12–3–98
Vol. 63 No. 232
Pages 66705–66976

Federal Register

Thursday
December 3, 1998

Now Available Online via

GPO Access

Free online access to the official editions of the *Federal Register, the Code of Federal Regulations* and other Federal Register publications is available on *GPO Access*, a service of the U.S. Government Printing Office at:

http://www.access.gpo.gov/nara/index.html

For additional information on ***GPO Access*** products, services and access methods, see page II or contact the *GPO Access* User Support Team via:

★ Phone: toll-free: 1-888-293-6498

★ Email: gpoaccess@gpo.gov

Attention: Federal Agencies

Plain Language Tools Are Now Available

The Office of the Federal Register offers Plain Language Tools on its Website to help you comply with the President's Memorandum of June 1, 1998—Plain Language in Government Writing (63 FR 31883, June 10, 1998). Our address is: http://www.nara.gov/fedreg

For more in-depth guidance on the elements of plain language, read ''Writing User-Friendly Documents'' on the National Partnership for Reinventing Government (NPR) Website at: http://www.plainlanguage.gov

The **FEDERAL REGISTER** is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see http://www.nara.gov/fedreg.

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and it includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

GPO Access users can choose to retrieve online **Federal Register** documents as TEXT (ASCII text, graphics omitted), PDF (Adobe Portable Document Format, including full text and all graphics), or SUMMARY (abbreviated text) files. Users should carefully check retrieved material to ensure that documents were properly downloaded.

On the World Wide Web, connect to the **Federal Register** at http://www.access.gpo.gov/nara. Those without World Wide Web access can also connect with a local WAIS client, by Telnet to swais.access.gpo.gov, or by dialing (202) 512-1661 with a computer and modem. When using Telnet or modem, type swais, then log in as guest with no password.

For more information about GPO Access, contact the GPO Access User Support Team by E-mail at gpoaccess@gpo.gov; by fax at (202) 512–1262; or call (202) 512–1530 or 1–888–293–6498 (toll free) between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $555, or $607 for a combined **Federal Register,** Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the Federal Register Index and LSA is $220. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $8.00 for each issue, or $8.00 for each group of pages as actually bound; or $1.50 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 63 FR 12345.

Printed on recycled paper.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**512–1806**
General online information	**202–512–1530; 1–888–293–6498**

Single copies/back copies:

Paper or fiche	**512–1800**
Assistance with public single copies	**512–1803**

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	**523–5243**
Assistance with Federal agency subscriptions	**523–5243**

NOW AVAILABLE ONLINE

The October 1998 Office of the Federal Register Document Drafting Handbook

Free, easy online access to the newly revised October 1998 Office of the Federal Register Document Drafting Handbook (DDH) is now available at:

http://www.nara.gov/fedreg/draftres.html

This handbook helps Federal agencies to prepare documents for publication in the **Federal Register.**

For additional information on access, contact the Office of the Federal Register's Technical Support Staff.

Phone: 202–523–3447

E-mail: info@fedreg.nara.gov

Contents

Federal Register

Vol. 63, No. 232

Thursday, December 3, 1998

Separate Parts In This Issue

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register
Vol. 63, No. 232
Thursday, December 3, 1998

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 213 and 335

RIN 3206–AI51

Excepted Service; Promotion and Internal Placement

AGENCY: Office of Personnel Management.

ACTION: Interim regulations with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations to implement the staffing provisions of S. 1021, The Veterans Employment Opportunities Act of 1998. This Act allows preference eligibles or veterans who have been honorably discharged from the armed forces after 3 or more years of active service to compete for vacant positions under merit promotion procedures when an agency is accepting applications from individuals outside its own workforce.

DATES: Effective Date: December 3, 1998. Comments: Comments are due January 4, 1999.

ADDRESSES: Send or deliver written comments to Mary Lou Lindholm, Associate Director for Employment, Office of Personnel Management, Room 6500, 1900 E Street, NW., Washington, DC 20415–9000.

FOR FURTHER INFORMATION CONTACT: Karen Jacobs or Sylvia Cole on (202) 606–0830, TDD (202) 606–0023, or FAX (202) 606–2329.

SUPPLEMENTARY INFORMATION: On October 31, 1998, the President signed into law S. 1021, The Veterans Employment Opportunities Act of 1998. Public Law 105–339, which will be codified in section 3304 of title 5, United States Code, allows preference eligibles or veterans who have been honorably discharged from the armed forces after 3 or more years of active service to compete for vacant positions under merit promotion procedures, if the hiring agency is accepting applications from individuals outside its own workforce. The law also requires OPM to create a special appointing authority to permit the appointment of these individuals if they are selected. Because the law did not specifically place these individuals in the competitive service, we are creating a Schedule B, excepted appointing authority under 5 CFR part 213 to permit their placement in agencies. A Schedule B appointing authority, under which positions are subject to basic qualification standards established by OPM, is appropriate in view of the language of the public law. Therefore, agencies should use Schedule B, section 213.3202 (n) and cite Legal Authority Code ''YKB/Sch B 213.3202(n)'' when making appointments. The new law does not provide for noncompetitive conversion into the competitive service.

Waiver of Delay in Effective Date

Pursuant to 5 U.S.C. 553(d)(3), I find that good cause exists to waive the delay in effective date and make these regulations effective in less than 30 days. The delay in effective date is being waived because the staffing provisions of this law became effective upon enactment, *October 31, 1998.*

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities (including small businesses, small organizational units, and small governmental jurisdictions) because the regulations apply only to appointment procedures for certain employees in Federal agencies.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 5 CFR Parts 213 and 335

Government employees, Reporting and record keeping requirements.

U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, OPM is amending parts 213 and 335 of title 5, Code of Federal Regulations, as follows:

PART 213—EXCEPTED SERVICE

1. The authority citation for part 213 is revised to read as follows:

Authority: 5 U.S.C. 3301 and 3302, E.O. 10577, 3 CFR 1954–1958 Comp., p. 218; § 213.101 also issued under 5 U.S.C. 2103; § 213.3102 also issued under 5 U.S.C. 3301, 3302, 3307, 8337(h) and 8456; E.O. 12364, 47 FR 22931, 3 CFR 1982 Comp., p. 185; 38 U.S.C. 4301 et. seq.; and Pub. L. *105–339*.

2. In § 213.3202, paragraph (n) is added to read as follows:

§ 213.3202 Entire executive civil service.

* * * * *

(n) Positions when filled by preference eligibles or veterans who have been separated from the armed forces under honorable conditions after 3 years or more of continuous active service and who, in accordance with 5 U.S.C. 3304(f) (Pub. L. *105–339*), applied for these positions under merit promotion procedures when applications were being accepted by the agency from individuals outside its own workforce. These veterans may be promoted, demoted, or reassigned, as appropriate, to other positions within the agency but would remain employed under this excepted authority as long as there is no break in service.

PART 335—PROMOTION AND INTERNAL PLACEMENT

3. The authority citation for part 335 is revised to read as follows:

Authority: 5 U.S.C. 3301, 3302, 3330; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218; Pub. L. *105–339*.

4. Section 335.106 is added to subpart A to read as follows:

§ 335.106 Special selection procedures for certain veterans under merit promotion.

Preference eligibles or veterans who have been separated under honorable conditions from the armed forces after 3 or more years of continuous active service may compete for vacancies under merit promotion when an agency accepts applications from individuals outside its own workforce.

[FR Doc. 98–32082 Filed 12–2–98; 8:45 am]

BILLING CODE 6325–01–P

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

RIN 0563–AB69

Common Crop Insurance Regulations; Basic Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the Common Crop Insurance Policy; Basic Provisions for the purpose of: Clarifying certain provisions; adding definitions and provisions to allow enterprise and whole farm units; allowing the use of a written agreement to insure acreage that has not been planted and harvested in one of the three previous crop years; removing the requirement that a minimum amount of prevented planting acreage be contiguous before a prevented planting payment can be made; and removing the requirement that the Palmer Drought Severity Index be used to determine eligibility for a prevented planting payment in certain circumstances. The intended effect of this action is to create a policy that best meets the needs of the insured.

EFFECTIVE DATE: November 30, 1998.

FOR FURTHER INFORMATION CONTACT: Janice Nuckolls, Insurance Management Specialist, Research and Development, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget (OMB) has determined this rule to be significant and, therefore, it has been reviewed by OMB.

Cost-Benefit Analysis

A Cost-Benefit Analysis has been completed and is available to interested persons at the address listed above. In summary, the analysis finds that of all the changes in the final rule, eliminating the contiguous acreage requirement to determine eligible prevented planting acreage will have the most impact. The impact is greatest in certain regions of the Northern Plains, but the effect on overall crop insurance payments is expected to be small. Additional indemnities resulting from this change are estimated to average $500,000 per year. Premium rate adjustments have been made to cover the additional indemnities. Additional costs to the Government will be about $250,000 for premium subsidies, $110,000 in administrative subsidies, and $38,000 in underwriting losses. Other provisions of the rule serve to clarify provisions or make changes that may cause slight changes in expected indemnities and premiums. Removal of the use of the Palmer Drought Severity Index is not expected to significantly impact indemnities over those that were expected to be covered. Previous premium rates reflected this risk. Other than removal of the contiguous land requirement indicated above, little impact is foreseen.

Paperwork Reduction Act of 1995

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information for this rule have been previously approved by the Office of Management and Budget (OMB) under control number 0563–0053 through October 31, 2000. The amendments set forth in this rule do not revise the content or alter the frequency of reporting for any of the forms or information collections cleared under the above referenced docket.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 12612

It has been determined under section 6(a) of Executive Order 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

This regulation will not have a significant economic impact on a substantial number of small entities. New provisions included in this rule will not impact small entities to a greater extent than large entities. The amount of work required of the insurance companies delivering and servicing these policies will not increase from the amount of work currently required. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605) and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

This program 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.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action against FCIC for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant economic impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

On Wednesday, September 30, 1998, FCIC published a notice of proposed rulemaking in the **Federal Register** at 63 FR 52194–52198 to amend the Common Crop Insurance Policy; Basic Provisions (Basic Provisions) (7 CFR part 457) effective for the 1999 and succeeding crop years for all crops with contract change dates after the effective date of the final rule, and for the 2000 or 2001 and succeeding crop years for all crops with contract change dates prior to the effective date of the final rule.

The public was afforded 15 days following filing of the proposed rule at the **Federal Register** to submit written comments and opinions. A total of 59 comments were received from an insurance service organization, reinsured companies, crop insurance agents, and a national commodity

group. The comments received and FCIC's responses are as follows:

Comment: An insurance service organization stated that sufficient time was not allowed to deal with the proposed rule. It stated that a fifteen day comment period is simply inadequate to deal with the magnitude of concerns and is an inadequate amount of time to sufficiently consider the implications and to solicit and compile comments from member companies.

Response: To meet the needs of producers and for ease in administering the policy, it was important the provisions be revised and effective for 1999 spring crops. This requires the rule to be made effective prior to the contract change dates for the specific crops. In order to accomplish this, the comment period could not be longer than 15 days. Most of the changes in the proposed rule arose from requests from producers and insurance companies. All individual members and other interested parties had an opportunity to comment.

Comment: A reinsured company and an insurance service organization made the following comments regarding enterprise and whole farm units: (1) Definitions should be consistent among policies such as Crop Revenue Coverage (CRC), Revenue Assurance (RA), the Basic Provisions, (2) The phrase ''and at least 50 insurable acres'' should be deleted from the definitions of enterprise unit and whole farm unit. The commenter stated that as long as at least two basic units were involved, the number of acres should be irrelevant. (3) Clarify whether the enterprise unit discount is based on the number of acres or the number of sections in the enterprise unit. (4) A producer who farms in four different sections, owning the land in one section but cash-renting the land in the other three sections would qualify for one basic unit and not for enterprise units under the proposed definition. However, if the other three sections were share-rented, the producer would qualify for at least two separate basic units and, therefore, for an enterprise unit. This does not seem equitable. (5) Whether the sentence referring to at least two basic units and at least 50 insurable acres mean cropland (plantable) acreage that may be counted for more than one crop or is it crop specific, meaning a small operation may qualify for an enterprise unit on a crop one year but not the next because of crop rotation or other factors, and whether it includes acreage that was prevented from being planted. (6) The provision that requires producers to report acreage and production at the basic unit level defeats the purpose of unit consolidation offered by enterprise and whole farm units and should be eliminated. (7) Allow an insured to report acreage and production on an optional unit basis if the producer chooses (currently allowed under CRC). This would allow flexibility in succeeding years to insure optional units. (8) Failure to report information at the enterprise or whole farm unit level, if those levels are chosen, should not result in premiums and indemnities being based on basic units. It would be more logical to treat basic units that were not reported as such as enterprise and whole farm units rather than as basic units. This reversion to basic units is logical when the insured wanted further division into optional units but did not certify accordingly. The commenter questioned why enterprise and whole farm units would revert to basic units when the required information, on a basic unit basis is not provided. This could result in more units and a higher possibility of a loss, although at a higher premium. Section 34(a)(5) may not be necessary if enterprise or whole farm units do not revert to basic units if acceptable production reports are not provided.

The insurance service organization stated that adding to the definition of ''enterprise unit,'' the requirement of separate legal descriptions and at least two optional units, may cause need for some clarification. The insurance service organization also asked whether the following can qualify for enterprise units: (A) Multiple legal descriptions as well as multiple basic units when two or more basic units (by share arrangement in the same section) are not divided into optional units; (B) Multiple optional units as a substitute for multiple basic units when one basic unit is divided into two or more optional units by legal description; and (C) When a basic unit is divided into two optional units, such as irrigated and non-irrigated practices within one section, rather than by legal description.

