, Signs, Tags, Tools, Welding.

IX. Authority

This document was prepared under the direction of Dorothy L. Strunk, Acting Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Accordingly, pursuant to sections 6(b) and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655, 657), Secretary of Labor's Order No. 1–90 (55 FR 9033), and 29 CFR Part 1911, Title 29, Chapter XVII, of the Code of Federal Regulations is amended as follows.

Signed at Washington, D.C., this 6th day of January, 1993.

Dorothy L. Strunk

Acting Assistant Secretary of Labor

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

1. The authority citation for Subpart J of Part 1910 is revised to read as follows:

AUTHORITY: Secs. 4, 6, and 8, Occupational Safety and Health Act of 1970, 29 USC 653, 655, 657; Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736) or 1–90 (55 FR 9033), as applicable.

Sections 1910.141, 1910.142,1910.145, 1910.146, and 1910.147 also issued under 29 CFR Part 1911.

2. Section 1910.146 is added to read as follows:

§1910.146 Permit-required confined spaces.

(a) *Scope and application.* This section contains requirements for practices and procedures to protect employees in general industry from the hazards of entry into permit-required confined spaces. This section does not apply to agriculture, to construction, or to shipyard employment (Parts 1928, 1926, and 1915 of this chapter, respectively).

(b) *Definitions.*

Acceptable entry conditions means the conditions that must exist in a permit space to allow entry and to ensure that employees involved with a permit-required confined space entry can safely enter into and work within the space.

Attendant means an individual stationed outside one or more permit spaces who monitors the authorized entrants and who performs all attendant's duties assigned in the employer's permit space program.

Authorized entrant means an employee who is authorized by the employer to enter a permit space.

Blanking or blinding means the absolute closure of a pipe, line, or duct by the fastening of a solid plate (such as a spectacle blind or a skillet blind) that completely covers the bore and that is capable of withstanding the maximum pressure of the pipe, line, or duct with no leakage beyond the plate.

Confined space means a space that:

(1) Is large enough and so configured that an employee can bodily enter and perform assigned work; and

(2) Has limited or restricted means for entry or exit (for example, tanks, vessels, silos, storage bins, hoppers, vaults, and pits are spaces that may have limited means of entry.); and

(3) Is not designed for continuous employee occupancy.

Double block and bleed means the closure of a line, duct, or pipe by closing and locking or tagging two in-line valves and by opening and locking or tagging a drain or vent valve in the line between the two closed valves.

Emergency means any occurrence (including any failure of hazard control or monitoring equipment) or event internal or external to the permit space that could endanger entrants.

Engulfment means the surrounding and effective capture of a person by a liquid or finely divided (flowable) solid substance that can be aspirated to cause death by filling or plugging the respiratory system or that can exert enough force on the body to cause death by strangulation, constriction, or crushing.

Entry means the action by which a person passes through an opening into a permit-required confined space. Entry includes ensuing work activities in that space and is considered to have occurred as soon as any part of the entrant's body breaks the plane of an opening into the space.

Entry permit (permit) means the written or printed document that is provided by the employer to allow and control entry into a permit space and that contains the information specified in paragraph (f) of this section.

Entry supervisor means the person (such as the employer, foreman, or crew chief) responsible for determining if acceptable entry conditions are present at a permit space where entry is planned, for authorizing entry and overseeing entry operations, and for terminating entry as required by this section.

Note: An entry supervisor also may serve as an attendant or as an authorized entrant, as long as that person is trained and equipped as required by this section for each role he or she fills. Also, the duties of entry supervisor may be passed from one individual to another during the course of an entry operation.

Hazardous atmosphere means an atmosphere that may expose employees to the risk of death, incapacitation, impairment of ability to self-rescue (that is, escape unaided from a permit space), injury, or acute illness from one or more of the following causes:

(1) Flammable gas, vapor, or mist in excess of 10 percent of its lower flammable limit (LFL);

(2) Airborne combustible dust at a concentration that meets or exceeds its LFL;

Note: This concentration may be approximated as a condition in which the dust obscures vision at a distance of 5 feet (1.52 m) or less.

(3) Atmospheric oxygen concentration below 19.5 percent or above 23.5 percent;

(4) Atmospheric concentration of any substance for which a dose or a permissible exposure limit is published in Subpart G, *Occupational Health and Environmental Control*, or in Subpart Z, *Toxic and Hazardous Substances*, of this part and which could result in employee exposure in excess of its dose or permissible exposure limit;

Note: An atmospheric concentration of any substance that is not capable of causing death, incapacitation, impairment of ability to self-rescue, injury, or acute illness due to its health effects is not covered by this provision.

(5) Any other atmospheric condition that is immediately dangerous to life or health.

Note: For air contaminants for which OSHA has not determined a dose or permissible exposure limit, other sources of information, such as Material Safety Data Sheets that comply with the Hazard Communication Standard, §1910.1200 of this part, published information, and internal documents can provide guidance in establishing acceptable atmospheric conditions.

Hot work permit means the employer's written authorization to perform operations (for example, riveting, welding, cutting, burning, and heating) capable of providing a source of ignition.

Immediately dangerous to life or health (IDLH) means any condition that poses an immediate or delayed threat to life or that would cause irreversible adverse health effects or that would interfere with an individual's ability to escape unaided from a permit space.

Note: Some materials—hydrogen fluoride gas and cadmium vapor, for example—may produce immediate transient effects that, even if severe, may pass without medical attention, but are followed by sudden, possibly fatal collapse 12–72 hours after exposure. The victim "feels normal" from recovery from transient effects until collapse. Such materials in hazardous quantities are considered to be "immediately" dangerous to life or health.

Inerting means the displacement of the atmosphere in a permit space by a noncombustible gas (such as nitrogen) to such an extent that the resulting atmosphere is noncombustible.

Note: This procedure produces an IDLH oxygen-deficient atmosphere.

Isolation means the process by which a permit space is removed from service and completely protected against the release of energy and material into the space by such means as: blanking or blinding; misaligning or removing sections of lines, pipes, or ducts; a double block and bleed system; lockout or tagout of all sources of energy; or blocking or disconnecting all mechanical linkages.

Line breaking means the intentional opening of a pipe, line, or duct that is or has been carrying flammable, corrosive, or toxic material, an inert gas, or any fluid at a volume, pressure, or temperature capable of causing injury.

Non-permit confined space means a confined space that does not contain or, with respect to atmospheric hazards, have the potential to contain any hazard capable of causing death or serious physical harm.

Oxygen deficient atmosphere means an atmosphere containing less than 19.5 percent oxygen by volume.

Oxygen enriched atmosphere means an atmosphere containing more than 23.5 percent oxygen by volume.

Permit-required confined space (permit space) means a confined space that has one or more of the following characteristics:

(1) Contains or has a potential to contain a hazardous atmosphere;

(2) Contains a material that has the potential for engulfing an entrant;

(3) Has an internal configuration such that an entrant could be trapped or asphyxiated by inwardly converging walls or by a floor which slopes downward and tapers to a smaller cross-section; or

(4) Contains any other recognized serious safety or health hazard.

Permit-required confined space program (permit space program) means the employer's overall program for controlling, and, where appropriate, for protecting employees from, permit space hazards and for regulating employee entry into permit spaces.

Permit system means the employer's written procedure for preparing and issuing permits for entry and for returning the permit space to service following termination of entry.

Prohibited condition means any condition in a permit space that is not allowed by the permit during the period when entry is authorized.

Rescue service means the personnel designated to rescue employees from permit spaces.

Retrieval system means the equipment (including a retrieval line, chest or full-body harness, wristlets, if appropriate, and a lifting device or anchor) used for non-entry rescue of persons from permit spaces.

Testing means the process by which the hazards that may confront entrants of a permit space are identified and evaluated. Testing includes specifying the tests that are to be performed in the permit space.

Note: Testing enables employers both to devise and implement adequate control measures for the protection of authorized entrants and to determine if acceptable entry conditions are present immediately prior to, and during, entry.

(c) *General requirements.* (1) The employer shall evaluate the workplace to determine if any spaces are permit-required confined spaces.

Note: Proper application of the decision flow chart in Appendix A to §1910.146 would facilitate compliance with this requirement.

(2) If the workplace contains permit spaces, the employer shall inform exposed employees, by posting danger signs or by any other equally effective means, of the existence and location of and the danger posed by the permit spaces.

Note: A sign reading "DANGER—PERMIT-REQUIRED CONFINED SPACE, DO NOT ENTER" or using other similar language would satisfy the requirement for a sign.

(3) If the employer decides that its employees will not enter permit spaces, the employer shall take effective measures to prevent its employees from entering the permit spaces and shall comply with paragraphs (c)(1), (c)(2), (c)(6), and (c)(8) of this section.

(4) If the employer decides that its employees will enter permit spaces, the employer shall develop and implement a written permit space entry program that complies with this section. The written program shall be available for inspection by employees and their authorized representatives.

(5) An employer may use the alternate procedures specified in paragraph (c)(5)(ii) of this section for entering a permit space under the conditions set forth in paragraph (c)(5)(i) of this section.