The reinsured company stated that section 34(a)(1) provides that an election of enterprise or whole farm units must be made before the earliest sales closing date for the insured crops. The company stated this language would be appropriate for whole farm units (multiple crops for a whole farm unit); however, language should also be added to specify the sales closing date for the crop for enterprise units (single crop). The insurance service organization stated if the enterprise unit definition is changed to match the CRC wheat definition, section 34(a) would need to be revised accordingly.

Response: With respect to the first set of comments: (1) Consistency among crop insurance policies is desirable. However, FCIC is required to offer its programs at an actuarially sound rate. Private insurance products need only be offered at an actuarially appropriate rate. Therefore, consistency may not always be achieved. (2) FCIC has deleted the 50 acre requirement from both the enterprise and whole farm units. (3) For enterprise units, the discount will be based on the number of sections, not the number of acres. (4) FCIC has revised the definition of ''enterprise unit'' to allow acreage to qualify for an enterprise unit if the acreage would qualify for either two or more basic units of the same crop located in separate sections, section equivalents, or farm serial numbers or two or more optional units of the same crop located in separate sections, section equivalents, or farm serial numbers. Therefore, both scenarios discussed in the comment would qualify for an enterprise unit. (5) As stated above, the definition of ''enterprise unit'' has been revised to require two or more basic or optional units of the same crop. (6) and (7) Producers will still be required to report acreage on a basic or optional unit to ensure eligibility for an enterprise unit, although when determining premiums or indemnities, all the acreage within the enterprise unit will be used. FCIC has eliminated the requirement that producers report production on a basic or optional unit basis. Production must be reported for the enterprise unit. However, a provision has also been added to specify that any required production records must be maintained separately by basic or optional units if the producer wishes to change the unit structure in subsequent crop years. (8) FCIC has eliminated the provisions that specified that if the producer fails to report information at the enterprise or whole farm level, premiums and indemnities will be based on the basic units. Instead, if the producer fails to provide any required production reports for the enterprise unit, the producer will be assigned a yield in accordance with section 3(c)(1) of the Basic Provisions. It is only if the acreage never qualified for enterprise units will the acreage be divided in basic units.

With respect to the second set of comments: (A) When there are basic units in multiple sections, the acreage will qualify for an enterprise unit. (B) When there are multiple optional units in multiple sections, the acreage will qualify for enterprise units. (C) When there are multiple optional units in the

same section, the acreage will not qualify as an enterprise unit.

Comment: A reinsured company suggested the wording in section 2(e) should clarify that administrative fees that are not paid also make a person ineligible to participate in crop insurance programs.

An insurance service organization asked if sections 2(e)(1)–(10) would remain after revising section 2(e) introductory text. The insurance service organization also stated that the phrase ''you may be determined to be ineligible'' suggests that a company may choose to not make that determination even though payment is past due. They recommended saying ''You will be determined to be ineligible.''

Response: FCIC has added a provision in section 2(e) to include administrative fees as ''any amount due'' for clarity. This provision was not intended to permit insurance companies to allow insureds to remain eligible even though they may be indebted. FCIC has revised the provision to change the word ''may'' to ''will.'' Sections 2(e)(1)–(10) were inadvertently deleted in the proposed rule and will remain in the policy.

Comment: A reinsured company stated that the provision in section 9(a)(1)(iii) that allows a written agreement to provide insurance coverage for acreage that has not been planted and harvested within one of the 3 previous crop years must recognize that this is most likely to occur at acreage reporting time. The written agreement process must be very streamlined and flexible.

Response: The written agreement provisions allow written agreements to be requested after the sales closing date if the producer was not aware, or should not have been aware of the condition that required the existence of a written agreement before the sales closing date, or if it is submitted in accordance with written agreement regulations. Written agreements will be prepared and submitted in accordance with the provisions in the Basic Provisions, written agreement regulations and FCIC approved procedures. Therefore, no change has been made.

Comment: An insurance service organization suggested that, if perennial crops are limited to trees, vines or bushes, this should be stated in the definitions instead of in section 9(a)(1)(i)(D).

Response: Perennial crops, under its common usage includes any plant that regrows each crop year without replanting and would encompass more than just tree, vine, and bush crops. However, section 9(a)(1)(i)(D) is intended to only include tree, vine and bush crops. Therefore, no change has been made.

Comment: A reinsured company stated the language in section 15(d) of the proposed rule that requires a crop to be destroyed or put to another use prior to payment of an indemnity is unnecessary and should not be implemented. Such language indicates lack of confidence in appraisal methods and will require two contacts to resolve a claim (one contact to appraise and another contact to confirm destruction or other use).

An insurance service organization stated that we should have more confidence in appraisals than section 15(d) of the proposed rule indicates. The commenter stated that if harvest is general in the area, it may not be prudent to require destruction. The producer may want to maintain the damaged crop as a cover crop on highly erodible land. The commenter asked who would be responsible to determine the crop had been destroyed or the acreage put to another use before the indemnity is paid. If this is intended to make insureds aware of their responsibility in this matter and is treated as one of the facts insureds certify to as part of the loss adjustment process, it may be useful.

A reinsured company stated that section 15(d) of the proposed rule appears to put in writing that use of a certification form for this purpose will continue to be acceptable. However, if this section means that such acreage must be physically inspected prior to an indemnity payment, the company definitely opposed it.

Response: FCIC has redesignated proposed section 15(d) as 15(e) to recognize the new section 15(d) that was added in the interim rule that was published in the **Federal Register** on July 30, 1998. Actual production is always more accurate than appraisals. FCIC has revised newly designated section 15(e) to specify that appraised production will be used if the acreage is not harvested. If the acreage is harvested, the insured must report the harvested production, which will be used to determine the indemnity, unless otherwise specified in the policy.

Comment: A national commodity group stated that a producer should be allowed to plant a noninsured ''ghost crop'' on the same acreage without losing a prevented planting payment for a crop that was prevented from being planted due to an insured cause.

Response: Prevented planting ''substitute crop'' coverage was provided for producers with coverage greater than catastrophic risk protection beginning with the 1995 crop year. During the three crop years this provision was effective, FCIC received numerous complaints from agents, reinsured companies, commodity groups, and producers, that the provision was subject to abuse, and that it was difficult to establish ''intent'' as required under those provisions.

If a producer is prevented from planting the ''intended'' crop, it is the producer's choice to leave the acreage idle, plant a cover crop, or plant another crop for harvest. Only one crop normally is produced per acre, per crop year. Instead, FCIC has discovered that producers were receiving windfalls by receiving a benefit from the crop they were prevented from planting and the benefit associated with producing another crop on the acreage. This was never an intended effect of prevented planting. Therefore, no change has been made.

Comment: A reinsured company and an insurance service organization stated that the entire prevented planting concept should be reconsidered. The reinsured company stated that the prevented planting provisions are overly complex and not workable. The company recommended that the entire prevented planting process would be more understandable and easier to administer if a set dollar amount per acre was established (the amount could vary by geographic area) that would be paid for acres that remained unplanted due to insurable causes after a set date (which would also vary by geographic area), rather than making prevented planting payments on a crop-specific basis.

The insurance service organization stated that the proposed changes provide only minor remedial relief to the prevented planting portions of the policy that continue to be complicated and burdensome. These areas of the policy are major concerns of the industry that elevate both loss and administrative costs, and subject providers to excessive scrutiny by RMA's Risk Compliance Division. The insurance service organization stated that it was unable to adequately address the prevented planting provisions within the time constraints allowed. It stated that the rule does not remedy larger problems of the current concept and that they will work with FCIC to improve the prevented planting provisions.

Response: The recommended changes, which are materially beyond the scope of the proposed rule, cannot be accomplished without benefit of public comment. FCIC considered similar ideas from the insurance industry in the past and found the

recommendation lacked detail, would create additional administrative burden, and may not be in the best interest of the insureds. FCIC is willing to review any detailed proposal for improving prevented planting for possible use in future crop years. Therefore, no change has been made.

Comment: A reinsured company suggested expanding the definition of ''field'' to be more consistent with the Farm Service Agency (FSA) definition. That definition incorporates references to ''crop lines being acceptable to delineate a field, if past farming practices indicate the crop lines are not subject to change.''

Response: A more permanent boundary, such as those required by the insurance policy, rather than the more liberal definition of FSA, is simpler to administer and best serves the purpose of field designation for the prevented planting provisions. The suggested revision would increase the administrative burden on the reinsured companies, which the current definition avoids. Therefore, no change has been made.

Comment: A reinsured company recommended that the definition of ''Palmer Drought Severity Index'' be expanded to state that the classification is determined on a weekly basis. Also, the rule must clarify how this index is to be administered when the sales closing date or final planting date occur between two weekly indexes. The company suggested that FCIC do additional research because it believes that neither the Palmer Drought Severity Index, which is a long term index, nor the Crop Moisture Index, which is a short term index, adequately define drought for all planting situations. The company stated that some combination of the two indexes or other alternatives might be useful.

Response: FCIC has received numerous complaints that although drought was a major problem, the Palmer Drought Severity Index did not reach the required ''severe or extreme'' category because it did not accurately reflect actual drought conditions at the time of planting. FCIC has reviewed the Crop Moisture Index and does not believe that it would be a viable alternative. Therefore, FCIC has deleted the definition of the Palmer Drought Severity Index and its reference in section 17(d).

Instead of the Palmer Drought Severity Index, FCIC has added language in section 17(d) to clarify when drought will be considered as an insurable cause of loss for prevented planting.

Comment: Reinsured companies and an insurance service organization commented on the definition of ''prevented planting.'' A reinsured company stated that the phrase ''general in the surrounding area and that prevents other producers from planting acreage with similar characteristics'' is very vague and is subject to many interpretations. This company was concerned whether oversight organizations would rely on a company's interpretation or question the determinations made by the company.

The insurance service organization questioned the intent of the revised definition. It asked that if insureds are prevented from planting until the final planting date due to an insurable cause and are not required to plant in the late planting period (even if possible) to qualify for a prevented planting payment, whether it matters if there is an insurable cause of loss within the late planting period. The commenter also stated that a crop planted in the late planting period is covered with a late planting guarantee and if no crop is planted in the late planting period, it is covered with a prevented planting guarantee because planting was prevented before the final planting date. The language, ''if you elect to plant the insured crop during the late planting period, failure to plant the insured crop within the late planting period . . .'' is not necessary since an insured would not need a cause of loss in the late planting period.

Another reinsured company suggested that, for crops with a late planting period, insureds be allowed to report prevented planting acreage up to ten days after the final planting date, to encourage producers to plant during that period.

Response: The proposed language ''general in the surrounding area and that prevents other producers from planting acreage with similar characteristics'' is intended to require the comparison of acreage, which is a major factor in determining whether acreage is prevented from being planted, and allow a producer legitimately prevented from planting due to an insurable cause to qualify for prevented planting coverage without requiring that over 50 percent of the producers in the surrounding area also be prevented. Reasonableness will be the standard used by oversight organizations examining the conduct of the reinsured companies.

The intent of the language regarding the late planting period is to allow producers to collect a prevented planting payment if they were prevented from planting by the final planting date. The previous definition made it unclear whether producers were required to be prevented from planting by the end of the late planting period to be eligible for a prevented planting payment. FCIC has amended the definition of prevented planting in section 1 for clarification.

The reduction in the guarantee already provides a sufficient incentive for producers to plant early in the late planting period. Requiring the producer to declare that he has been prevented from planting before the end of the late planting period may subject the producer to sanctions if the producer later plants the crop. All reporting must occur after the late planting period to give producers a chance to plant the crop. Therefore, no change has been made.

Comment: A reinsured company suggested that section 17(a)(3) should be revised to specify that prevented planting coverage is not available if the insured planted any crop (not just the ''insured crop'') during or after the late planting period, except an approved cover crop planted for haying or grazing.

Response: Section 17(a)(3) is intended to clarify that prevented planting provisions do not apply to any acreage when the insured crop is prevented from being planted and that same insured crop is planted during or after the late planting period. FCIC has revised section 17(a)(3) to specify that such acreage is covered under the late planting provisions. Provisions in section 17(f)(5) exclude prevented planting coverage for any acreage on which another crop is planted for harvest. FCIC does not see any reason to repeat this provision.

Comment: A reinsured company and an insurance service organization stated that section 17(d) provides that if a late planting period is applicable, that period will also be considered when determining if drought or failure of the irrigation water supply is an insurable cause of loss for the purposes of prevented planting. They questioned why the late planting period would matter if the date for determining prevented planting under the proposal is the final planting date.

The insurance service organization asked if the phrase ''if a late planting period is applicable'' means if the insured planted or attempted to plant the insured crop during the late planting period, or only if a late planting period is available for the crop in question. If the latter, they recommended that FCIC consider revising the phrase to state, ''* * * or within the late planting period (for crops with a late planting

period)'' and place a comma before the word ''either'' and delete the comma that now follows the word. The insurance service organization also asked if the Palmer Drought Severity Index is still used. If so, will the acreage qualify for prevented planting as long as the index classifies the acreage as ''extreme'' or ''severe'' within the late planting period, even though it did not reach one of those categories by the final planting date?

Response: As stated above, FCIC has eliminated all references to the Palmer Drought Severity Index and substituted another standard. Section 17(d) is revised to clarify that drought will be considered an insurable cause of loss for non-irrigated acreage if the drought exists through the planting period to the final planting date, or within the late planting period if the producer elects to try to plant the crop.

Comment: An insurance service organization stated that both column headings in section 17(e)(1) refer to the four most recent crop years, and asked if this means ''APH crop years'' or ''policy crop years.'' If the former, this could mean having to verify backward an unlimited number of years due to crop rotation, etc. They also questioned the wording of the last phrase in both columns, ''* * * (have/have not) received a prevented planting insurance guarantee,'' asking if a prevented planting guarantee is considered the same as a prevented planting indemnity for this purpose. If so, they suggested referring to it as an indemnity. The commenter also stated that the headings are so lengthy that it might be at least as clear to change this back from table format to the standard outline format of the rest of the policy.

Response: Reference to the ''four most recent crop years'' means the crop year as defined in the Basic Provisions, not APH crop years. However, the heading also specifies ''any crop''. Therefore, reinsured companies only have to verify the total acreage planted in each of the previous four crop years. Reference to prevented planting insurance guarantee in section 17(e)(1) is not the same as a prevented planting payment. The term prevented planting insurance guarantee is necessary to recognize acreage that received a prevented planting guarantee prior to 1998, when payment began on an acre by acre basis, where an indemnity may not have been paid under previous prevented planting rules. While the column headings may be somewhat lengthy, FCIC believes the chart format is the easiest format to present this information. Therefore, no change has been made.

Comment: A reinsured company, an insurance service organization, and crop insurance agents commented about removing the requirement that a minimum number of prevented planting acres be contiguous from section 17(f)(1). The reinsured company strongly objected to removing the contiguous requirement, stating that the potential negative effects on loss ratios and delivery costs (loss adjustment expenses) are too great. The commenter stated that it does not support the action because they have no knowledge of proposed rate increases and because the Standard Reinsurance Agreement, that governs company risk sharing and administrative expense reimbursement is already in place for 1999. The company stated that this would greatly increase loss adjustment expenses and workload, as potholes and small acreages must be determined and accumulated, resulting in an increased number of payable prevented planting claims and increased indemnities. The company stated that these prospects were not contemplated in the Standard Reinsurance Agreement. The company further stated that, while FCIC may project additional indemnities of $500,000 per year, they are not comfortable that this figure is correct. They also stated that the increased loss adjustment expenses are not identified in the Cost-Benefit Analysis, but they will be greatly increased. The company was concerned that, while the Cost-Benefit Analysis suggests higher premium rates, they have no detail concerning these rates, and they doubt that they will provide enough increased premium or administrative expense subsidy to cover the increased indemnities or loss adjustment expenses.

The reinsured company challenged the statement in the Regulatory Flexibility Act section in the preamble of the proposed rule which states that, ''the amount of work required of the insurance companies delivering and servicing these policies will not increase from the amount of work currently required.'' The company stated that this is an untrue statement given the loss adjustment process that will be required to determine prevented planting acreage that would not have been required if the ''contiguous'' requirement remained.

The reinsured company also stated that language contained in section 17(f)(1) requiring knowledge of the crops planted by field in the four most recent crop years is not workable. In many cases, the provider will have no way of determining this information.

The crop insurance agents supported FCIC's proposal to remove the contiguous acreage requirement from section 17(f)(1), stating that this change is needed to fairly treat producers who might have a high percentage of their land prevented from being planted but do not have a contiguous block of prevented planting acres that is of sufficient size.

The insurance service organization stated that section 17(f)(1) requires that, in order for unplanted acreage to be considered prevented planting acreage for a different crop than the crop planted in the field, the insured must have produced both crops in the same field in the same crop year within any of the four most recent crop years. They stated that four years is not enough. The commenter also suggested rewording the beginning of the second sentence to, ''Any prevented planting acreage within a field that contains planted acreage will be considered to be acreage of the same crop unless * * *'' or similar wording. This avoids the problems of saying acreage that was prevented from being planted ''will be presumed to have been planted * * *''

Response: FCIC proposed to remove the ''contiguous'' acreage requirement due to the numerous complaints received since the requirement was implemented. This change was intended to recognize that potholes and other small portions of fields are wet in most years, although planting occasionally may be possible. However, this provision has prevented some producers having a substantial number of acres that could not be planted from qualifying for prevented planting coverage because a single block of prevented planting acreage was not large enough.

FCIC acknowledges that removing the ''contiguous'' acreage requirement may result in an increased number of claims qualifying for prevented planting payments. However, the reinsured company's complaint that loss adjustment expenses and workload would greatly increase by removal of this provision is not accurate. Prevented planting acreage must be determined to assure the ''contiguous'' requirement is met. Therefore, the loss adjustment expenses and workload are incurred in any case. Further, FCIC has simply restored a part of the prevented planting coverage that was in effect prior to the 1998 crop year. Therefore, FCIC has ample evidence upon which to base the amount of premium increase and estimate any additional losses. Although the recommended change to remove the contiguous requirement is being made after the date the SRA became effective for 1999, this change is done within the time required for making contract

changes and will result in an increase in premium that should offset any additional costs. Therefore, no change has been made.

The previous four crop years is an appropriate amount of time to determine if a producer has a history of planting two crops in a field, and is consistent with the four year time period used to determine the maximum acreage eligible for prevented planting coverage. It is the producer's burden to provide evidence of past planting practices. If the producer cannot meet this burden, the acreage will be considered as intended to be planted to the crop planted in the field. Therefore, no change has been made.

FCIC has revised section 17(f)(1) to specify that ''Any prevented planting acreage within a field that contains planted acreage will be considered to be acreage of the same crop unless * * *'' and has added references to crop, crop type, and practice for clarification.

Comment: A reinsured company stated that the 20 acre or 20 percent acreage requirement to qualify for a prevented planting payment is too high. The company suggested these parameters be changed to a 5 acre or 5 percent deductible amount and that only acreage in excess of this amount be paid for prevented planting. The commenter stated that this threshold would be consistent with NASS figures for acreage historically left unplanted.

Response: Prevented planting regulations since the 1994 crop year have had the 20 acre or 20 percent requirement. FCIC did not receive adverse comments until the word ''contiguous'' was added beginning with the 1998 crop year. Removing the word contiguous, while still retaining the 20 acre or 20 percent requirement, best achieves the goal of not paying prevented planting claims when only a small number of acres are prevented from being planted. FCIC believes that once the minimum acreage threshold has been met, all prevented planting acreage should be indemnified. Therefore, no change has been made.

Comment: A reinsured company commented regarding the language contained in section 17(f)(5), which states if one of the crops being double-cropped is not insurable, other verifiable records of it being planted may be used, recommending that only one crop should be considered for prevented planting purposes and that no prevented planting payment should be made for a second crop.

Response: Crop insurance, including prevented planting coverage, is intended to compensate producers for their actual losses. Therefore, producers who traditionally plant one crop per year can receive a prevented planting payment for failure to plant that crop. However, if producers have the expectation of producing two crops for a single year, compensating them for their actual losses requires the payment of a prevented planting payment if the producer is unable to plant one of the crops. Therefore, no change has been made.

Comment: A reinsured company and an insurance service organization commented on section 17(f)(12), stating that this section contains several references to the ''four most recent years.'' The company recommended that this should be revised to ''four most recent crop years'' to be consistent throughout section 17.

The insurance service organization asked whether the phrase ''receive a prevented planting insurance guarantee'' means that as long as such crop type was reported as prevented planting on the acreage report within the four most recent crop years, it does not matter whether any prevented planting payment was made on such acreage. If so, they stated that language conflicts with section 17(e)(1)(i)(A), which states that the maximum prevented planting acreage will not include reported prevented planting acreage planted to a substitute crop other than an approved cover crop.

Response: FCIC has revised section 17(f)(12) to refer to ''four most recent crop years.'' The phrase ''receive a prevented planting insurance guarantee'' was added because there are some years where the producer is prevented from planting a crop, whether indemnified or not. Now the provision states that no prevented planting payment will be made for any crop that the producer has not planted, or has not received a prevented planting guarantee for in at least one of the last four years. This language does not conflict with the provisions contained in section 17(e)(1)(i)(A). Provisions in section 17(e)(1)(i)(A) specify the method to determine the maximum acreage eligible for prevented planting coverage of each crop. Section 17(f)(12) determines the crop acreage eligible for prevented planting.

Comment: A reinsured company stated that FCIC must assure that the language in section 17(g), along with the provisions contained in 17 (e) and (f), sufficiently limits the high-risk land eligible for prevented planting in relation to the total acres (planted or not) for the crop.

Response: The provisions contained in sections 17 (e), (f), and (g) limit the number of high risk acres eligible for prevented planting under a catastrophic risk policy to the maximum number of high-risk acres insured under the catastrophic risk policy in any one of the four most recent crop years. Therefore, no change has been made.

Comment: Reinsured companies and an insurance service organization commented on the provisions in section 17(h). They stated that the provisions are too complex and difficult to administer. The reinsured companies stated that the provision requires knowledge of the crop planted on the acreage previously and that this conflicts with the other prevented planting provisions which are just based on a number of acres eligible and are not tied to a specific crop on specific acreage.

The companies and the insurance service organization point out the administrative burden associated with making such determinations and the problems that arise when there was no crop planted the previous year or if the eligible acres for the crop that was planted to that acreage have already been exhausted because the crop was planted on other acreage. An insurance service organization also asked the consequences if the previous crop planted on the acreage was not an insurable crop, is a perennial, was not insured, or the acreage was just coming out of CRP. It also asked whether the crop that the producer was prevented from planting has to be insurable and whether the crop will be eligible for prevented planting the following year.

As a solution, one company suggested providing coverage on a non-crop specific basis. Another company suggested that the provision be deleted and all eligible prevented planting acreage be determined in accordance with section 17(e). A company also stated that it would be simplest to state the crop acres on which the extra prevented planting acres should be applied. It suggested that, as an alternative, to determine the eligible prevented planting acres remaining for all crops and to prorate the extra prevented planting acres to these crops in proportion to the number of acres remaining. This would be consistent with the rest of the prevented planting provisions by using the eligible acres established over the four previous crop years and taking into account the remaining eligible acres for prevented planting from the insurable crops on the policy.

Response: FCIC acknowledges the problems associated with the requirement that the eligible prevented planting acreage will be based on the crop planted the previous year on the

acreage. Instead, FCIC has revised the provision to base the guarantee, etc., on the crops insured for the current year for which the producer has remaining eligible prevented planting acreage. The company need only look at the application or acreage report to see the crops listed. Most producers who have insured a crop in the farming operation do not cancel their policy when they elect not to plant the crop during the crop year. As a result, the crop remains insured and the eligible base acreage for the crop may be used to determine the guarantee for those acres where the producer intended to plant a crop without an adequate base. FCIC has also added a provision that if there are several crops with eligible base acres that may be used to establish the guarantee, etc., the crops that would have provided the prevented planting coverage most like the intended crop will be used first. This is intended to ensure that the producer receives fair compensation.

Comment: A reinsured company recommended that FCIC develop a means, such as a flowchart to effectively ''map'' the major options available in the implementation of the prevented planting provisions. This information could be presented at a spring update training session prior to the 1999 spring crop year to assure uniform understanding by all.

Response: FCIC agrees that a flow chart may be helpful to map the prevented planting provisions and will work with insurance providers or their service organization to develop such a chart.

Comment: A reinsured company stated it applauds the provision in section 24(e) that provides that amounts owed to the company may be collected through administrative set off from payments the policyholder receives from U.S. Government agencies and is anticipating procedures for its implementation.

An insurance service organization asked whether the producer will be removed from the Ineligible Tracking System once the amount owed is offset by another government payment.

Response: Unfortunately, FCIC only has the authority to use administrative offset from payments received from other agencies, against any portion of the debt that has been paid by FCIC. There is no authority to offset that portion paid by the company. Section 24(e) just puts the producer on notice that debts may be subject to such offset. The producers name will only be removed from the Ineligible Tracking System once all amounts due have been paid.

Additionally, FCIC received the following comments regarding provisions that FCIC did not propose to change. These changes cannot be made without first proposing the recommended changes and allowing the public to comment. FCIC will consider these recommendations when additional changes to the regulations are proposed.

Comment: A reinsured company recommended the ''Agreement to Insure'' section of the policy be amended to clarify the priority order for crop specific endorsements or options such as malting barley. The company stated that during recent discussions on malting barley it was mentioned that the Malting Barley Endorsement takes precedence over the Special Provisions and the order of priority is currently not clear.

Comment: A reinsured company, a national commodity group, and an insurance service organization expressed concern regarding the ability of a producer to collect multiple indemnities for the same acreage after the first, and possibly additional crops have failed. The reinsured company recommended adding provisions to limit payment of indemnities to one per acre per crop year, with the exception of legitimate fall and spring crops. A national commodity group stated that the second crop should be considered a ''ghost crop'' if the farm does not have a history of double-cropping.

An insurance service organization has presented a policy prototype that includes continued coverage as the producer tries to get a crop established.

Comment: A reinsured company recommended adding wording to section 7(b) to authorize deducting unpaid premium from replant claims.

Comment: A reinsured company recommended adding language in section 20 to require arbitration proceedings to begin within 12 months.