(i) An employer whose employees enter a permit space need not comply with paragraphs (d) through (f) and (h) through (k) of this section, provided that:

(A) The employer can demonstrate that the only hazard posed by the permit space is an actual or potential hazardous atmosphere;

(B) The employer can demonstrate that continuous forced air ventilation alone is sufficient to maintain that permit space safe for entry;

(C) The employer develops monitoring and inspection data that supports the demonstrations required by paragraphs (c)(5)(i)(A) and (c)(5)(i)(B) of this section;

(D) If an initial entry of the permit space is necessary to obtain the data required by paragraph (c)(5)(i)(C) of this section, the entry is performed in compliance with paragraphs (d) through (k) of this section;

(E) The determinations and supporting data required by paragraphs (c)(5)(i)(A), (c)(5)(i)(B), and (c)(5)(i)(C) of this section are documented by the employer and are made available to each employee who enters the permit space under the terms of paragraph (c)(5) of this section; and

(F) Entry into the permit space under the terms of paragraph (c)(5)(i) of this section is performed in accordance with the requirements of paragraph (c)(5)(ii) of this section.

Note: See paragraph (c)(7) of this section for reclassification of a permit space after all hazards within the space have been eliminated.

(ii) The following requirements apply to entry into permit spaces that meet the conditions set forth in paragraph (c)(5)(i) of this section.

(A) Any conditions making it unsafe to remove an entrance cover shall be eliminated before the cover is removed.

(B) When entrance covers are removed, the opening shall be promptly guarded by a railing, temporary cover, or other temporary barrier that will prevent an accidental fall through the opening and that will protect each employee working in the space from foreign objects entering the space.

(C) Before an employee enters the space, the internal atmosphere shall be tested, with a calibrated direct-reading instrument, for the following conditions in the order given:

(*1*) Oxygen content,

(*2*) Flammable gases and vapors, and

(*3*) Potential toxic air contaminants.

(D) There may be no hazardous atmosphere within the space whenever any employee is inside the space.

(E) Continuous forced air ventilation shall be used, as follows:

(*1*) An employee may not enter the space until the forced air ventilation has eliminated any hazardous atmosphere;

(*2*) The forced air ventilation shall be so directed as to ventilate the immediate areas where an employee is or will be present within the space and shall continue until all employees have left the space;

(*3*) The air supply for the forced air ventilation shall be from a clean source and may not increase the hazards in the space.

(F) The atmosphere within the space shall be periodically tested as necessary to ensure that the continuous forced air ventilation is preventing the accumulation of a hazardous atmosphere.

(G) If a hazardous atmosphere is detected during entry:

(*1*) Each employee shall leave the space immediately;

(*2*) The space shall be evaluated to determine how the hazardous atmosphere developed; and

(*3*) Measures shall be implemented to protect employees from the hazardous atmosphere before any subsequent entry takes place.

(H) The employer shall verify that the space is safe for entry and that the measures required by paragraph (c)(5)(ii) of this section have been taken, through a written certification that contains the date, the location of the space, and the signature of the person providing the certification. The certification shall be made before entry and shall be made available to each employee entering the space.

(6) When there are changes in the use or configuration of a non-permit confined space that might increase the hazards to entrants, the employer shall reevaluate that space and, if necessary, reclassify it as a permit-required confined space.

(7) A space classified by the employer as a permit-required confined space may be reclassified as a non-permit confined space under the following procedures:

(i) If the permit space poses no actual or potential atmospheric hazards and if all hazards within the space are eliminated without entry into the space, the permit space may be reclassified as a non-permit confined space for as long as the non-atmospheric hazards remain eliminated.

(ii) If it is necessary to enter the permit space to eliminate hazards, such entry shall be performed under paragraphs (d) through (k) of this section. If testing and inspection during that entry demonstrate that the hazards within the permit space have been eliminated, the permit space may be reclassified as a non-permit confined space for as long as the hazards remain eliminated.

Note: Control of atmospheric hazards through forced air ventilation does not constitute elimination of the hazards. Paragraph (c)(5) covers permit space entry where the employer can demonstrate that forced air ventilation alone will control all hazards in the space.

(iii) The employer shall document the basis for determining that all hazards in a permit space have been eliminated, through a certification that contains the date, the location of the space, and the signature of the person making the determination. The certification shall be made available to each employee entering the space.

(iv) If hazards arise within a permit space that has been declassified to a non-permit space under paragraph (c)(7) of this section, each employee in the space shall exit the space. The employer shall then reevaluate the space and determine whether it must be reclassified as a permit space, in accordance with other applicable provisions of this section.

(8) When an employer (host employer) arranges to have employees of another employer (contractor) perform work that involves permit space entry, the host employer shall:

(i) Inform the contractor that the workplace contains permit spaces and that permit space entry is allowed only through compliance with an permit space program meeting the requirements of this section;

(ii) Apprise the contractor of the elements, including the hazards identified and the host employer's experience with the space, that make the space in question a permit space;

(iii) Apprise the contractor of any precautions or procedures that the host employer has implemented for the protection of employees in or near permit spaces where contractor personnel will be working;

(iv) Coordinate entry operations with the contractor, when both host employer personnel and contractor personnel will be working in or near permit spaces, as required by paragraph (d)(11) of this section; and

(v) Debrief the contractor at the conclusion of the entry operations regarding the permit space program followed and regarding any hazards confronted or created in permit spaces during entry operations.

(9) In addition to complying with the permit space requirements that apply to all employers, each contractor who is retained to perform permit space entry operations shall:

(i) Obtain any available information regarding permit space hazards and entry operations from the host employer;

(ii) Coordinate entry operations with the host employer, when both host employer personnel and contractor personnel will be working in or near permit spaces, as required by paragraph (d)(11) of this section; and

(iii) Inform the host employer of the permit space program that the contractor will follow and of any hazards confronted or created in permit spaces, either through a debriefing or during the entry operation.

(d) *Permit-required confined space program.* Under the permit-required confined space program required by paragraph (c)(4) of this section, the employer shall:

(1) Implement the measures necessary to prevent unauthorized entry;

(2) Identify and evaluate the hazards of permit spaces before employees enter them;

(3) Develop and implement the means, procedures, and practices necessary for safe permit space entry operations, including, but not limited to, the following:

(i) Specifying acceptable entry conditions;

(ii) Isolating the permit space;

(iii) Purging, inerting, flushing, or ventilating the permit space as necessary to eliminate or control atmospheric hazards;

(iv) Providing pedestrian, vehicle, or other barriers as necessary to protect entrants from external hazards; and

(v) Verifying that conditions in the permit space are acceptable for entry throughout the duration of an authorized entry.

(4) Provide the following equipment (specified in paragraphs (d)(4)(i) through (d)(4)(ix) of this section) at no cost to employees, maintain that equipment properly, and ensure that employees use that equipment properly:

(i) Testing and monitoring equipment needed to comply with paragraph (d)(5) of this section;

(ii) Ventilating equipment needed to obtain acceptable entry conditions;

(iii) Communications equipment necessary for compliance with paragraphs (h)(3) and (i)(5) of this section;

(iv) Personal protective equipment insofar as feasible engineering and work practice controls do not adequately protect employees;

(v) Lighting equipment needed to enable employees to see well enough to work safely and to exit the space quickly in an emergency;

(vi) Barriers and shields as required by paragraph (d)(3)(iv) of this section;

(vii) Equipment, such as ladders, needed for safe ingress and egress by authorized entrants;

(viii) Rescue and emergency equipment needed to comply with paragraph (d)(9) of this section, except to the extent that the equipment is provided by rescue services; and

(ix) Any other equipment necessary for safe entry into and rescue from permit spaces.

(5) Evaluate permit space conditions as follows when entry operations are conducted:

(i) Test conditions in the permit space to determine if acceptable entry conditions exist before entry is authorized to begin, except that, if isolation of the space is infeasible because the space is large or is part of a continuous system (such as a sewer), pre-entry testing shall be performed to the extent feasible before entry is authorized and, if entry is authorized, entry conditions shall be continuously monitored in the areas where authorized entrants are working;

(ii) Test or monitor the permit space as necessary to determine if acceptable entry conditions are being maintained during the course of entry operations; and

(iii) When testing for atmospheric hazards, test first for oxygen, then for combustible gases and vapors, and then for toxic gases and vapors.

Note: Atmospheric testing conducted in accordance with Appendix B to §1910.146 would be considered as satisfying the requirements of this paragraph. For permit space operations in sewers, atmospheric testing conducted in accordance with Appendix B, as supplemented by Appendix E to §1910.146, would be considered as satisfying the requirements of this paragraph.

(6) Provide at least one attendant outside the permit space into which entry is authorized for the duration of entry operations;

Note: Attendants may be assigned to monitor more than one permit space provided the duties described in paragraph (i) of this section can be effectively performed for each permit space that is monitored. Likewise, attendants may be stationed at any location outside the permit space to be monitored as long as the duties described in paragraph (i) of this section can be effectively performed for each permit space that is monitored.

(7) If multiple spaces are to be monitored by a single attendant, include in the permit program the means and procedures to enable the attendant to respond to an emergency affecting one or more of the permit spaces being monitored without distraction from the attendant's responsibilities under paragraph (i) of this section;

(8) Designate the persons who are to have active roles (as, for example, authorized entrants, attendants, entry supervisors, or persons who test or monitor the atmosphere in a permit space) in entry operations, identify the duties of each such employee, and provide each such employee with the

training required by paragraph (g) of this section;

(9) Develop and implement procedures for summoning rescue and emergency services, for rescuing entrants from permit spaces, for providing necessary emergency services to rescued employees, and for preventing unauthorized personnel from attempting a rescue;

(10) Develop and implement a system for the preparation, issuance, use, and cancellation of entry permits as required by this section;

(11) Develop and implement procedures to coordinate entry operations when employees of more than one employer are working simultaneously as authorized entrants in a permit space, so that employees of one employer do not endanger the employees of any other employer;

(12) Develop and implement procedures (such as closing off a permit space and canceling the permit) necessary for concluding the entry after entry operations have been completed;

(13) Review entry operations when the employer has reason to believe that the measures taken under the permit space program may not protect employees and revise the program to correct deficiencies found to exist before subsequent entries are authorized; and

Note: Examples of circumstances requiring the review of the permit-required confined space program are: any unauthorized entry of a permit space, the detection of a permit space hazard not covered by the permit, the detection of a condition prohibited by the permit, the occurrence of an injury or near-miss during entry, a change in the use or configuration of a permit space, and employee complaints about the effectiveness of the program.