Comment: A national commodity group stated that producers who plant corn in areas that historically have been subject to aflatoxin should not be allowed to insure that corn when they have the option of planting grain sorghum, which is resistant to aflatoxin.

In addition to the changes described above and minor editorial and format changes, FCIC has made the following changes:

1. The definition of ''crop year'' in section 1 is revised to specify that it is the period within which the insured crop is normally grown, regardless of whether or not it is actually grown, and designated by the calendar year in which the insured crop is normally harvested. This change clarifies that any year in which the crop is prevented from being planted will not affect the crop year designation.

2. Section 6(f) is revised to clarify that when a producer fails to report a unit and the insurer denies liability for the unreported units, the insured's share of any production from the unreported unit will be allocated, for loss purposes only, as production to count to the reported units in proportion to the liability on each reported unit; however, such production will not be allocated to prevented planting acreage or otherwise affect any prevented planting payment.

3. Section 28 is revised to clarify that when a transfer of right to an indemnity is in effect, that both the transferor and the transferee are jointly and severally liable for the payment of both the premium and administrative fees.

Good cause is shown to make this rule effective upon filing for public inspection at the Office of the Federal Register. This rule provides prevented planting coverage for crops under the Basic Provisions, as applicable. This rule must be effective prior to the November 30, 1998, contract change dates of the crops for which these revised prevented planting provisions are effective. Therefore, public interest requires the agency to act immediately to make these provisions available for as many crops as possible for the 1999 crop year.

List of Subjects in 7 CFR Part 457

Crop insurance.

Final Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation amends 7 CFR part 457 as follows:

PART 457—COMMON CROP INSURANCE REGULATIONS

1. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(1), 1506(p).

§ 457.2 [Amended]

2. Section 457.2(e) is amended to remove the words ''paragraph 21'' and insert the words ''paragraph 24'' in their place.

§ 457.8 [Amended]

3. Section § 457.8 is amended as follows:

A. Section 1 of the Basic Provisions is amended by adding definitions for ''enterprise unit'' and ''whole farm unit,'' removing the definition of ''palmer drought severity index,'' and by revising the definitions of ''crop year'' and ''prevented planting'' to read as follows:

1. Definitions.

* * * * *

Crop year. The period within which the insured crop is normally grown, regardless of whether or not it is actually grown, and designated by the calendar year in which the insured crop is normally harvested.

* * * * *

Enterprise unit. All insurable acreage of the insured crop in the county in which you have a share on the date coverage begins for the crop year. An enterprise unit must consist of:

(1) Two or more basic units of the same insured crop that are located in two or more separate sections, section equivalents, or FSA farm serial numbers; or

(2) Two or more optional units of the same insured crop established by separate sections, section equivalents, or FSA farm serial numbers.

* * * * *

Prevented planting. Failure to plant the insured crop with proper equipment by the final planting date designated in the Special Provisions for the insured crop in the county. You may also be eligible for a prevented planting payment if you failed to plant the insured crop with the proper equipment within the late planting period. You must have been prevented from planting the insured crop due to an insured cause of loss that is general in the surrounding area and that prevents other producers from planting acreage with similar characteristics.

* * * * *

Whole farm unit. All insurable acreage of the insured crops in the county in which you have a share on the date coverage begins for each crop for the crop year.

* * * * *

B. Section 2(e) introductory text, of the Basic Provisions is revised to read as follows:

2. Life of Policy, Cancellation, and Termination.

* * * * *

(e) If any amount due, including administrative fees or premium, is not paid or an acceptable arrangement for payment is not made on or before the termination date for the crop on which the amount is due, you will be determined to be ineligible to participate in any crop insurance program authorized under the Act in accordance with 7 CFR part 400, subpart U.

* * * * *

C. Sections 6(a)(1) and (2), 6(e) and 6(f) of the Basic Provisions are revised to read as follows:

6. Report of Acreage.

(a) * * *

(1) If you insure multiple crops with us that have final planting dates on or after August 15 but before December 31, you must submit an acreage report for all such crops on or before the latest applicable acreage reporting date for such crops; and

(2) If you insure multiple crops with us that have final planting dates on or after December 31 but before August 15, you must submit an acreage report for all such crops on or before the latest applicable acreage reporting date for such crops.

* * * * *

(e) We may elect to determine all premiums and indemnities based on the information you submit on the acreage report or upon the factual circumstances we determine to have existed, subject to the provisions contained in section 6(g).

* * * * *

(f) If you do not submit an acreage report by the acreage reporting date, or if you fail to report all units, we may elect to determine by unit the insurable crop acreage, share, type and practice, or to deny liability on such units. If we deny liability for the unreported units, your share of any production from the unreported units will be allocated, for loss purposes only, as production to count to the reported units in proportion to the liability on each reported unit. However, such production will not be allocated to prevented planting acreage or otherwise affect any prevented planting payment.

D. Sections 9(a)(1)(i)(D) and 9(a)(1)(iii) of the Basic Provisions are revised to read as follows:

9. Insurable Acreage.

(a) * * *

(1) * * *

(i) * * *

(D) Because a perennial tree, vine, or bush crop was grown on the acreage;

* * * * *

(iii) The Crop Provisions or a written agreement specifically allow insurance for such acreage;

* * * * *

E. Section 15 of the Basic Provisions is amended to add a new subsection (e) to read as follows:

(e) Appraised production will be used to calculate your claim if you will not be harvesting the acreage. To determine your indemnity based on appraised production, you must agree to notify us if you harvest the crop and advise us of the production. If the acreage will be harvested, harvested production will be used to determine any indemnity due, unless otherwise specified in the policy.

F. Section 16(b)(2) of the Basic Provisions is amended to add the word ''and'' immediately following the semicolon.

G. Section 16(b)(3) of the Basic Provisions is removed and section 16(b)(4) is redesignated as section 16(b)(3).

H. Section 16(c) of the Basic Provisions is revised to read as follows:

16. Late Planting.

* * * * *

(c) The premium amount for insurable acreage specified in this section will be the same as that for timely planted acreage. If the amount of premium you are required to pay (gross premium less our subsidy) for such acreage exceeds the liability, coverage for those acres will not be provided (no premium will be due and no indemnity will be paid).

I. Section 16(d) of the Basic Provisions is added to read as follows:

16. Late Planting.

* * * * *

(d) Any acreage on which an insured cause of loss is a material factor in preventing completion of planting, as specified in the definition of ''planted acreage'' (*e.g.*, seed is broadcast on the soil surface but cannot be incorporated) will be considered as acreage planted after the final planting date and the production guarantee will be calculated in accordance with section 16(b)(1).

J. Revise section 17(a) of the Basic Provisions to delete the word ''and'' at the end of section 17(a)(1)(ii), add ''; and'' at the end of section 17(a)(2), and add a new section 17(a)(3) to read as follows:

17. Prevented Planting.

(a) * * *

(3) You did not plant the insured crop during or after the late planting period. If such acreage was planted to the insured crop during or after the late planting period, it is covered under the late planting provisions.

* * * * *

K. Revise sections 17(d) introductory text and 17(d)(1) of the Basic Provisions to read as follows:

17. Prevented Planting.

* * * * *

(d) Drought or failure of the irrigation water supply will be considered to be an insurable cause of loss for the purposes of prevented planting only if on the final planting date (or within the late planting period if you elect to try to plant the crop):

(1) For non-irrigated acreage, the area that is prevented from being planted has insufficient soil moisture for germination of seed and progress toward crop maturity due to a prolonged period of dry weather. Prolonged precipitation deficiencies must be verifiable using information collected by sources whose business it is to record and study the weather, including, but not limited to, local weather reporting stations of the National Weather Service; or

* * * * *

L. The middle column heading in the table in section 17(e)(1) of the Basic Provisions is revised to read as follows:

''Eligible acres if, in any of the 4 most recent crop years, you have planted any crop in the county for which prevented planting insurance was available or have received a prevented planting insurance guarantee''.

* * * * *

M. The last column heading in the table in section 17(e)(1) of the Basic Provisions is revised to read as follows:

''Eligible acres if, in any of the 4 most recent crop years, you have not planted any crop in the county for which prevented planting insurance was available or have not received a prevented planting insurance guarantee''.

* * * * *

N. Sections 17(f)(1), (f)(11), and (f)(12) of the Basic Provisions are revised to read as follows:

17. Prevented Planting.

* * * * *

(f) * * *

(1) That does not constitute at least 20 acres or 20 percent of the insurable crop acreage in the unit, whichever is less. Any prevented planting acreage within a field that contains planted acreage will be considered to be acreage of the same crop, type, and practice that is planted in the field unless the acreage that was prevented from being planted constitutes at least 20 acres or 20 percent of the total insurable acreage in the field and you produced both crops, crop types, or followed both practices in the same field in the same crop year within any of the 4 most recent crop years;

* * * * *

(11) Based on an irrigated practice production guarantee or amount of insurance unless adequate irrigation facilities were in place to carry out an irrigated practice on the acreage prior to the insured cause of loss that prevented you from planting. Acreage with an irrigated practice production guarantee will be limited to the number of acres allowed for that practice under sections 17(e) and (f); or

(12) Based on a crop type that you did not plant, or did not receive a prevented planting insurance guarantee for, in at least one of the four most recent crop years. Types for which separate price elections, amounts of insurance, or production guarantees are available must be included in your APH database in at least one of the four most recent crop years, or crops that do not require yield certification (crops for which the insurance guarantee is not based on APH) must be reported on your acreage report in at least one of the four most recent crop years except as allowed in section 17(e)(1)(i)(B). We will limit prevented planting payments based on a specific crop type to the number of acres allowed for that crop type as specified in sections 17(e) and (f).

* * * * *

O. Section 17(f)(5) of the Basic Provisions is revised to add the following text to the end of the paragraph between the word ''acreage'' and the semicolon: ''(If one of the crops being double-cropped is not insurable, other verifiable records of it being planted may be used)''

* * * * *

P. Section 17(g) of the Basic Provisions is redesignated as 17(i) and new sections 17(g) and (h) are added to read as follows:

17. Prevented Planting.

* * * * *

(g) If you purchased a limited or additional coverage policy for a crop, and you executed a High Risk Land Exclusion Option that separately insures acreage which has been designated as ''high-risk'' land by FCIC under a Catastrophic Risk Protection Endorsement for that crop, the maximum number of acres eligible for a prevented planting payment will be limited for each policy as specified in sections 17(e) and (f).

(h) If you are prevented from planting a crop for which you do not have an adequate base of eligible prevented planting acreage, as determined in accordance with section 17(e)(1), your prevented planting production guarantee or amount of insurance, premium, and prevented planting payment will be based on the crops insured for the current crop year, for which you have remaining eligible prevented planting acreage. The crops used for this purpose will be those that result in a prevented planting payment most similar to the prevented planting payment that would have been made for the crop that was prevented from being planted.

(1) For example, assume you were prevented from planting 200 acres of corn and have 100 acres eligible for a corn prevented planting guarantee that would result in a payment of $40 per acre. You also had 50 acres of potato eligibility that would result in a $100 per acre payment, 90 acres of grain sorghum eligibility that would result in a $30 per acre payment, and 100 acres of soybean eligibility that would result in a $25 per acre payment. Your prevented planting coverage for the 200 acres would be based on 100 acres of corn ($40 per acre), 90 acres of grain sorghum ($30 per acre), and 10 acres of soybeans ($25 per acre).

(2) Prevented planting coverage will be allowed as specified in this section (17(h)) only if the crop that was prevented from being planted meets all policy provisions, except for having an adequate base of eligible prevented planting acreage. Payment may be made based on crops other than those that were prevented from being planted even though other policy provisions, including but not limited to, processor contract and rotation requirements, have not been met for the crop on which payment is being based.

Q. Amend newly designated section 17(i)(2) of the Basic Provisions by changing the section reference therein from ''17(g)(1)'' to ''17(i)(1).''

R. Amend newly designated section 17(i)(3) of the Basic Provisions by changing the section reference therein from ''17(g)(2)'' to ''17(i)(2).''

S. Revise section 24(e) to read as follows:

* * * * *

For reinsured policies

24. Amounts Due Us.

* * * * *

(e) Amounts owed to us by you may be collected in part through administrative offset from payments you receive from United States government agencies in accordance with 31 U.S.C. chapter 37.

* * * * *

T. Section 28 of the Basic Provisions is revised to read as follows:

28. Transfer of Coverage and Right to Indemnity.

If you transfer any part of your share during the crop year, you may transfer your coverage rights, if the transferee is eligible for crop insurance. We will not be liable for any more than the liability determined in accordance with your policy that existed before the transfer occurred. The transfer of coverage rights must be on our form and will not be effective until approved by us in writing. Both you and the transferee are jointly and severally liable for the payment of the premium and administrative fees. The transferee has all rights and responsibilities under this policy consistent with the transferee's interest.

U. Section 34 of the Basic Provisions is amended by redesignating sections 34(a) through 34(d) as sections 34(b) through 34(e) respectively, and adding a new section 34(a) to read as follows:

* * * * *

34. Unit Division.

(a) You may elect an enterprise unit or a whole farm unit if the Special Provisions allow such unit structure, subject to the following:

(1) You must make such election on or before the earliest sales closing date for the insured crops and report such unit structure to us in writing. Your unit selection will remain in effect from year to year unless you notify us in writing by the earliest sales closing date for the crop year for which you wish to change this election. These units may not be further divided except as specified herein;

(2) For enterprise units:

(i) You must report the acreage for each optional or basic unit on your acreage report that comprises the enterprise unit;

(ii) These basic units or optional units that comprise the enterprise unit must each have insurable acreage of the same crop in the crop year insured;

(iii) You must comply with all reporting requirements for the enterprise unit (You must maintain any required production records on a basic or optional unit basis if you wish to change your unit structure for any subsequent crop year);

(iv) The qualifying basic units or optional units may not be combined into an enterprise unit on any basis other than as described herein;

(v) If you do not comply with the reporting provisions for the enterprise unit, your yield for the enterprise unit will be determined in accordance with section 3(c)(1); and

(vi) If you do not qualify for an enterprise unit when the acreage is reported, we will assign the basic unit structure.

(3) For a whole farm unit:

(i) You must report on your acreage report the acreage for each optional or basic unit for each crop produced in the county that comprises the whole farm unit; and

(ii) Although you may insure all of your crops under a whole farm unit, you will be required to pay separate applicable administrative fees for each crop included in the whole farm unit.

* * * * *

Signed in Washington, D.C., on November 30, 1998.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 98–32156 Filed 11–30–98; 2:18 pm]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

RIN 0563–AB62

Common Crop Insurance Regulations; Cotton and ELS Cotton Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes the Cotton Crop Insurance Provisions and the Extra Long Staple (ELS) Cotton Crop Insurance Provisions for the 1999 and succeeding crop years to provide a prevented planting coverage level of 50 percent of the insured's production guarantee for timely planted acreage. The intended effect of this action is to create a policy that better meets the needs of the insured.

EFFECTIVE DATE: November 30, 1998.

FOR FURTHER INFORMATION CONTACT: Stephen Hoy, Insurance Management Specialist, Research and Development, Product Development Division, Federal Crop Insurance Corporation, U.S. Department of Agriculture, 9435 Holmes Street, Kansas City, MO 64131, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget (OMB) has determined this final rule to be significant and, therefore, it has been reviewed by OMB.

Cost-Benefit Analysis

A Cost-Benefit Analysis has been completed and is available to interested persons from the address listed above. In summary, for prevented planting coverage, Government outlays for producer premium subsidies are estimated at about $9.9 million; administrative subsidies are estimated at about $3.5 million; and underwriting costs are estimated at about $1.2 million. If only the portion of the prevented planting costs attributable to increasing the payment rate from 45 to 50 percent are included, the total increase in Government outlays is expected to be about $0.2 million. The analysis indicates that rate increases for prevented planting coverage vary from region to region, depending on locally expected indemnities, from 0.3 percent to 0.9 percent. On average, at the 50 percent payment rate, about 0.76 percentage point will be added to cotton and ELS cotton premium rates to account for the basic prevented planting coverage. Preliminary analysis suggests that the increase in the payment rate will add about 0.1 percent to total premiums to cover expected losses.

Paperwork Reduction Act of 1995

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information for this rule have been previously approved by the Office of Management and Budget (OMB) under control number 0563–0053 through October 31, 2000. The amendments set forth in this rule do not revise the content or alter the frequency of reporting for any of the forms or information collections cleared under the above referenced docket.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform of 1995 (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12612

It has been determined under section 6(a) of Executive Order No. 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

This regulation will not have a significant economic impact on a substantial number of small entities. New provisions in this rule will not impact small entities to a greater extent than large entities. The amount of work required of the insurance companies will not increase because the information must already be collected under the present policy. No additional work is required as a result of this action on the part of either the insured or the insurance companies. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605), and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372 which require 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.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action against FCIC for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant economic impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

On Wednesday, September 30, 1998, FCIC published a proposed rule in the **Federal Register** at FR 52198–52200 to amend the Common Crop Insurance Regulations (7 CFR part 457) by revising 7 CFR 457.104 and 7 CFR 457.105 effective for the 1999 and succeeding crop years.

Following filing of the proposed rule at the **Federal Register**, the public was afforded 15 days to submit written comments, data, and opinions. A total of 10 written comments were received from an insurance service organization, two cotton producer associations, and three reinsured companies. The comments received and FCIC's responses are as follows:

Comment: Two producer associations concurred with the proposal to provide a replant payment for cotton and ELS

cotton damaged by excess moisture, hail, or blowing sand or soil but only if no additional premium is added for the coverage. One producer association recommended that replanting coverage be provided as an option at the choice of the producer. Two reinsured companies stated that adding replant payments will substantially increase loss adjustment expenses, which was not contemplated in the 1999 Standard Reinsurance Agreement. One reinsured company recommended that data regarding premium rates and workload requirements be published before changes are made. Another reinsured company stated that support could not be provided without knowledge of rate increases. This commenter also indicated that multiple causes of loss often occur, and, therefore, it would be nearly impossible to identify damage by cause and limit replant payments to excess moisture, hail, or blowing sand or soil.

Response: Additional premium must be charged to provide replanting coverage because this increases the risk of loss and is not included in the premium rate. Loss adjustment workload for reinsured companies may increase due to this provision. However, costs would be recouped through the additional administrative subsidies as a result of higher premium. The proposed rule limited the causes of loss on which replanting payments would be provided in an effort to limit loss exposure and subsequent impact on premium rates. Based on the negative comments, FCIC has elected not adopt the proposal, and no replanting payment will be provided for the 1999 crop year.

Comment: A producer association stated that the 25 percent deductible in price that must be met before cotton is eligible for quality adjustment is too high to be useful. The commenter recommended that quality adjustment be based on physical standards, and FCIC establish a base quality as is done with grains with a trigger of not greater than 5 percent adopted. The commenter stated that the quality adjustment procedure should not be changed unless the proposal is modified substantially. The commenter also recommended that FCIC adopt a procedure that does not penalize a producer's APH yield as a result of quality adjustment. A reinsured company stated that without knowing specific plans for rate increases, the proposal could not be endorsed.

Response: FCIC must apply a premium rate increase if the quality adjustment deductible is lowered. Calculating the quality adjustment factor using any reduction in value due to damage will increase indemnities, and FCIC has determined that if it adopted the trigger suggested, a premium rate increase of approximately 5 percent would be required to compensate for the potential increase in losses. FCIC concurs with the recommendation that the quality adjustment for cotton and ELS cotton be based on physical standards; however, this requires a detailed study to evaluate the appropriate cotton classification factors for quality adjustment, the deductible to apply, and to measure the effect on premium rates. FCIC cannot adopt the recommendation that cotton producer's APH yields should not reflect production to count after quality adjustment. For all crops that permit a quality adjustment, a producer's yield is reduced due to quality adjustment for indemnity purposes, and the yield reduction is retained in the producer's production history. Cotton should not be an exception. If the crop insurance program is to be actuarially sound, the producer's production history must reflect all indemnities paid, including losses due to quality adjustments. Based on the negative comments, FCIC has elected not to adopt the proposed change to quality adjustment, and the quality adjustment determination will remain the same as that available for the 1998 crop year. However, FCIC will work with the industry to explore alternatives to the current quality adjustment determination.

Comment: A cotton producer association stated that an analysis comparing preplanting costs shows that cotton should have a prevented planting percentage comparable to corn. The commenter stated that deducting preplanting costs from the prevented planting payment for each commodity shows that cotton producers fare considerably worse than either corn or soybean growers, even if cotton producers receive the proposed 50 percent coverage level, and the inequity is believed greater when premiums are deducted. The commenter stated that this analysis indicates that the soybean prevented planting percentage should be less than cotton and corn and questioned why soybeans were not included in the Economic Research Service (ERS) study. The commenter also expressed opposition to the provision that prohibits planting a substitute crop on prevented planting acreage. The commenter stated that elimination of the substitute crop provision penalizes Southern producers who have more numerous cropping alternatives than producers in the Midwest. The commenter recommended that FCIC raise the cotton prevented planting coverage level to 60 percent and allow a non-insurable ghost crop to be planted on the prevented planting acreage. If these recommendations cannot be implemented with no additional cost to the producer, the commenter asked that prevented planting coverage become an option for cotton producers, and any premium reduction due to the reduced coverage be credited.

Response: FCIC has found that the evidence does not support an increase in the cotton prevented planting percentage to 60 percent. Prevented planting coverage levels should be based on estimated preplanting costs for a crop, and not on equivalency to the coverage level for other crops. An increase to the 50 percent rate of payment for prevented planting of cotton is consistent with the basis on which prevented planting payment rates have been established for other crops. An adjustment will be made in premium rates for cotton to reflect this higher value. However, this increase will be proportional to the increase in coverage, *i.e.*, the cost for the prevented planting component of the premium rates will increase by approximately 11 percent, or 0.1 percentage point. This higher rate of payment should not affect the frequency with which prevented planting would occur. The commenter raised an issue of including crop insurance premium costs in the preplanting expenses that are analyzed to determine the rates of payment for prevented planting. Premium is based on the risk associated with the crop, not the cost associated with planting the crop. Prevented planting is only intended to cover costs associated with planting. This issue is interrelated with the issue of the overall level of cotton premium costs relative to other crops, an issue that also was raised by commenters (see below). FCIC has committed to work with interested parties in a detailed review of premium rates for cotton. FCIC did not request ERS to ignore soybeans in the study of prevented planting payment rates. The reason soybeans were not included cannot be determined. History has shown that prevented planting cannot be provided as an option. This would be inconsistent with the prevented planting requirement mandated by the Federal Crop Insurance Act. FCIC removed the substitute crop provision because it discovered that producers could receive benefits for the crop year that exceeded their income received for the crop year if the crop produced the approved yield. This is not the intent of crop insurance. Therefore, for 1998 and

subsequent crop years, the substitute crop provision was removed from all prevented planting provisions.

Comment: Two producer associations expressed concern that cotton premiums substantially exceed other major commodities relative to risk exposure and the level of coverage provided. One commenter stated that prior to the Federal Crop Insurance Reform Act of 1994, most cotton producers chose not to participate in the crop insurance program. Therefore, the actuarial tables prior to 1995 reflect a very unrepresentative pool of cotton insurance participants. The commenter stated that the rating models used by FCIC should reflect the much larger pool of cotton insurance participants since 1995, which would result in significantly lower premiums for cotton producers. One commenter opposed implementation of the proposed rule if the changes result in any increase in premium costs for cotton producers and suggested that each of the proposed changes be made optional coverage. A reinsured company expressed concern that the proposed changes are not beneficial enough to warrant any additional premium.

Response: FCIC recognizes that many cotton producers believe premium rates for cotton to be inequitably high for that crop. FCIC traditionally has based premium rates on its experience in each county. However, improvements to crop varieties, such as resistance to disease and insects, changes to cropping patterns due to ''freedom to farm,'' and other changes may be rendering some experience to be unreliable as a predictor of potential future losses. The Federal Crop Insurance Act directs FCIC to charge premiums that are adequate to pay expected losses and build a reasonable reserve. FCIC is reviewing its experience for cotton to determine if it does in fact provide a basis to meet the tests set forth in the law. If it does not, adjustments will be made as appropriate. As stated above, FCIC has eliminated many of the proposed provisions that would have raised premium rates. However, FCIC has retained the 50 percent coverage because it concluded the benefits outweigh the insignificant increase in premium.

In addition to the changes described above, FCIC has amended the following ELS Cotton Crop Provisions:

1. Sections 10 (d) and (f)—Changed the ELS cotton price quotations for prices ''A'' and ''B'' and the price used to adjust AUP cotton harvested or appraised from acreage originally planted to ELS cotton from the Weekly Cotton Market Review to the Daily Spot Cotton Quotation. This publication more accurately reflects the value of the ELS cotton.

Good cause is shown to make this rule effective upon filing for public inspection at the Office of the Federal Register. This rule must be effective prior to the November 30, 1998, contract change date to be effective for the 1999 crop year. Therefore, public interest requires that FCIC act immediately to make these provisions available.

List of Subjects in 7 CFR part 457

Crop insurance, Cotton.

Final Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation amends 7 CFR part 457 as follows:

PART 457—COMMON CROP INSURANCE REGULATIONS

1. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(1), 1506(p).

2. § 457.104, section 11 of the crop provisions is revised to read as follows:

§ 457.104 Cotton crop insurance provisions.

* * * * *

11. Prevented Planting

* * * * *

(b) Your prevented planting coverage will be 50 percent of your production guarantee for timely planted acreage. If you have limited or additional levels of coverage, as specified in 7 CFR part 400, subpart T, and pay an additional premium, you may increase your prevented planting coverage to a level specified in the actuarial documents.

3. § 457.105, section 10 of the crop provisions is revised to read as follows:

§ 457.105 ELS Cotton Crop Insurance Provisions.

* * * * *

10. Settlement of Claim

* * * * *

(d) Mature ELS cotton production may be adjusted for quality when production has been damaged by insured causes. Such production to count will be reduced if the price quotation for ELS cotton of like quality (price quotation ''A'') for the applicable growth area is less than 75 percent of price quotation ''B.'' Price quotation ''B'' is defined as the price quotation for the applicable growth area for ELS cotton of the grade, staple length, and micronaire reading designated in the Special Provisions for this purpose. Price quotations ''A'' and ''B'' will be the price quotations contained in the Daily Spot Cotton Quotations published by the USDA Agricultural Marketing Service on the date the last bale from the unit is classed. If the date the last bale is classed is not available, the price quotations will be determined when the last bale from the unit is delivered to the warehouse, as shown on the producers account summary obtained from the gin. If eligible for quality adjustment, the amount of production to be counted will be determined by multiplying the number of pounds of such production by the factor derived from dividing price quotation ''A'' by 75 percent of price quotation ''B.''