(14) Review the permit-required confined space program, using the canceled permits retained under paragraph (e)(6) of this section within 1 year after each entry and revise the program as necessary, to ensure that employees participating in entry operations are protected from permit space hazards.

Note: Employers may perform a single annual review covering all entries performed during a 12-month period. If no entry is performed during a 12-month period, no review is necessary.

Appendix C to §1910.146 presents examples of permit entry programs that are considered to comply with the requirements of paragraph (d) of this section.

(e) *Permit system.* (1) Before entry is authorized, the employer shall document the completion of measures required by paragraph (d)(3) of this section by preparing an entry permit.

Note: Appendix D to §1910.146 presents examples of permits whose elements are considered to comply with the requirements of this section.

(2) Before entry begins, the entry supervisor identified on the permit shall sign the entry permit to authorize entry.

(3) The completed permit shall be made available at the time of entry to all authorized entrants, by posting it at the entry portal or by any other equally effective means, so that the entrants can confirm that pre-entry preparations have been completed.

(4) The duration of the permit may not exceed the time required to complete the assigned task or job identified on the permit in accordance with paragraph (f)(2) of this section.

(5) The entry supervisor shall terminate entry and cancel the entry permit when:

(i) The entry operations covered by the entry permit have been completed; or

(ii) A condition that is not allowed under the entry permit arises in or near the permit space.

(6) The employer shall retain each canceled entry permit for at least 1 year to facilitate the review of the permit-required confined space program required by paragraph (d)(14) of this section. Any problems encountered during an entry operation shall be noted on the pertinent permit so that appropriate revisions to the permit space program can be made.

(f) *Entry permit.* The entry permit that documents compliance with this section and authorizes entry to a permit space shall identify:

(1) The permit space to be entered;

(2) The purpose of the entry;

(3) The date and the authorized duration of the entry permit;

(4) The authorized entrants within the permit space, by name or by such other means (for example, through the use of rosters or tracking systems) as will enable the attendant to determine quickly and accurately, for the duration of the permit, which authorized entrants are inside the permit space;

Note: This requirement may be met by inserting a reference on the entry permit as to the means used, such as a roster or tracking system, to keep track of the authorized entrants within the permit space.

(5) The personnel, by name, currently serving as attendants;

(6) The individual, by name, currently serving as entry supervisor, with a space for the signature or initials of the entry supervisor who originally authorized entry;

(7) The hazards of the permit space to be entered;

(8) The measures used to isolate the permit space and to eliminate or control permit space hazards before entry;

Note: Those measures can include the lockout or tagging of equipment and procedures for purging, inerting, ventilating, and flushing permit spaces.

(9) The acceptable entry conditions;

(10) The results of initial and periodic tests performed under paragraph (d)(5) of this section, accompanied by the names or initials of the testers and by an indication of when the tests were performed;

(11) The rescue and emergency services that can be summoned and the means (such as the equipment to use and the numbers to call) for summoning those services;

(12) The communication procedures used by authorized entrants and attendants to maintain contact during the entry;

(13) Equipment, such as personal protective equipment, testing equipment, communications equipment, alarm systems, and rescue equipment, to be provided for compliance with this section;

(14) Any other information whose inclusion is necessary, given the circumstances of the particular confined space, in order to ensure employee safety; and

(15) Any additional permits, such as for hot work, that have been issued to authorize work in the permit space.

(g) *Training.* (1) The employer shall provide training so that all employees whose work is regulated by this section acquire the understanding, knowledge, and skills necessary for the safe performance of the duties assigned under this section.

(2) Training shall be provided to each affected employee:

(i) Before the employee is first assigned duties under this section;

(ii) Before there is a change in assigned duties;

(iii) Whenever there is a change in permit space operations that presents a hazard about which an employee has not previously been trained;

(iv) Whenever the employer has reason to believe either that there are deviations from the permit space entry procedures required by paragraph (d)(3) of this section or that there are inadequacies in the employee's knowledge or use of these procedures.

(3) The training shall establish employee proficiency in the duties required by this section and shall introduce new or revised procedures, as necessary, for compliance with this section.

(4) The employer shall certify that the training required by paragraphs (g)(1)

through (g)(3) of this section has been accomplished. The certification shall contain each employee's name, the signatures or initials of the trainers, and the dates of training. The certification shall be available for inspection by employees and their authorized representatives.

(h) *Duties of authorized entrants.* The employer shall ensure that all authorized entrants:

(1) Know the hazards that may be faced during entry, including information on the mode, signs or symptoms, and consequences of the exposure;

(2) Properly use equipment as required by paragraph (d)(4) of this section;

(3) Communicate with the attendant as necessary to enable the attendant to monitor entrant status and to enable the attendant to alert entrants of the need to evacuate the space as required by paragraph (i)(6) of this section;

(4) Alert the attendant whenever:

(i) The entrant recognizes any warning sign or symptom of exposure to a dangerous situation, or

(ii) The entrant detects a prohibited condition; and

(5) Exit from the permit space as quickly as possible whenever:

(i) An order to evacuate is given by the attendant or the entry supervisor,

(ii) The entrant recognizes any warning sign or symptom of exposure to a dangerous situation,

(iii) The entrant detects a prohibited condition, or

(iv) An evacuation alarm is activated.

(i) *Duties of attendants.* The employer shall ensure that each attendant:

(1) Knows the hazards that may be faced during entry, including information on the mode, signs or symptoms, and consequences of the exposure;

(2) Is aware of possible behavioral effects of hazard exposure in authorized entrants;

(3) Continuously maintains an accurate count of authorized entrants in the permit space and ensures that the means used to identify authorized entrants under paragraph (f)(4) of this section accurately identifies who is in the permit space;

(4) Remains outside the permit space during entry operations until relieved by another attendant;

Note: When the employer's permit entry program allows attendant entry for rescue, attendants may enter a permit space to attempt a rescue if they have been trained and equipped for rescue operations as required by paragraph (k)(1) of this section and if they have been relieved as required by paragraph (i)(4) of this section.

(5) Communicates with authorized entrants as necessary to monitor entrant status and to alert entrants of the need to evacuate the space under paragraph (i)(6) of this section;

(6) Monitors activities inside and outside the space to determine if it is safe for entrants to remain in the space and orders the authorized entrants to evacuate the permit space immediately under any of the following conditions;

(i) If the attendant detects a prohibited condition;

(ii) If the attendant detects the behavioral effects of hazard exposure in an authorized entrant;

(iii) If the attendant detects a situation outside the space that could endanger the authorized entrants; or

(iv) If the attendant cannot effectively and safely perform all the duties required under paragraph (i) of this section;

(7) Summon rescue and other emergency services as soon as the attendant determines that authorized entrants may need assistance to escape from permit space hazards;

(8) Takes the following actions when unauthorized persons approach or enter a permit space while entry is underway:

(i) Warn the unauthorized persons that they must stay away from the permit space;

(ii) Advise the unauthorized persons that they must exit immediately if they have entered the permit space; and

(iii) Inform the authorized entrants and the entry supervisor if unauthorized persons have entered the permit space;

(9) Performs non-entry rescues as specified by the employer's rescue procedure; and

(10) Performs no duties that might interfere with the attendant's primary duty to monitor and protect the authorized entrants.

(j) *Duties of entry supervisors.* The employer shall ensure that each entry supervisor:

(1) Knows the hazards that may be faced during entry, including information on the mode, signs or symptoms, and consequences of the exposure;

(2) Verifies, by checking that the appropriate entries have been made on the permit, that all tests specified by the permit have been conducted and that all procedures and equipment specified by the permit are in place before endorsing the permit and allowing entry to begin;

(3) Terminates the entry and cancels the permit as required by paragraph (e)(5) of this section;

(4) Verifies that rescue services are available and that the means for summoning them are operable;

(5) Removes unauthorized individuals who enter or who attempt to enter the permit space during entry operations; and

(6) Determines, whenever responsibility for a permit space entry operation is transferred and at intervals dictated by the hazards and operations performed within the space, that entry operations remain consistent with terms of the entry permit and that acceptable entry conditions are maintained.

(k) *Rescue and emergency services.* (1) The following requirements apply to employers who have employees enter permit spaces to perform rescue services.

(i) The employer shall ensure that each member of the rescue service is provided with, and is trained to use properly, the personal protective equipment and rescue equipment necessary for making rescues from permit spaces.

(ii) Each member of the rescue service shall be trained to perform the assigned rescue duties. Each member of the rescue service shall also receive the training required of authorized entrants under paragraph (g) of this section.

(iii) Each member of the rescue service shall practice making permit space rescues at least once every 12 months, by means of simulated rescue operations in which they remove dummies, manikins, or actual persons from the actual permit spaces or from representative permit spaces. Representative permit spaces shall, with respect to opening size, configuration, and accessibility, simulate the types of permit spaces from which rescue is to be performed.

(iv) Each member of the rescue service shall be trained in basic first-aid and in cardiopulmonary resuscitation (CPR). At least one member of the rescue service holding current certification in first aid and in CPR shall be available.

(2) When an employer (host employer) arranges to have persons other than the host employer's employees perform permit space rescue, the host employer shall:

(i) Inform the rescue service of the hazards they may confront when called on to perform rescue at the host employer's facility, and

(ii) Provide the rescue service with access to all permit spaces from which rescue may be necessary so that the rescue service can develop appropriate rescue plans and practice rescue operations.

(3) To facilitate non-entry rescue, retrieval systems or methods shall be used whenever an authorized entrant enters a permit space, unless the retrieval equipment would increase the overall risk of entry or would not contribute to the rescue of the entrant.

Retrieval systems shall meet the following requirements.

(i) Each authorized entrant shall use a chest or full body harness, with a retrieval line attached at the center of the entrant's back near shoulder level, or above the entrant's head. Wristlets may be used in lieu of the chest or full body harness if the employer can demonstrate that the use of a chest or full body harness is infeasible or creates a greater hazard and that the use of wristlets is the safest and most effective alternative.

(ii) The other end of the retrieval line shall be attached to a mechanical device or fixed point outside the permit space in such a manner that rescue can begin as soon as the rescuer becomes aware that rescue is necessary. A mechanical device shall be available to retrieve personnel from vertical type permit spaces more than 5 feet deep.

(4) If an injured entrant is exposed to a substance for which a Material Safety Data Sheet (MSDS) or other similar written information is required to be kept at the worksite, that MSDS or written information shall be made available to the medical facility treating the exposed entrant.

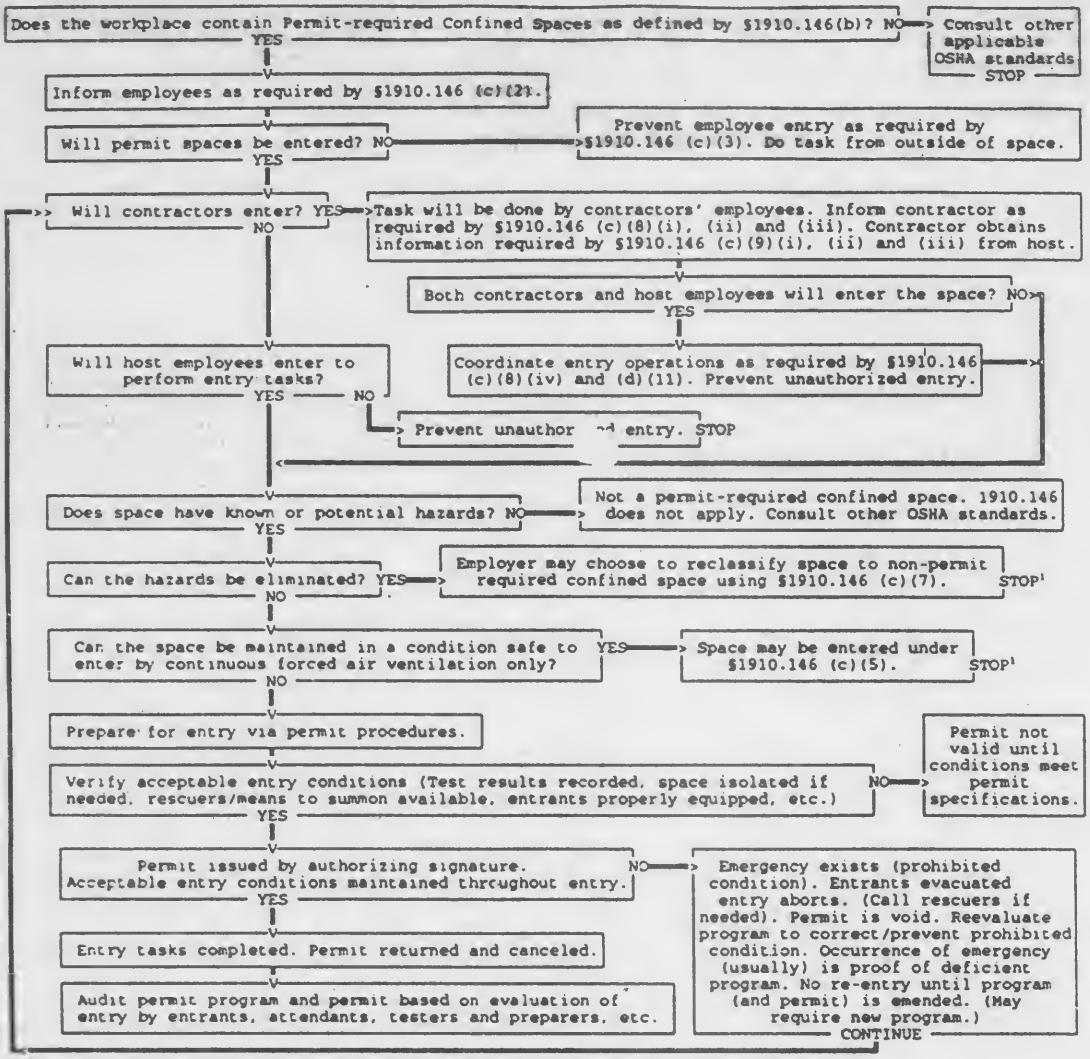
APPENDICES TO §1910.146—PERMIT-REQUIRED CONFINED SPACES

Note: Appendices A through E serve to provide information and non-mandatory guidelines to assist employers and employees in complying with the appropriate requirements of this section.

Appendix A to §1910.146—Permit-required Confined Space Decision Flow Chart

Appendix A

Permit-required Confined Space Decision Flow Chart



[1] Spaces may have to be evacuated and re-evaluated if hazards arise during entry

Appendix B to §1910.146—Procedures for Atmospheric Testing

Atmospheric testing is required for two distinct purposes: evqaluation of the hazards of the permit space and verification that acceptable entry conditions for entry into that space exist.

(1) *Evaluatian testing.* The atmosphere of a confined space should be analyzed using equipment of sufficient sensitivity and specificity to identify and evaluate any hazardous atmospheres that may exist or arise, so that appropriate permit entry procedures can be developed and acceptable entry conditions stipulated for that space. Evaluation and interpretation of these data, and development of the entry procedure, should be done by, or reviewed by, a technically qualified professional (e.g., OSHA consultation service, or certified industrial hygienist, registered safety engineer, certified safety professional, etc.) based on evaluation of all serious hazards.

(2) *Verificatian testing.* The atmosphere of a permit space which may contain a hazardous atmosphere should be tested for residues of all contaminants identified by evaluation testing using permit specified equipment to determine that residual concentrations at the time of testing and entry are within the range of acceptable entry conditions. Results of testing (i.e., actual concentration, etc.) should be recorded on the permit in the space provided adjacent to the stipulated acceptable entry condition.

(3) *Duratian af testing.* Measurement of values for each atmospheric parameter should be made for at least the minimum response time of the test instrument specified by the manufacturer.

(4) *Testing stratified atmospheres.* When monitoring for entries involving a descent into atmospheres that may be stratified, the atmospheric envelope should be tested a distance of approximately 4 feet (1.22 m) in the direction of travel and to each side. If a sampling probe is used, the entrant's rate of progress should be slowed to accommodate the sampling speed and detector response.

Appendix C to §1910.146—Examples of Permit-required Confined Space Programs

Example 1.

Workplace. Sewer entry.

Potential hazards. The employees could be exposed to the following:

Engulfment.

Presence af toxic gases. Equal to or more than 10 ppm hydrogen sulfide. If the presence of other toxic contaminants is suspected, specific monitoring programs will be developed.

Presence af explasive/flammable gases. Equal to or greater than 10% of the lower flammable limit (LFL).

Oxygen Deficiency. A concentration of oxygen in the atmosphere equal to or less than 19.5% by volume.

A. *Entry Without Permit/Attendant*

Certification. Confined spaces may be entered without the need for a written permit or attendant provided that: 1.) the space is determined *not* to be a permit required confined space, or 2.) the space can be maintained in a safe condition for entry by mechanical ventilation alone. All spaces shall be considered permit-required confined spaces until the pre-entry procedures demonstrate otherwise. Any employee required or permitted to pre-check or enter an enclosed/confined space shall have successfully completed, as a minimum, the training as required by the following sections of these procedures. *A written copy af operating and rescue procedures as required by these procedures shall be at the wark site for the duration of the jab.* The Confined Space Pre-Entry Check List must be completed by the LEAD WORKER before entry into a confined space. This list verifies completion of items listed below. This check list shall be kept at the job site for duration of the job. If circumstances dictate an interruption in the work, the permit space must be re-evaluated and a new check list must be completed.

Control af atmospheric and engulfment hazards.

Pumps and Lines. All pumps and lines which may reasonably cause contaminants to flow into the space shall be disconnected, blinded and locked out, or effectively isolated by other means to prevent development of dangerous air contamination or engulfment. Not all laterals to sewers or storm drains require blocking. However, where experience or knowledge of industrial use indicates there is a reasonable potential for contamination of air or engulfment into an occupied sewer, then all affected laterals shall be blocked. If blocking and/or isolation requires entry into the space the provisions for entry into a permit- required confined space must be implemented.