* * * * *

(f) Any AUP cotton harvested or appraised from the acreage originally planted to ELS cotton in the same growing season will be reduced by the factor obtained by dividing the price per pound of the AUP cotton by the price quotation for the ELS cotton of the grade, staple length, and micronaire reading designated in the Special Provisions for this purpose. The prices used for the AUP and ELS cotton will be the price quotations contained in the Daily Spot Cotton Quotations published by the USDA Agricultural Marketing Service on the date the last bale from the unit is classed. If the date the last bale is classed is not available, the price quotations will be determined when the last bale from the unit is delivered to the warehouse, as shown on the producer's account summary obtained from the gin. If either price quotation is unavailable for the dates stated above, the price quotations for the nearest prior date for which price quotations for both the AUP and ELS cotton are available will be used. If prices are not yet available for the insured crop year, the previous season's average prices will be used.

* * * * *

4. In § 457.105 section 12 is revised to read as follows:

12. Prevented Planting

* * * * *

(b) Your prevented planting coverage will be 50 percent of your production guarantee for timely planted acreage. If you have limited or additional levels of coverage, as specified in 7 CFR part 400, subpart T, and pay an additional premium, you may increase your prevented planting coverage to a level specified in the actuarial documents.

Signed in Washington, DC, on November 30, 1998.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 98–32155 Filed 11–30–98; 2:17pm]

BILLING CODE 3410–08–p

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 948

[Docket No. FV98–948–2 FIR]

Irish Potatoes Grown in Colorado; Exemption From Area No. 2 Handling Regulation for Potatoes Shipped for Experimentation and the Manufacture or Conversion Into Specified Products

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting, as a final rule, without change, the provisions of an interim final rule which exempts shipments of potatoes handled for experimentation and the manufacture or conversion into specified products from the grade, size, maturity, and inspection requirements prescribed under the handling regulations of the Colorado Potato Marketing Order for Area No. 2 (San Luis Valley). This rule was unanimously recommended by the Colorado Potato Administrative Committee for Area No. 2 (Committee), the agency responsible for local administration of the marketing order. This rule continues in effect exemptions designed to expand markets for potatoes and to increase fresh utilization. These changes are expected to improve the marketing of Colorado potatoes and increase returns to producers.

EFFECTIVE DATE: January 4, 1999.

FOR FURTHER INFORMATION CONTACT: Dennis L. West, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, room 369, Portland, Oregon 97204; telephone: (503) 326–2724, Fax: (503) 326–7440; or George J. Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632. Small businesses may request information on complying with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632, or E-mail: Jay__N__Guerber@usda.gov. You may view the marketing agreement and order small business compliance guide at the following web site: http://www.ams.usda.gov/fv/moab.html.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 97 and Marketing Order No. 948 (7 CFR part 948), both as amended, regulating the handling of Irish potatoes grown in Colorado, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

This rule continues to exempt shipments of potatoes handled for the purposes of experimentation and the manufacture or conversion into specified products from the grade, size, maturity, and inspection requirements prescribed under the order's handling regulations for Area No. 2 (San Luis Valley).

Section 948.22 authorizes the issuance of regulations for grade, size, quality, maturity, and pack for any variety or varieties of potatoes grown in different portions of the production area during any period. Section 948.23 authorizes the issuance of regulations that modify, suspend, or terminate requirements issued under § 948.22 or to facilitate the handling of potatoes for special purposes. Section 948.24 requires adequate safeguards to be prescribed to ensure that potatoes handled pursuant to § 948.23 enter authorized trade channels. Safeguard procedures for special purpose shipments are specified in §§ 948.120 through 948.125.

At its meeting on June 18, 1998, the Committee unanimously recommended that handlers of potatoes shipped for experimentation and for the manufacture or conversion into specified products be exempted from the grade, size, maturity, and inspection requirements prescribed under the order's handling regulations for Area No. 2 in § 948.386. The Committee recommended that experimentation and manufacture or conversion into specified products be added under § 948.386(d)(2) as special purpose shipments.

As required for all special purpose shipments, handlers desiring to handle potatoes for such purposes would apply for and obtain Certificates of Privilege and furnish the Committee such information as the Committee may require to track such shipments and to verify proper disposition.

Several producers and handlers within the production area are attempting to develop new fresh uses for potatoes using experimental varieties and packs. The Committee also anticipates that some handlers may want to ship experimental varieties, or traditional varieties, for use in the manufacture or conversion into special products, or perform the manufacture or conversion themselves prior to shipment. Handlers are, for example, attempting to develop new special products such as fresh cut potatoes shipped in vacuum sealed bags. The Committee strongly encourages innovation that could result in the development of new varieties, markets, or opportunities for fresh potatoes that would be good for the Colorado potato industry. Some of the new varieties have irregular shapes or are small in size, and that prevents them from being shipped except under the minimum quantity exemption of 1,000 pounds specified in paragraph (f) of § 948.386. This has prevented handlers from shipping larger quantities. Handlers have also expressed a desire to experiment with the shipment of potatoes of different varieties in the same container. This is not currently possible because the potatoes do not meet the minimum grade requirement that a particular lot of potatoes have ''similar'' varietal characteristics.

For the purpose of this action, the term ''manufacture or conversion into specified products'' means the

preparation of potatoes for market into products by peeling, slicing, dicing, applying material to prevent oxidation, or other means approved by the Committee, but not including other processing. Formerly, potatoes for manufacture or conversion into products had to be inspected and certified as meeting specified quality requirements prior to preparation for market. This action continues to exempt shipments handled for experimentation or the manufacture or conversion into products from these requirements, thus, relieving handlers of this regulatory burden.

These changes to the Area No. 2 handling regulation are expected to encourage new product development and could lead to market expansion which would benefit producers, handlers, buyers, and consumers of Colorado potatoes.

The special purpose shipments authorized by this action are fresh use markets so it is appropriate that the handlers taking advantage of the exemptions be assessed to defray the costs the Committee incurs in administering the program, tracking such shipments, in determining whether applicable requirements have been met, and in determining whether the potatoes ended up in the proper trade channel. This rule is designed to expand markets for potatoes and to increase fresh utilization. These changes are expected to improve the marketing of Colorado potatoes and increase returns to producers.

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

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

There are approximately 100 handlers of Colorado Area No. 2 potatoes who are subject to regulation under the marketing order and approximately 285 producers of Colorado potatoes in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those whose annual receipts are less than $500,000. The majority of potato producers and handlers regulated under the marketing agreement and order may be classified as small entities.

This rule continues to exempt shipments of potatoes handled for experimentation and the manufacture or conversion into specified products from the grade, size, maturity, and inspection requirements that are prescribed under the order's handling regulations for Area No. 2 in § 948.386.

At its meeting on June 18, 1998, the Committee unanimously recommended that potatoes shipped for the purposes of experimentation and for the manufacture or conversion into specified products be considered special purpose shipments and be exempt from the grade, size, maturity, and inspection requirements prescribed in § 948.386. The Committee recommended that experimentation and manufacture or conversion into specified products be added under § 948.386(d)(2) as special purpose shipments. As is required for all special purpose shipments, handlers desiring to handle potatoes for such purposes would apply for and obtain Certificates of Privilege and furnish the Committee such information as the Committee may require to track such shipments, determine whether applicable requirements have been met, and whether proper disposition has occurred.

Several producers and handlers within the production area are attempting to develop new fresh uses for potatoes using experimental varieties and packs. The Committee also anticipates that some handlers may want to ship experimental varieties, or traditional varieties, for use in the manufacture or conversion into special products, or perform the manufacture or conversion themselves prior to shipment. Handlers are, for example, attempting to develop new special products such as fresh cut potatoes shipped in vacuum sealed bags. The Committee strongly encourages innovation that could result in the development of new varieties, markets, or opportunities for fresh potatoes that would be good for the Colorado potato industry. Some of the new varieties have characteristics, such as small size or misshape, that prevent them from being shipped fresh except under the minimum quantity exemption of 1,000 pounds in paragraph (f) of § 948.386. This has placed a burden on handlers desiring to ship larger quantities of such potatoes. Handlers have also expressed a desire to experiment with the shipment of potatoes of different varieties in the same container. This is not currently possible because the potatoes do not meet the minimum grade requirement that a particular lot of potatoes have ''similar'' varietal characteristics.

For purpose of this action, the term ''manufacture or conversion into specified products'' means the preparation of potatoes for market into products by peeling, slicing, dicing, applying material to prevent oxidation, or other means approved by the Committee, but not including other processing.

These changes to the handling regulation are expected to encourage new product development and could lead to market expansion which would benefit producers, handlers, buyers, and consumers of Colorado potatoes.

The special purpose outlets authorized by this action are fresh use markets so it is appropriate that handlers taking advantage of the exemptions be assessed to defray the costs the Committee incurs in administering the program, tracking such shipments, determining whether applicable requirements have been met, and whether the potatoes end up in proper trade channels. Currently, the assessment rate is $0.0015 per hundredweight of potatoes handled. This rule is designed to expand markets for potatoes and to increase fresh utilization. The changes are expected to improve the marketing of Colorado potatoes and increase returns to producers.

There is no available information detailing how many potatoes this relaxation will allow to be marketed. However, the Committee expects the quantities to be small.

No viable alternatives to this action were identified that would ensure innovations in marketing and product development. Furthermore, the goals expressed by the committee could not be solved absent this action.

The Committee estimates that three or four handlers may apply for and obtain Certificates of Privilege for the handling of potatoes for experimentation or for the manufacture or conversion into specified products. It is estimated that the time taken by the handlers who apply will total less than ten hours and this time is currently approved under OMB No. O581–0178 by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To date, three handlers have obtained Certificates of Privilege for these purposes.

As with all Federal marketing order programs, reports and forms are

periodically reviewed to reduce information requirements and duplication by industry and public sectors. In addition, as noted in the initial regulatory flexibility analysis, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the Committee's meeting was widely publicized throughout the Colorado potato industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the June 18, 1998, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. The Committee itself is composed of 12 members, of which 5 are handlers and 7 are producers, the majority of whom are small entities.

An interim final rule concerning this action was published in the **Federal Register** on August 11, 1998 (63 FR 42686. Copies of the rule were mailed by the Committee's staff to all Committee members and Area No. 2 potato handlers. In addition, the rule was made available through the Internet by the Office of the Federal Register. That rule provided for a 60-day comment period which ended October 13, 1998. No comments were received.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (63 FR 42686, August 11, 1998) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 948

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

PART 948—IRISH POTATOES GROWN IN COLORADO

Accordingly, the interim final rule amending 7 CFR part 948 which was published at 63 FR 42686 on August 11, 1998 is adopted as a final rule without change.

Dated: November 27, 1998

Robert C. Keeney

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98–32209 Filed 12–2–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

9 CFR Part 205

RIN 0580–AA63

Clear Title—Protection for Purchasers of Farm Products

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Final rule.

SUMMARY: This document amends regulations relating to the establishment and management of statewide central filing systems as they pertain specifically to the filing of ''effective financing statements'' for ''farm products'', as defined in section 1324 of the Food Security Act of 1985 (7 U.S.C. 1631), to allow a continuation of an effective financing statement to be filed without the signature of the debtor provided State law authorizes such a filing. This rule responds to comments received when the regulations were previously amended by a final rule published on April 1, 1997 (62 FR 15363) that brought the regulations into conformity with statutory amendments found in Sections 662 and 663 of the Federal Agriculture Improvement and Reform Act of 1996.

EFFECTIVE DATE: January 4, 1999.

FOR FURTHER INFORMATION CONTACT: Gerald E. Grinnell, Director, Economic/Statistical Support, Grain Inspection, Packers and Stockyards Administration, (202) 720–7455. Kimberly D. Hart, Esquire, Trade Practices Division, Office of the General Counsel, (202) 720–8160.

SUPPLEMENTARY INFORMATION:

Background

Section 1324 of the Food Security Act of 1985 (7 U.S.C. 1631) (the Act) provides that certain persons may be subject to a security interest in a farm product created by the seller under certain circumstances in which a lender files an ''effective financing statement'' with the ''system operator'' in a State that has a certified central filing system as defined by the Act. The Act requires the Secretary of Agriculture to prescribe regulations ''to aid States in the implementation and management of a central filing system.'' Final regulations were published on August 18, 1986 (51 FR 29450).

The Secretary's authority and responsibility under the Act is limited to certification of the State central filing systems and to prescribing regulations to aid in the implementation and management of certified central filing systems. The Act does not give the Secretary the authority or responsibility for such matters as direct notification by secured parties, sales of and payment for products, procedures for payment or procedures for personal liability protection. Those matters are governed by State law.

Prior to the 1996 amendment of the Act, lenders could not file effective financing statements or amendments to those statements electronically with State certified central filing systems because such statements were required to bear the signature of the debtor, which could not be transmitted electronically. Commercial lenders also expressed concern and confusion due to the vagueness of the provisions for effective financing and continuation statements contained in the Act and the inconsistency between the Act and the Uniform Commercial Code.

Section 662 of the Federal Agriculture Improvement and Reform Act of 1996 (Pub. L. 104–127) (hereinafter the ''FAIR Act'') amended the Act to allow lenders to file ''effective financing statements'' by electronic transmission without the necessity of obtaining the signature of the debtor provided State law authorizes such a filing.