Surveillance. The surrounding area shall be surveyed to avoid hazards such as drifting vapors from the tanks, piping, or sewers.

Testing. The atmosphere within the space will be tested to determine whether dangerous air contamination and/or oxygen deficiency exists. An alarm only type gas monitor may be used. Testing shall be performed by the LEAD WORKER who has successfully completed the Gas Detector training for the monitor he will use. The minimum parameters to be monitored are oxygen deficiency, LFL, and hydrogen sulfide concentration. A written record of the pre-entry test results shall be made and kept at the work site for the duration of the job. The supervisor will certify in writing, based upon the results of the pre-entry testing, that all hazards have been eliminated. Affected employees shall be able to review the testing results. The most hazardous conditions shall govern when work is being performed in two adjoining, connecting spaces.

Entry Procedures. If there are no non-atmospheric hazards present and if the pre-entry tests show there is no dangerous air contamination and/or oxygen deficiency within the space and there is no reason to believe that any is likely to develop, entry into and work within may proceed. Continuous testing of the atmosphere in the immediate vicinity of the workers within the space shall be accomplished. The workers will immediately leave the permit space when any of the gas monitor alarm set points are reached as defined. Workers will not return to the area until a SUPERVISOR who has completed the gas detector training has used a direct reading gas detector to evaluate the situation and has determined that it is safe to enter.

Rescue. Arrangements for rescue services are not required where there is no attendant. See the rescue portion of section B., below, for instructions regarding rescue planning where an entry permit is required.

B. *Entry Permit Required*

Permits. Confined Space Entry Permit. All spaces shall be considered permit-required confined spaces until the pre-entry procedures demonstrate otherwise. Any employee required or permitted to pre-check or enter a permit-required confined space shall have successfully completed, as a minimum, the training as required by the following sections of these procedures. *A written copy of operating and rescue procedures as required by these procedures shall be at the work site for the duration of the jab.* The Confined Space Entry Permit must be completed before approval can be given to enter a permit-required confined space. This permit verifies completion of items listed below. This permit shall be kept at the job site for the duration of the job. If circumstances cause an interruption in the work or a change in the alarm conditions for which entry was approved, a new Confined Space Entry Permit must be completed.

Contral af atmospheric and engulfment hazards.

Surveillance. The surrounding area shall be surveyed to avoid hazards such as drifting vapors from tanks, piping or sewers.

Testing. The confined space atmosphere shall be tested to determine whether dangerous air contamination and/or oxygen deficiency exists. A direct reading gas monitor shall be used. Testing shall be performed by the SUPERVISOR who has successfully completed the gas detector training for the monitor he will use. The minimum parameters to be monitored are oxygen deficiency, LFL and hydrogen sulfide concentration. A written record of the pre-entry test results shall be made and kept at the work site for the duration of the job. Affected employees shall be able to review the testing results. The most hazardous conditions shall govern when work is being performed in two adjoining, connected spaces.

Space Ventilatian. Mechanical ventilation systems, where applicable, shall be set at 100% outside air. Where possible, open additional manholes to increase air circulation. Use portable blowers to augment natural circulation if needed. After a suitable ventilating period, repeat the testing. Entry may not begin until testing has demonstrated that the hazardous atmosphere has been eliminated.

Entry Procedures. The following procedure shall be observed under any of the following conditions: 1.) Testing demonstrates the existence of dangerous or deficient conditions and additional ventilation cannot reduce concentrations to safe levels; 2.) The atmosphere tests as safe but unsafe

conditions can reasonably be expected to develop; 3.) It is not feasible to provide for ready exit from spaces equipped with automatic fire suppression systems and it is not practical or safe to deactivate such systems; or 4.) An emergency exists and it is not feasible to wait for pre-entry procedures to take effect.

All personnel must be trained. A self contained breathing apparatus shall be worn by any person entering the space. At least one worker shall stand by the outside of the space ready to give assistance in case of emergency. The standby worker shall have a self contained breathing apparatus available for immediate use. There shall be at least one additional worker within sight or call of the standby worker. Continuous powered communications shall be maintained between the worker within the confined space and standby personnel.

If at any time there is any questionable action or non- movement by the worker inside, a verbal check will be made. If there is no response, the worker will be moved immediately. *Exception:* If the worker is disabled due to falling or impact, he/she shall not be removed from the confined space unless there is immediate danger to his/her life. Local fire department rescue personnel shall be notified immediately. The standby worker may only enter the confined space in case of an emergency (wearing the self contained breathing apparatus) and only after being relieved by another worker. Safety belt or harness with attached lifeline shall be used by all workers entering the space with the free end of the line secured outside the entry opening. The standby worker shall attempt to remove a disabled worker via his lifeline before entering the space.

When practical, these spaces shall be entered through side openings—those within 3 1/2 feet (1.07 m) of the bottom. When entry must be through a top opening, the safety belt shall be of the harness type that suspends a person upright and a hoisting device or similar apparatus shall be available for lifting workers out of the space.

In any situation where their use may endanger the worker, use of a hoisting device or safety belt and attached lifeline may be discontinued.

When dangerous air contamination is attributable to flammable and/or explosive substances, lighting and electrical equipment shall be Class 1, Division 1 rated per National Electrical Code and no ignition sources shall be introduced into the area.

Continuous gas monitoring shall be performed during all confined space operations. If alarm conditions change adversely, entry personnel shall exit the confined space and a new confined space permit issued.

Rescue. Call the fire department services for rescue. Where immediate hazards to injured personnel are present, workers at the site shall implement emergency procedures to fit the situation.

Example 2.

Workplace. Meat and poultry rendering plants.

Cookers and dryers are either batch or continuous in their operation. Multiple batch cookers are operated in parallel. When one unit of a multiple set is shut down for repairs, means are available to isolate that unit from the others which remain in operation.

Cookers and dryers are horizontal, cylindrical vessels equipped with a center, rotating shaft and agitator paddles or discs. If the inner shell is jacketed, it is usually heated with steam at pressures up to 150 psig (1034.25 kPa). The rotating shaft assembly of the continuous cooker or dryer is also steam heated.

Potential Hazards. The recognized hazards associated with cookers and dryers are the risk that employees could be:

1. Struck or caught by rotating agitator;
2. Engulfed in raw material or hot, recycled fat;
3. Burned by steam from leaks into the cooker/dryer steam jacket or the condenser duct system if steam valves are not properly closed and locked out;
4. Burned by contact with hot metal surfaces, such as the agitator shaft assembly, or inner shell of the cooker/dryer;
5. Heat stress caused by warm atmosphere inside cooker/dryer;
6. Slipping and falling on grease in the cooker/dryer;
7. Electrically shocked by faulty equipment taken into the cooker/dryer;
8. Burned or overcome by fire or products of combustion; or
9. Overcome by fumes generated by welding or cutting done on grease covered surfaces.

Permits. The supervisor in this case is always present at the cooker/dryer or other permit entry confined space when entry is made. The supervisor must follow the pre-entry isolation procedures described in the entry permit in preparing for entry, and ensure that the protective clothing, ventilating equipment and any other equipment required by the permit are at the entry site.

Control of hazards. Mechanical. Lock out main power switch to agitator motor at main power panel. Affix tag to the lock to inform others that a permit entry confined space entry is in progress.

Engulfment. Close all valves in the raw material blow line. Secure each valve in its closed position using chain and lock. Attach a tag to the valve and chain warning that a permit entry confined space entry is in progress. The same procedure shall be used for securing the fat recycle valve.

Burns and heat stress. Close steam supply valves to jacket and secure with chains and tags. Insert solid blank at flange in cooker vent line to condenser manifold duct system. Vent cooker/dryer by opening access door at discharge end and top center door to allow natural ventilation throughout the entry. If faster cooling is needed, use an portable ventilation fan to increase ventilation. Cooling water may be circulated through the jacket to reduce both outer and inner surface temperatures of cooker/dryers faster. Check air and inner surface temperatures in cooker/dryer to assure they are within acceptable limits before entering, or use proper protective clothing.

Fire and fume hazards. Careful site preparation, such as cleaning the area within 4 inches (10.16 cm) of all welding or torch cutting operations, and proper ventilation are the preferred controls. All welding and cutting operations shall be done in accordance with the requirements of 29 CFR Part 1910, Subpart Q, OSHA's welding standard. Proper ventilation may be achieved by local exhaust ventilation, or the use of portable ventilation fans, or a combination of the two practices.

Electrical shock. Electrical equipment used in cooker/dryers shall be in serviceable condition.

Slips and falls. Remove residual grease before entering cooker/dryer.

Attendant. The supervisor shall be the attendant for employees entering cooker/dryers.

Permit. The permit shall specify how isolation shall be done and any other preparations needed before making entry. This is especially important in parallel arrangements of cooker/dryers so that the entire operation need not be shut down to allow safe entry into one unit.

Rescue. When necessary, the attendant shall call the fire department as previously arranged.

Example 3.

Workplace. Workplaces where tank cars, trucks, and trailers, dry bulk tanks and trailers, railroad tank cars, and similar portable tanks are fabricated or serviced.

A. *During fabrication.* These tanks and dry-bulk carriers are entered repeatedly throughout the fabrication process. These products are not configured identically, but the manufacturing processes by which they are made are very similar.

Sources of hazards. In addition to the mechanical hazards arising from the risks that an entrant would be injured due to contact with components of the tank or the tools being used, there is also the risk that a worker could be injured by breathing fumes from welding materials or mists or vapors from materials used to coat the tank interior. In addition, many of these vapors and mists are flammable, so the failure to properly ventilate a tank could lead to a fire or explosion.

Control of hazards.

Welding. Local exhaust ventilation shall be used to remove welding fumes once the tank or carrier is completed to the point that workers may enter and exit only through a manhole. (Follow the requirements of 29 CFR 1910, Subpart Q, OSHA's welding standard, at all times.) Welding gas tanks may never be brought into a tank or carrier that is a permit entry confined space.

Application of interior coatings/linings. Atmospheric hazards shall be controlled by forced air ventilation sufficient to keep the atmospheric concentration of flammable materials below 10% of the lower flammable limit (LFL) (or lower explosive limit (LEL), whichever term is used locally). The appropriate respirators are provided and shall be used in addition to providing forced ventilation if the forced ventilation does not maintain acceptable respiratory conditions.

Permits. Because of the repetitive nature of the entries in these operations, an "Area

Entry Permit" will be issued for a 1 month period to cover those production areas where tanks are fabricated to the point that entry and exit are made using manholes.

Authorization. Only the area supervisor may authorize an employee to enter a tank within the permit area. The area supervisor must determine that conditions in the tank trailer, dry bulk trailer or truck, etc. meet permit requirements before authorizing entry.

Attendant. The area supervisor shall designate an employee to maintain communication by employer specified means with employees working in tanks to ensure their safety. The attendant may not enter any permit entry confined space to rescue an entrant or for any other reason, unless authorized by the rescue procedure and, and even then, only after calling the rescue team and being relieved by as attendant by another worker.

Communications and observation. Communications between attendant and entrant(s) shall be maintained throughout entry. Methods of communication that may be specified by the permit include voice, voice powered radio, tapping or rapping codes on tank walls, signalling tugs on a rope, and the attendant's observation that work activities such as chipping, grinding, welding, spraying, etc., which require deliberate operator control continue normally. These activities often generate so much noise that the necessary hearing protection makes communication by voice difficult.

Rescue procedures. Acceptable rescue procedures include entry by a team of employee-rescuers, use of public emergency services, and procedures for breaching the tank. The area permit specifies which procedures are available, but the area supervisor makes the final decision based on circumstances. (Certain injuries may make it necessary to breach the tank to remove a person rather than risk additional injury by removal through an existing manhole. However, the supervisor must ensure that no breaching procedure used for rescue would violate terms of the entry permit. For instance, if the tank must be breached by cutting with a torch, the tank surfaces to be cut must be free of volatile or combustible coatings within 4 inches (10.16 cm) of the cutting line and the atmosphere within the tank must be below the LFL.

Retrieval line and harnesses. The retrieval lines and harnesses generally required under this standard are usually impractical for use in tanks because the internal configuration of the tanks and their interior baffles and other structures would prevent rescuers from hauling out injured entrants. However, unless the rescue procedure calls for breaching the tank for rescue, the rescue team shall be trained in the use of retrieval lines and harnesses for removing injured employees through manholes.

B. *Repair or service of "used" tanks and bulk trailers.*

Sources of hazards. In addition to facing the potential hazards encountered in fabrication or manufacturing, tanks or trailers which have been in service may contain residues of dangerous materials, whether left over from the transportation of hazardous cargoes or generated by chemical or bacterial action on residues of non-hazardous cargoes.

Control of atmospheric hazards. A "used" tank shall be brought into areas where tank entry is authorized only after the tank has been emptied, cleansed (without employee entry) of any residues, and purged of any potential atmospheric hazards.

Welding. In addition to tank cleaning for control of atmospheric hazards, coating and surface materials shall be removed 4 inches (10.16 cm) or more from any surface area where welding or other torch work will be done and care taken that the atmosphere within the tank remains well below the LFL. (Follow the requirements of 29 CFR 1910, Subpart Q, OSHA's welding standard, at all times.)

Permits. An entry permit valid for up to 1 year shall be issued prior to authorization of entry into used tank trailers, dry bulk trailers or trucks. In addition to the pre-entry cleaning requirement, this permit shall require the employee safeguards specified for new tank fabrication or construction permit areas.

Authorization. Only the area supervisor may authorize an employee to enter a tank trailer, dry bulk trailer or truck within the permit area. The area supervisor must determine that the entry permit requirements have been met before authorizing entry.

Appendix D to §1910.146—Sample Permits

Appendix D - 1A Sewer Entry Permit

Confined Space Pre-Entry Check List

See Safety Procedure.
A confined space either is entered through an opening other than a door (such as manhole or side port) or requires the use of a ladder or rungs to reach the working level and test results are satisfactory. This check list must be filled out whenever the job site meets this criteria.

		Yes	No
1.	Did your survey of the surrounding area show it to be free of hazards such as drifting vapors from tanks, piping or sewers?	( )	( )
2.	Does your knowledge of industrial or other discharges indicate this area is likely to remain free of dangerous air contaminants while occupied?	( )	( )
3.	Are you certified in operation of the gas monitor to be used?	( )	( )
4.	Has a gas monitor functional test (Bump Test) been performed this shift on the gas monitor to be used?	( )	( )
5.	Did you test the atmosphere of the confined space prior to entry?	( )	( )
6.	Did the atmosphere check as acceptable (no alarms given)?	( )	( )
7.	Will the atmosphere be continuously monitored while the space is occupied?	( )	( )

Contact County Centrex for personnel rescue by local fire department in the event of an emergency. If on-site at the Regional Treatment Plant, contact the Plant Control Center (PCC).

Notice: If any of the above questions are answered "no" do not enter. Contact your immediate supervisor.

Job Location_____

LEAD MAN signature_____Date_____

Appendix D - 1B

Confined Space Entry Permit (Pre-Entry/Entry Chec

Date and Time

Issued:_____

Job site:_____

Equipment to be worked on:_____

Pre-Entry (See Safety Procedure)

1. Atmospheric Checks: Time _____
   Oxygen _____%
   Explosive _____% L.F.
   Toxic _____PPM

	N/A	Yes	No
2. Source isolation (No Entry): Pumps or lines blinded, disconnected, or blocked	( )	( )	( )
3. Ventilation Modification:	N/A	Yes	No
Mechanical	( )	( )	( )
Natural Ventilation only	( )	( )	( )

4. Atmospheric check after isolation and Ventilation:

Oxygen_____%	>	19.5	%
Explosive_____% L.F.L.	<	10	%
Toxic_____PPM	<	10	PPM

Time_____

If conditions are in compliance with the a requirements and there is no reason to bel conditions may change adversely, then proceed to Permit Space Pre-Entry Check List. Complete and with this permit. If conditions are not in compli with the above requirements or there is reason believe that conditions may change adversely, pro to the Entry Check-List portion of this permit.

We have reviewed the work authorized by this instructions and safety procedures have been rece squares are marked in the "No" column. This permit

Permit and Check List Prepared By: (Supervisor)___

Approved By: (Unit Supervisor)_____

Reviewed By (Confined Space Operations Personnel)

This permit to be kept at job site. Return job si

Copies: White Original (Safety Office) Yellow (U

Check List)

Date and Time Expires:_____

Job Supervisor_____

Work to be performed: _____

Entry (See Safety Procedure)

1. Entry, standby, and back up persons: Successfully completed required training?		Yes	No
Is it current?		( )	( )
2. Equipment:	N/A	Yes	No
Direct reading gas monitor - tested	( )	( )	( )
Safety harnesses and lifelines for entry and standby persons	( )	( )	( )
Hoisting equipment	( )	( )	( )
Powered communications	( )	( )	( )
SCBA's for entry and standby persons	( )	( )	( )
Protective Clothing	( )	( )	( )
All electric equipment listed Class I, Division I, Group D and Non-sparking tools	( )	( )	( )

3. Rescue Procedure:

_____

_____

_____

_____

_____

_____

L.F.L.
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)
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)
PPM H_2S
e above
believe
to the
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mpliance
ason to
proceed
t.

is permit and the information contained here-in. Written received and are understood. Entry cannot be approved if any mit is not valid unless all appropriate items are completed.