The Department published interim and final rules in the **Federal Register** to implement the FAIR Act amendments (61 FR 54727 and 62 FR 15363, respectively). The rule allows electronic filing of amendments to effective financing statements without the signature of the debtor. Comments received in response to the rule encouraged the Department to further amend the regulations to allow the filing of paper continuation statements without the signature of the debtor as well. Section 205.209(d) of the regulations (9 CFR 205.209(d)) currently provides that continuation statements are to be treated in the same manner as amendments to effective financing statements. Therefore, the rule implementing the 1996 FAIR Act amendments allows continuation statements to be filed electronically, without the signature of the debtor as well. However, because the purpose of that rule was to bring the regulations into conformity with the 1996 amendment (which addressed electronic filings), the final rule did not address the commentors' request to eliminate the signature requirement for paper continuation statements.

The Department published a proposed rule in the **Federal Register** on June 8, 1998 (63 FR 31130), which would remove the requirement from the regulations that a filing of a continuation to an effective financing

statement bear the signature of the debtor. Section 1324 of the Food Security Act of 1985 does not require that continuation statements be signed. This rule will make it easier for lenders to file continuation statements because lenders would no longer be required to obtain the signature of the debtor. This rule will also simplify the filing of lien notices by bringing the regulations for central filing systems into conformity with Article 9 of the Uniform Commercial Code, which covers non-farm products.

Comments Received

Only one comment was received in response to the proposed rule. The commenter, an association purporting to represent more than 200 farm credit institutions throughout the United States, fully supported the proposed rule because the change would make it easier—and therefore less costly—for lenders to file continuation statements. The commenter also stated that it would simplify filing of lien notices by bringing the regulations for central filing systems into conformity with the Uniform Commercial Code.

After review of the proposed rule and the comment received, we have determined that the proposed rule as published at 63 FR 31330 will be adopted as the final rule.

Compliance With Regulatory Requirements

As set forth in the proposed rule published at 63 FR 31130, this rulemaking was reviewed under and is issued in conformance with Executive Order 12866, Civil Justice Reform (Executive Order 12778), and Regulatory Flexibility Act and Information Collection requirements. The information collection and recordkeeping requirements for 9 CFR Part 205 have been previously approved by the Office of Management and Budget under control number 0580–0016.

List of Subjects in 9 CFR Part 205

Agriculture, Central filing system.

For reasons set out in the preamble, the Grain Inspection, Packers and Stockyards Administration is amending 9 CFR Part 205 as set forth below.

PART 205—CLEAR TITLE—PROTECTION FOR PURCHASERS OF FARM PRODUCTS

1. The authority citation for Part 205 is revised to read as follows:

Authority: 7 U.S.C. 1631 and 7 CFR 2.22, 2.81.

2. Section 205.209 is amended by revising paragraph (d) to read as follows:

§ 205.209 Amendment or continuation of EFS.

* * * * *

(d) An effective financing statement remains effective for a period of 5 years from the date of filing and may be continued in increments of 5-year periods beyond the initial 5-year filing period by refiling an effective financing statement or by filing a continuation statement within 6 months before expiration of the effective financing statement. A continuation statement may be filed electronically or as a paper document, and need not contain the signature of the debtor.

Dated: November 24, 1998.

James R. Baker,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 98–32127 Filed 12–2–98; 8:45 am]

BILLING CODE 3410–EN–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2 and 51

RIN 3150–AG09

Streamlined Hearing Process for NRC Approval of License Transfers

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is amending its regulations to provide specific uniform procedures and rules of practice for handling requests for hearings associated with license transfer applications involving material and reactor licenses as well as licenses issued under the regulations governing the independent storage of spent nuclear fuel and high-level radioactive waste. Conforming amendments are also made to certain other parts of the Commission's regulations. These new provisions provide for public participation and opportunity for an informal hearing on matters relating to license transfers, specify procedures for filing and docketing applications for license transfers, and assign appropriate authorities for issuance of administrative amendments to reflect approved license transfers. This rulemaking also adds a categorical exclusion that permits processing of transfer applications without preparation of Environmental Assessments.

EFFECTIVE DATE: December 3, 1998.

FOR FURTHER INFORMATION CONTACT: James A. Fitzgerald, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001, telephone (301) 415–1607, e-mail *JAF@nrc.gov*, or Leo Slaggie, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, telephone (301) 415–1605 (TDD), e-mail *ELS@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On September 11, 1998 (63 FR 48644), the NRC published in the **Federal Register** a proposed rule that would amend NRC's regulations by adding to 10 CFR Part 2, the NRC's Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders, a subpart M, which would establish uniform informal procedures for handling requests for hearings associated with license transfer applications. This initiative is part of a broad effort to improve the effectiveness of the agency's programs and processes.

A number of categories of NRC licensees, but in particular the electric power industry, have undergone and will continue to undergo significant transformations as a result of changes to the economic and regulatory environment in which they operate. Electric utilities in particular are now operating in an environment which is increasingly characterized by restructuring and organizational change. In recent years, the Commission has seen a significant increase in the number of requests for transfers of NRC licenses. The number of requests related to reactor licenses has increased from a historical average of 2–3 per year to more than 20 requests in fiscal year 1997. With the restructuring that the energy industry is undergoing, the Commission expects this high rate of requests for approval of license transfers to continue. Because of the need for expeditious decisionmaking from all agencies, including the Commission, for these kinds of transactions, timely and effective resolution of requests for transfers on the part of the Commission is essential.

In general, license transfers do not involve any technical changes to plant operations. Rather, they involve changes in ownership or partial ownership of facilities at a corporate level. Section 184 of the Atomic Energy Act of 1954, as amended (AEA), specifies, however, that:

[N]o license granted hereunder * * * shall be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through

transfer of control of any license to any person, unless the Commission shall, after securing full information, find that the transfer is in accordance with the provisions of this Act, and shall give its consent in writing. (42 U.S.C. 2234; 10 CFR 30.34 (b), 40.46, 50.80, 72.50)

Transfers falling within the foregoing provision include indirect transfers which might entail, for example, the establishment of a holding company over an existing licensee, as well as direct transfers, such as transfer of an ownership interest held by a non-operating, minority owner, and the complete transfer of the ownership and operating authority of a single or majority owner. Although other requirements of the Commission's licensing provisions may also be addressed to the extent relevant to the particular transfer action, typical NRC staff review of such applications consists largely of assuring that the ultimately licensed entity has the capability to meet financial qualification and decommissioning funding aspects of NRC regulations. These financial capabilities are important over the long term, but have no direct or immediate impact on the requirements for day-to-day operations at a licensed facility. The same is generally true of applications involving the transfer of materials licenses.

Notwithstanding the nature of the issues relevant to a decision on whether to consent to a license transfer, past Commission practice has generally involved the use of formal hearing procedures under the provisions of 10 CFR Part 2, Subpart G, for license transfers other than those for materials licenses, which have used the informal hearing procedures provided by 10 CFR Part 2, Subpart L. However, license transfers do not, as a general proposition, involve the type of technical issues with immediate impact on the actual operation of the facilities that might benefit from review by a multi-member, multi-disciplined Atomic Safety and Licensing Board historically used by the Commission in hearings on initial licensing or license amendments that substantially affect the technical operations. It is a matter suitable for reasonable discussion whether such complex hearing procedures provide the best means of reaching decisions on such technical issues, but, be they the best or not, they clearly are not required and are not the most efficient means for resolving the issues encountered in license transfers. Accordingly, the Commission has determined that requests for hearings on applications for license transfers should be handled by a separate Subpart of 10 CFR Part 2. This new Subpart M establishes an efficient and appropriate informal process for handling hearing requests associated with transfer applications commensurate with the nature of the issues involved and the rights of all parties.

The basic requirement for an opportunity for a hearing on a license transfer is found in Section 189.a of the Atomic Energy Act of 1954, as amended (AEA), which provides that:

> [I]n any proceeding under this Act, for the granting, suspending, revoking, or amending of any license or construction permit, or application to transfer control, * * * the Commission shall grant a hearing upon the request of any person whose interest may be affected by the proceeding, and shall admit any such person as a party to such proceeding. (42 U.S.C. 2239(1).)

The Commission believes that AEA sections 184 and 189 give the Commission the flexibility to fashion procedures which provide for a fair process to consider any issues raised concerning license transfers while still proceeding in an expedited manner. In 1983, a reviewing court held that Section 189.a of the Atomic Energy Act did not require that a hearing on a materials license amendment be conducted ''on the record.'' *City of West Chicago* v. *U.S. Nuclear Regulatory Commission*, 701 F.2d 632, 641–45 (7th Cir. 1983). There, the court declined to read Section 189.a as requiring formal trial-type hearings, in the absence of clear Congressional ''intent to trigger the formal on-the-record hearing provisions of the APA.'' *Id.* at 641. The Commission has also taken the position in court that Section 189.a does not require formal hearings in reactor licensing proceedings. *En Banc* Brief for Respondents dated August 30, 1991 (filed in the U.S. Court of Appeals for the District of Columbia Circuit, No. 89–1381, *Nuclear Information and Resource Service* v. *NRC*, at pp. 32–38). However, the court did not find it necessary to decide the question. *Nuclear Information Resource Services* v. *NRC*, 969 F.2d 1169, 1180 (D.C. Cir. 1992).

To promote uniformity, the hearing procedures established in the final rule apply to all license transfers which require prior NRC approval. The Commission has added to the final rule, as appropriate, additional language to make explicit that the new procedures apply to transfers of licenses issued under 10 CFR Part 72 for independent storage of spent nuclear fuel and high level radioactive waste. The procedures are designed to provide for public participation in the event of requests for a hearing under these provisions, while at the same time providing an efficient process that recognizes the time-sensitivity normally present in transfer cases.

II. Comments and Commission Responses

The Commission received sixteen letters of comment from interested persons. Commenters included private corporations who hold or plan to acquire NRC licenses for nuclear facilities, the Nuclear Energy Institute, private counsel representing electric utilities and nuclear plant operating companies, a licensed nuclear power plant operator employed at a nuclear power station, the president of Local 369 of the Utility Workers Union of America representing workers at a nuclear power station, a citizens group, and an individual member of the public. Twelve of the Commenters expressed strong support for the proposed rule and provided specific comments and suggestions on particular provisions. Two Commenters, the individual member of the public and the citizens group, indicated strong but general opposition to the proposed Subpart M hearing process.

A review of the comments, not necessarily in the order received, and the Commission's responses follows:

Comments from individuals:

Comment 1. Mr. Marvin Lewis, a member of the public, opposed the adoption of informal procedures for hearings on license transfer applications. Mr. Lewis's brief comment expressed concern that under the proposed procedures there will be no record upon which findings of fact and conclusions of law may rest and that ''general findings'' will suffice to support a license transfer.

Commission response. The Commission believes the commenter has not fully understood the proposal. While the procedures do not allow discovery as such, there will be an extensive record consisting of the hearing transcript, exhibits, and all papers filed or issued in connection with the hearing. See § 2.1317. The Presiding Officer will certify the completed hearing record to the Commission, which will then issue its decision on the issues raised in the hearing or request additional testimony and/or documentary evidence if it finds that additional evidentiary presentations are needed for a decision on the merits. See § 2.1320. The Commission does not understand Mr. Lewis's reference to ''general findings'' in the context of this rulemaking. Before approving a license transfer the Commission must find that the transfer is in accordance with the provisions of

the Atomic Energy Act (42 U.S.C. 2234). This finding will necessarily address the specifics of the transfer in question. Nothing in the rule alters the nature of the findings needed to support approval of a license transfer.

Comment 2. The Ohio Citizens for Responsible Energy (''OCRE'') generally opposed the proposed rule. OCRE characterizes the Subpart M informal procedures as ''a pro forma exercise'' that in OCRE's view will not be adequate to deal with the complex inquiry that could arise in a license transfer proceeding. OCRE also objects to shortened filing times and to the requirement that common interests be represented by a single party. OCRE sees such provisions as ''attempts to make life difficult for intervenors.''

Commission response. For the reasons given in the notice of proposed rulemaking, the Commission believes that the Subpart M procedures will be both efficient and effective in dealing with the issues that license transfer application proceedings typically involve. They are not ''pro forma'' but in fact provide ample opportunity for the parties to raise appropriate issues and build a sound evidentiary record for decision. At the same time, the Commission recognizes that issues might arise that could require additional procedures. Therefore the rule explicitly provides that the Commission may use additional procedures or even convene a formal hearing ''on specific and substantial disputes of fact necessary for the Commission's decision, that cannot be resolved with sufficient accuracy except in a formal hearing.'' See § 2.1322(d). The rule thus provides sufficient flexibility to cope with extraordinary or unusual cases. For typical cases, however, a ''streamlined hearing process'' providing faster decision-making without loss of quality is a desirable objective. The shortened filing times and other provisions to which OCRE objects are steps which make this streamlining possible. They are not selective attempts to burden intervenors. The Commission believes that all parties to a license transfer application proceeding will benefit from the use of the Subpart M procedures.

Comment 3. Mr. David Leonardi, a licensed reactor operator, submitted a two-part comment ''directed more to what is missing in the proposed rule rather than to what it contains.'' First, Mr. Leonardi questioned the Commission's statement in the notice of proposed rulemaking that license transfers in general ''do not involve . . . significant changes in personnel of consequence to the continued reasonable assurance of public health and safety.'' Mr. Leonardi called this ''a dangerous assumption'' and expressed his view that ''significant losses of critical personnel must be anticipated and factored into the transfer decision.'' He suggested that the proposed rule ''must require the applicant to submit a critical staff retention plan.''