)_____

_____

nel):(printed name & signature)

_____ _____

b site copy to Safety Office following job completion.
w (Unit Supervisor) Hard(Job site)

EN

_____CONFINED SPAC

PERMIT VALID FOR 8 HOURS ONLY. ALL COPIES OF PERMIT

SITE LOCATION and DESCRIPTION _____

PURPOSE OF ENTRY _____

SUPERVISOR(S) in charge of crews Type of Crew Pho

_____

*** BOLD DENOTES MINIMUM REQUIREMENTS TO BE COMPLETE**

REQUIREMENTS COMPLETED	DATE	TIME	REQUIREMENTS
Lock Out/De-energize/Try-out	____	____	**Full Body Ha**
Line(s) Broken-Capped-Blanked	____	____	**Emergency Eq**
Purge-Flush and Vent	____	____	**Lifelines**
Ventilation	____	____	Fire Extingu
Secure Area (Post and Flag)	____	____	Lighting (Ex
Breathing Apparatus	____	____	Protective C
Resuscitator - Inhalator	____	____	Respirator(s
Standby Safety Personnel	____	____	Burning and

Note: Items that do not apply enter N/A in the bla

** RECORD CONTINUOUS M

CONTINUOUS MONITORING**	Permissible Entry Level			
TEST(S) TO BE TAKEN				
PERCENT OF OXYGEN	**19.5% to 23.5%**	____	____	_
LOWER FLAMMABLE LIMIT	**Under 10%**	____	____	_
CARBON MONOXIDE	**+35 PPM**	____	____	_
Aromatic Hydrocarbon	+ 1 PPM * 5PPM	____	____	_
Hydrogen Cyanide	(Skin) * 4PPM	____	____	_
Hydrogen Sulfide	+10 PPM *15PPM	____	____	_
Sulfur Dioxide	+ 2 PPM * 5PPM	____	____	_
Ammonia	*35PPM	____	____	_

* Short-term exposure limit:Employee can work in th

\+ 8 hr. Time Weighted Avg.:Employee can work in area

REMARKS:_____

GAS TESTER NAME & CHECK # INSTRUMENT(S) USED MODEL

_____ _____ _____

_____ _____ _____

SAFETY STANDBY PERSON IS REQU

SAFETY STANDBY PERSON(S) CHECK # NAME OF SAFETY ST

_____ _____ _____

_____ _____ _____

SUPERVISOR AUTHORIZING ENTRY

ALL ABOVE CONDITIONS SATISFIED_____

DEPARTMENT_____Phone_____

ENTRY PERMIT

PACE _____HAZARDOUS AREA
RMIT WILL REMAIN AT JOB SITE UNTIL JOB IS COMPLETED

_____

_____

Phone #

_____

ETED AND REVIEWED PRIOR TO ENTRY*

ENTS COMPLETED	DATE	TIME
y Harness w/"D" ring	____	____
y Escape Retrieval Equip	____	____
s	____	____
inguishers	____	____
(Explosive Proof)	____	____
ve Clothing	____	____
or(s) (Air Purifying)	____	____
and Welding Permit	____	____

blank.

US MONITORING RESULTS EVERY 2 HOURS

_____

_	____	____	____	____	____	____
_	____	____	____	____	____	____
_	____	____	____	____	____	____
_	____	____	____	____	____	____
_	____	____	____	____	____	____
_	____	____	____	____	____	____
_	____	____	____	____	____	____
_	____	____	____	____	____	____

n the area up to 15 minutes.
rea 8 hrs (longer with appropriate respiratory protection).

_____

DEL &/OR TYPE SERIAL &/OR UNIT #

_____ _____

REQUIRED FOR ALL CONFINED SPACE WORK

STANDBY PERSON(S)	CHECK #
_____	_____
_____	_____

AMBULANCE 2800 FIRE 2900
_ Safety 4901 Gas Coordinator 4529/5387
__ Original to Department Pink Copy to Safety

Appendix E to §1910.146—Sewer System Entry

Sewer entry differs in three vital respects from other permit entries; first, there rarely exists any way to completely isolate the space (a section of a continuous system) to be entered; second, because isolation is not complete, the atmosphere may suddenly and unpredictably become lethally hazardous (toxic, flammable or explosive) from causes beyond the control of the entrant or employer, and third, experienced sewer workers are especially knowledgeable in entry and work in their permit spaces because of their frequent entries. Unlike other employments where permit space entry is a rare and exceptional event, sewer workers' usual work environment is a permit space.

(1) *Adherence to procedure.* The employer should designate as entrants only employees who are thoroughly trained in the employer's sewer entry procedures and who demonstrate that they follow these entry procedures exactly as prescribed when performing sewer entries.

(2) *Atmospheric monitoring.* Entrants should be trained in the use of, and be equipped with, atmospheric monitoring equipment which sounds an audible alarm, in addition to its visual readout, whenever one of the following conditions is encountered: oxygen concentration less than 19.5 percent; flammable gas or vapor at 10 percent or more of the lower flammable limit (LFL); or hydrogen sulfide or carbon monoxide at or above their PEL (10 ppm or 50 ppm, respectively); or, if a broad range sensor device is used, at 100 ppm as characterized by its response to toluene. Normally, the oxygen sensor/broad range sensor instrument is best suited for sewer entry. However, substance specific devices should be used whenever actual contaminants have been identified. The instrument should be carried and used by the entrant in sewer line work to monitor the atmosphere in the entrant's environment, and in advance of the entrants' direction of movement, to warn the entrant of any deterioration in atmospheric conditions. Where several entrants are working together in the same immediate location, one instrument, used by the lead entrant, is acceptable.

(3) *Surge flow and flooding.* Sewer crews should develop and maintain liaison, to the extent possible, with the local weather bureau and fire and emergency services in their area so that sewer work may be delayed or interrupted and entrants withdrawn whenever sewer lines might be suddenly flooded by rain or fire suppression activities, or whenever flammable or other hazardous materials are released into sewers during emergencies by industrial or transportation accidents.

(4) *Special Equipment.* Entry into large bore sewers may require the use of special equipment. Such equipment might include such items as atmosphere monitoring devices with automatic audible alarms, escape self-contained breathing apparatus (ESCBA) with at least 10 minute air supply (or other NIOSH approved self-rescuer), and waterproof flashlights, and may also include boats and rafts, radios and rope stand-offs for pulling around bends and corners as needed.

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BILLING CODE 4510–26–

federal register

Thursday
January 14, 1993

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 29

Airworthiness Standards; Turboshaft Engine Rotor Burst Protection; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 29

[Docket No. 26037; Notice No. 89-29A]

RIN 2120-AB91

Airworthiness Standards; Turboshaft Engine Rotor Burst Protection

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: This notice reopens the comment period for Notice of Proposed Rulemaking (NPRM) No. 89-29A. In that notice, the FAA proposed to require that manufacturers consider the safety implications of a failure of an engine rotor disc and to implement practical design precautions to minimize this hazard to rotorcraft. This reopening is needed because, after the original comment period closed, representatives of the Aerospace Industries Association (AIA) and the FAA met to review the AIA's comments originally made during the public comment period concerning the issues of engine rotor containment and the use of advanced composite material. This reopening of the comment period is to afford all interested persons the same opportunity as was afforded the AIA to comment on these issues. Comments are invited only on these issues.

DATES: Comments on the issues of engine rotor containment and the use of advanced composite materials must be received on or before March 15, 1993.

ADDRESSES: Comments on the issues of engine rotor containment and the use of advanced composites material should be mailed in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Docket No. 26037, 800 Independence Avenue, SW., Washington, DC 20591, or delivered in triplicate to: room 915G, 800 Independence Avenue, SW., Washington, DC 20591. Comments must be marked Docket No. 26037.

Comments may be inspected in room 915G between the hours of 8:30 a.m. and 5 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Mathias, FAA, Regulations Group (ASW-111), Rotorcraft Directorate, Aircraft Certification Service, Fort Worth, Texas 76193-0111, telephone number (817) 624-5123.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this notice are also invited. Substantive comments should be accompanied by cost estimates. Commenters should identify the regulatory docket or notice number and submit comments in triplicate to the Rules Docket address specified above. All comments received on or before the closing date for comments will be considered by the FAA before taking action on the proposed rulemaking. The proposals contained in this notice may be changed in light of the comments received.

All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Commenters wishing to have the FAA acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 26037." The postcard will be date/time stamped and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of Public Affairs, Attention: Public Inquiry Center, APA-430, 800 Independence Ave., SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify NPRM 89-29.

Persons interested in being placed on the mailing list for future NPRM's should request a copy of Advisory Circular (AC) No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

On October 10, 1989, the FAA issued Notice No. 89-29 (54 FR 42716, October 17, 1989), which proposed that design precautions be taken to minimize the hazards to rotorcraft in the event of an engine rotor failure.

To increase the safety margin when there is an engine rotor failure, changes are proposed to §§ 29.901 and 29.903. These changes would require that design precautions be taken to minimize the hazards to transport category rotorcraft in the event of an engine rotor failure. The intended design precautions may include items such as separation or duplication of critical components, care in designing engine alignment, or benign component locations. Containment provisions for one or more stages of the engine are not specifically required by this proposal. Any one or more of the previously mentioned design precautions would be effective in improving the level of safety of the rotorcraft. When evaluating an applicant's proposed method of compliance, the FAA would consider the available technology and the costs required to minimize the hazards from an engine rotor failure. The guidance contained in Advisory Circular 20-128 is intended to apply to § 29.903 in the same way that it currently applies to §§ 23.903 and 25.903 for airplanes.

The FAA recognizes that a rotorcraft design may differ significantly from that of an airplane, particularly regarding an engine location and its proximity to other engines, systems, and components. Engine rotor containment features have not been found to be necessary in airplane programs. Likewise, the FAA does not believe that containment features would be required in rotorcraft in order to "minimize the hazards * * *" in the event of a rotor failure.

Section 29.901 Proposal

The FAA is proposing to change the current FAR to require that manufacturers consider the safety implications of a failure of engine rotor discs and practical design precautions to minimize this hazard to the rotorcraft. Since this proposed regulatory wording would be inconsistent with current paragraph (c)(2) which states, "The failure of engine rotor discs need not be considered," paragraph (c)(2) would be removed.

The revision to paragraph (c), which was proposed by Notice No. 89-29, is repeated here for reference purposes.

(c) For each powerplant and auxiliary power unit installation, it must be established that no single failure or malfunction or probable combination of failures will jeopardize the safe operation of the rotorcraft except that the failure of structural elements need not be considered if the probability of any such failure is extremely remote.

Section 29.903 Proposal

For turbine engine installations, the FAA is proposing to revise paragraph (f) to state explicitly that design

precautions must be taken to minimize the hazard to the rotorcraft in the event of an engine rotor failure.

The revision to paragraph (f) which was proposed by Notice No. 89–29 is repeated here for reference purposes.

(f) *Turbine engine installation.* For turbine engine installations—

(1) Design precautions must be taken to minimize the hazards to the rotorcraft in the event of an engine rotor failure; and

(2) The powerplant systems associated with engine control devices, systems, and instrumentation must be designed to give reasonable assurance that those engine operating limitations that adversely affect engine rotor structural integrity will not be exceeded in service.

Benefits-Cost Evaluation Update

The economic impact evaluation for Notice No. 89–29 compares the benefits and costs of the proposed regulation on a per-rotorcraft basis with the rotorcraft varying in size from 8 to 20 seats. Therefore, the evaluation reduces dependence on forecasts of the size and the number of new transport rotorcraft produced.

For purposes of this evaluation, it is assumed that a Category A or B transport rotorcraft with two engines will be certificated under this proposed rule. Even though some rotorcraft will minimize the hazards from engine rotor failures by design precautions that may add little additional weight, this analysis assumes the addition of design features such as the redundancy of critical component and/or duplication of cables or tubing.

Cost of Compliance

The proposed requirement could be satisfied by minimizing the hazards from an engine rotor failure by design features that add little weight, such as relocation of critical components. These types of design features assume a weight increase of 6 pounds per engine. The one-time development cost to a manufacturer of transport rotorcraft for necessary design features is estimated to be $330 per rotorcraft produced, and the estimated manufacturing cost is $480. The increase in cost of manufacturing twin-engine rotorcraft certificated under these proposed requirements would be $480 for each engine plus $330 or $1,290.

Rotorcraft operators would also experience an increase in the operating cost of transport rotorcraft as a result of the additional weight. The estimated annual cost per pound of additional weight is $37.13. Therefore, the 12-pound weight of these design features is estimated to increase the operating cost for a twin-engine transport rotorcraft by $445.56 annually. The present value of the increase in the total cost of purchasing and operating twin-engine transport rotorcraft certificated under this proposed rule, over 15 years, would be $4,254. For a more detailed explanation of the estimation of these costs, see the regulatory evaluation included in the docket.

Comments and Meetings

Several comments have been received for Notice No. 89–29. Three commenters fully supported the entire proposal; and three commenters requested that the notice be withdrawn, in large part, because of the impracticability of containing rotor failures for one or more stages of a complete engine through extensive use of advanced composites or rotorcraft airframe mounted containment rings.

The commenters were critical of the proposed change for a number of reasons. The AIA stated, "Notice 89–29 implies very strongly that 'minimize' means to eliminate the hazard through the use of rotor containment devices, integral with, or separate from the engine." The European Joint Aviation Authorities commented that FAR parts 23 and 25 require that the hazards be minimized only for airplanes and do not refer to "engine rotor burst protection." Pratt & Whitney Canada, Inc., commented that research has never produced a composite disc containment device at an acceptable size and cost which can tolerate turbine zone temperatures even external to the engine.

The comment period for Notice No. 89–29 originally closed April 16, 1990, and was extended to October 16, 1990. In February 1991, the AIA requested and was subsequently granted a meeting to discuss its comments on the implication of Notice No. 89–29 relative to engine rotor containment and the use of advanced composite materials. Representatives of the FAA met with representatives of AIA on February 20, 1991; March 1, 1991; and June 20, 1991. During these meetings, AIA representatives opposed certain requirements that they inferred from reading the preamble to the notice. A record summary of these meetings has been placed in Docket 26037 and is available for interested parties to review. It is apparent that AIA members have concluded that mandatory engine rotor containment with the use of advanced composite materials is being proposed.

It was not the intent of the proposal to require containment or the use of advanced composite materials. Since this apparently was unclear to the AIA and many other commenters, the FAA is reopening the comment period with further explanation of the proposed amendments.

Clarification

It is not correct to assume, as some commenters have, either that engine or airframe containment of rotor burst fragments or the use of advanced composites is needed to satisfy the proposed requirement. Rather, the use of airframe design features that minimize this hazard is all that would be required. These features could include separation and duplication of critical components, special engine alignment or placement, or benign location of critical components.

Reopening of Comment Period

Department of Transportation (DOT) policy encourages full public participation in the development of rules and provides all members of the public an equal opportunity to present their views. DOT policy also provides that the general public should be afforded adequate knowledge of contacts made with individual members of the public, especially after the close of a comment period. Since the AIA was afforded the opportunity to restate its previous formal comments to representatives of the FAA after the close of the public comment period, the FAA has determined that it is appropriate to reopen the comment period for Notice 89–29. This will afford all interested persons an equal opportunity to comment on the interpretation of "design precautions to minimize the hazards to the rotorcraft in the event of an engine rotor failure" as it relates to rotor containment and the use of advanced composite materials. Accordingly, the comment period for Notice 89–29 is reopened for 60 days and will close March 15, 1993.

Conclusion

This document reopens the comment period on a notice of proposed rulemaking. Therefore, the FAA has determined that this document, like Notice 89–29, is not major under Executive Order 12291 and is considered nonsignificant under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). In addition, it is certified that reopening the docket for Notice 89–29 will not have a significant economic impact, positive or negative, on a substantial number of small entities. An initial regulatory evaluation of the proposal, including a Regulatory Flexibility Determination and Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting

the person identified under **FOR FURTHER INFORMATION CONTACT.**

List of Subjects in 14 CFR Part 29

Aircraft, Air transportation, Aviation safety, Rotorcraft, Safety.

Issued in Washington, DC, on January 8, 1993.

Henry A. Armstrong,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 93–884 Filed 1–13–93; 8:45 am]

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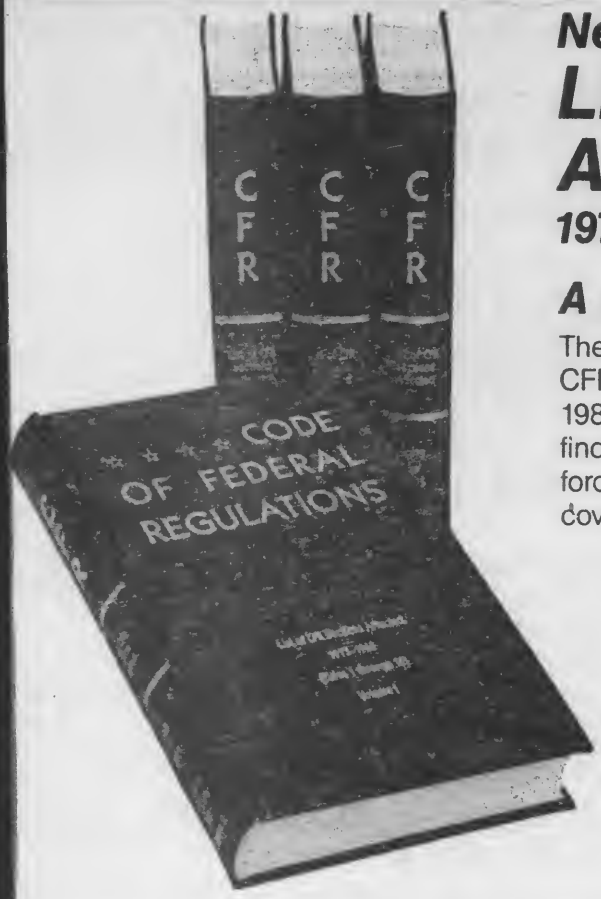

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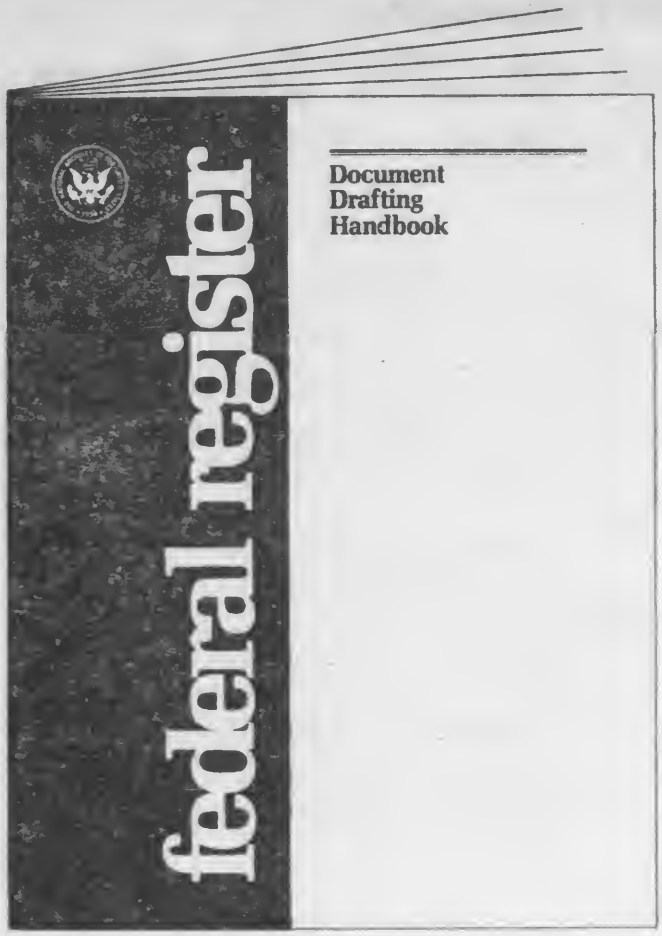

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