Second, with regard to the placement in the Public Document Room of documents pertaining to each license transfer application, § 2.1303, Mr. Leonardi commented that he finds the Public Document Room difficult to use. He indicated his preference for ''a separate section on the NRC web site for each proposed license transfer where all relevant documents and correspondence may be accessed.''

Commission response. Mr. Leonardi is correct that if a significant loss and replacement of critical plant personnel can be anticipated as the result of a particular license transfer this might well be a reason not to approve the transfer or to condition the transfer on the maintenance of adequate technical qualifications. However, the Commission does not regard this observation as a reason for modifying this proposed rule, which deals with hearing procedures rather than with the substantive findings that must be made to support approval of a license transfer application. The commenter does not assert that the Subpart M procedures cannot deal adequately with the issue of technical qualifications of the applicant for license transfer, and the Commission perceives no potential inadequacy in this regard. The Commission continues to believe that personnel retention issues and technical qualifications of the applicant do not involve the type of technical questions bearing on the actual operation of a facility that may benefit from different hearing procedures. As for the commenter's suggestion that the rule should incorporate a requirement for a critical staff retention plan to be submitted by the applicant for the license transfer, the Commission finds that Subpart M, which deals primarily with hearing procedures, is not an appropriate place for such a substantive requirement. If, in a particular license transfer case, a need is identified for submission of a critical staff retention plan in order to address the applicant's technical qualifications, this matter can readily be addressed in the hearing process and can ultimately result in a condition on license transfer approval.

Turning to the matter of availability of license transfer application documents on the NRC web site, the Commission notes that the NRC is in the process of developing a new and comprehensive Agencywide Documents Access and Management System (''ADAMS''). Documents filed in a license transfer case after ADAMS becomes operational, probably in the second half of 1999, will be placed in the ADAMS public library. The public will be able to find relevant documents by using general search criteria such as docket numbers, case names, and subject topics. The details of how ADAMS will operate have yet to be fully worked out, but the Commission believes that this system will prove responsive to the commenter's concern. In the meantime, the Commission notes that the NRC Public Document Room licensing files have worked quite well in the past and been readily available to members of the public who wish to obtain extensive information on pending licensing actions.

Comment 4. A comment by the president of Local 369, Utility Workers Union of America, representing 197 workers at a nuclear power station, acknowledged the need to streamline the hearing process but identified what the commenter perceived as potential problems with the proposed Subpart M procedures. In particular, the commenter was concerned about the Commission's expectation that the procedures will result in the issuance of a final Commission decision on a license transfer application within about six to eight months of notice of receipt of the application. The commenter said that ''a process that proceeds too rapidly could compromise the Union's and the NRC's ability to obtain critical information about the license transferee.'' The Commission of course agrees that what the commenter calls ''a rush to approval'' could fail to obtain adequate information about the transferee's experience and ability to manage the plant safely. The Commission notes, however, that the expectation of completing license transfer proceedings in six to eight months applies to ''routine cases.'' (63 FR 48646, col. 2.) Subpart M itself does not specify or limit the substantive questions which must be addressed in license transfer proceedings. If difficult issues arise in unusual cases, they will be dealt with as sound decisionmaking requires, even if this requires a greater time commitment than routine cases. The Commission's aim in adopting the Subpart M procedures is to provide an efficient and effective hearing process and a structure for compiling a decision record in a timely manner, not a hurried one.

The commenter also expressed concern that the Union not be denied the opportunity to participate in license transfer hearings. The new Subpart M

does not alter the Commission's usual requirement for standing to intervene in a proceeding that a person show an interest which may be affected by the outcome of the proceeding. By showing an interest (within the ''zone of interests'' of the relevant statutes) which may be affected by the Commission's action on an application for license transfer, any person or organization may participate as of right. See § 2.1306(a). Under current agency case law, the Commission may also allow discretionary intervention to a person who does not meet standing requirements, where there is reason to believe the person's participation will make a valuable contribution to the proceeding and where a consideration of the other criteria on discretionary intervention shows that such intervention is warranted.

Comments by or on behalf of members of the nuclear energy industry:

Comment 5. The Nuclear Energy Institute (''NEI''), an organization representing utilities licensed to operate commercial nuclear power plants in the United States, nuclear materials licensees, and other organizations and individuals involved in the nuclear industry, submitted a comment on behalf of its members. NEI supports as a ''very positive development'' the use of informal rather than formal trial-type procedures for consideration of license transfer applications. NEI suggests the goals of the rule can be furthered by the following proposed clarification: ''Where the proposed change only involves a transfer of ownership of all or a portion of the facility, both NRC staff review and the Subpart M proceeding should be limited solely to the capability of the transferee to meet financial qualifications and decommissioning funding requirements.'' Several comments by individual members of the nuclear energy industry or their representatives endorsed the comments of NEI.

Commission response. The Commission does not accept NEI's proposed clarification. The Commission observed in the Notice of Proposed Rulemaking that ''*typical* staff review consists largely of assuring that the ultimately licensed entity has the capability to meet financial qualification and decommissioning funding aspects of NRC regulations,'' (63 FR 48644, col. 3. (emphasis added)). But financial qualification and decommissioning funding are not the sole issues that may bear on a license transfer approval, even when the transfer will change only the ownership of all or part of a facility and will not directly affect management or operation. Section 103d of the Atomic Energy Act, 42 U.S.C. 2133, for example, places certain restrictions on foreign ownership, control, or domination of certain licenses. Consideration of the question whether a proposed license transfer is consistent with this provision of the Act would require a broader scope for the proceeding than the limited one NEI recommends. Generally, the Commission believes it is desirable to focus its Subpart M rulemaking solely on procedures rather than attempting in this rulemaking to describe and enumerate the substantive issues that license transfers may involve.

Comment 6. The Southern California Edison Company (''SCE'') stated its strong support for the proposed rule. SCE supported the comments submitted by the Nuclear Energy Institute, which the Commission has already addressed in the response to Comment 5, *supra.* SCE also offered suggestions for ''minor enhancements'' to the proposed rule, which the Commission addresses in its response to this comment.

Commission response. Change (1) suggested by SCE is that the rule should give the Presiding Officer, in addition to the power to ''strike or reject duplicative or irrelevant presentations,'' § 2.1320(a)(9), the responsibility and power to strike or reject unreliable or immaterial presentations. As the commenter points out, this change would make Subpart M similar in this regard to 10 CFR Part 2, Subpart L, Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings, which gives the presiding officer the power to strike portions of a presentation that are ''cumulative, irrelevant, immaterial, or unreliable.'' (10 CFR 2.1233(e)). The Commission agrees that unreliable and immaterial presentations detract from the value of the record and should be subject to exclusion in the sound discretion of the Presiding Officer. Therefore the Commission accepts this suggestion and has revised § 2.1320(a)(9) accordingly in the final rule.

Change (2) suggested by SCE deals with responses to papers served by mail. SCE notes that proposed § 2.1314(c) provides for three additional days to respond to papers served pursuant to § 2.1307 by regular mail. SCE suggests that three additional days for mail service should be allowed for all responses to service of a paper, not just those made pursuant to § 2.1307. The Commission accepts this suggestion and has revised § 2.1314(c) accordingly in the final rule.

Change (3) suggested by SCE is that proposed § 2.1331(b) be clarified to make plain that the Commission may consider other information on the docket when it decides matters that were not designated as issues for the hearing. The Commission agrees and has adopted the language proposed by SCE for § 2.1331(b) in the final rule: ''The decision on issues designated for hearing pursuant to § 2.1308(d)(1) will be based on the record developed at the hearing.''

Comment 7. Florida Power & Light Company (''FPL'') submitted a comment endorsing the comments of the Nuclear Energy Institute, which the Commission has already addressed in the context of its response to comment 5, *supra.* FPL concurred with the Commission's findings in support of the proposed Subpart M and offered the following additional suggestions:

(1) FPL suggested that the Commission should extend the informal hearing process to all NRC adjudicatory proceedings.

Commission response. Although the suggestion goes well beyond the scope of the proposed rule, the Commission notes elsewhere in this notice that it has argued in court that section 189a of the Atomic Energy Act does not require formal hearings, and the Commission has directed the staff to seek legislation that supports greater use of informal procedures. The Commission has also asked the staff to advise the Commission on ways to enhance the Commission's ability to use informal procedures in any proceeding in which formal procedures are currently used.

(2) FPL supported close Commission oversight of the Presiding Officer but believed that the Commissioners should not personally be involved, as the proposed Subpart M envisions, in developing the evidentiary record in license transfer application proceedings.

Commission response. Under the proposed rule the Commission ''will ordinarily be the Presiding Officer at a hearing,'' but the Commission ''may provide * * * that one or more Commissioners, or any other person permitted by law, may preside.'' See § 2.1319. The Commission believes this language provides sufficient flexibility to deal with the commenter's concerns, should the Commission perceive that its direct involvement in Subpart M hearings is in some cases unduly burdensome or impractical for the Commission.

(3) FPL stated its belief that allowing all parties to make oral presentations in every license transfer proceeding ''could defeat the underlying purpose of the proposed rule: to streamline license transfer proceedings.'' Comments by several other members of the nuclear

energy industry or their representatives questioned the proposed rule's provision that hearings shall be oral unless all parties agree to a hearing on written submissions. These Commenters recognized the Commission's intention to avoid delays caused by a need to consider a party's request that a hearing be oral; that is, the Commission intends to avoid needless nonsubstantive ''litigation'' over the form (oral or written) of the litigation on the merits—but noted that there are alternative ways to avoid these delays. Two Commenters suggested that the Commission could provide that hearings will be on written submissions unless any party requests an oral hearing.

Commission response. Under the proposed Subpart M oral hearings are the ''default choice'' in that it provides for oral presentations unless all parties agree to a written hearing. Under the proposed scheme if the parties take no action the hearing will be oral, and only unanimous action of the parties in favor of a written hearing will cause oral procedures to be supplanted. The Commenters' suggested alternative that the hearing be written unless a party requests an oral hearing would turn this around and make a written hearing the default choice. The Commission prefers to retain the approach taken in the proposed rule. The Commission believes that oral presentations with the structure established by Subpart M may allow for the compilation of a better record because the Presiding Officer can more readily ask follow-up or clarifying questions. A strictly written hearing is likely to prove more cumbersome in this regard. Furthermore, members of the public attending oral proceedings will be able to follow the hearing more readily than by combing through extensive written materials in the Public Document Room as they would be required to do in a written hearing context. Accordingly, the Commission does not accept the commenter's proposed alternative.

(4) FPL noted its support of Commission action to ensure timely completion of license transfer proceedings but recommended ''that the final rule specifically require automatic Commission review in the event that any of the schedular ''milestones'' are exceeded by a Presiding Officer.''

Commission response. Although the Commission intends to monitor these proceedings carefully and will be fully prepared to step in to address schedular problems when necessary, the Commission is not prepared to require by regulation, and bind itself to, a review of every instance in which a Presiding Officer exercises discretion to enlarge the time provided in the rule for filings or other actions. In view of the Commission's recent Policy Statement on Conduct of Adjudicatory Proceedings, 48 NRC 18 (1998), (63 FR 41872; August 5, 1998), the Commission is confident that persons serving as Presiding Officers will be highly sensitive to the need for expeditious completion of adjudicatory proceedings, consistent with considerations of fairness and the production of an adequate record, and will countenance delays only for compelling reasons. The Commission of course retains discretion to take such action in individual proceedings as it deems necessary to assure timeliness and adherence to all other Commission requirements that govern the hearing process.

Comment 8. Texas Utilities Electric Company (''TU Electric'') expressed support for the proposed rule. TU Electric also offered many of the suggestions put forward in the comments already described. In addition, TU Electric expressed concern that the reference in proposed § 2.1330(b) to 10 CFR 2.790, which is in Subpart G, might convey an implication that other Subpart G procedures also apply in Subpart M proceedings.

Commission response. To allay the commenter's concern, the Commission has modified § 2.1330(b) in the final rule by replacing the language ''under 10 CFR 2.790'' with the language ''in accordance with law and policy as reflected in 10 CFR 2.790 . . .'' The intent of this modification is to remove any possible implication that Subpart G is intended to apply to license transfer actions.

Comment 9. AmerGen Energy Company, LLC (''AmerGen'') commented that it favored the proposed rule and urged its prompt adoption. AmerGen also suggested that the Commission should apply the proposed Subpart M procedures, at the request of an applicant, in any license transfer application proceedings that may be undertaken before the final Subpart M becomes effective. In AmerGen's opinion, the NRC has authority under the Atomic Energy Act and the Administrative Procedure Act to use the Subpart M procedures on a case-by-case basis, prior to finalization of the rule, so long as the Commission provides fair notice to the potential parties.

Commission response. For reasons discussed elsewhere in this notice, the Commission is making this rule effective upon publication, pursuant to the provisions of the Administrative Procedure Act for immediate effectiveness. 5 U.S.C. 553(d)(1) and 553(d)(3). Any applications received but not yet noticed as of the effective date of this rule will be subject to Subpart M procedures. In the case of license transfer applications, if any, that have been noticed and for which proceedings are pending as of the date of this notice of final rulemaking, affected applicants or parties to such proceedings who wish to avail themselves of the new procedures may file motions with the Presiding Officer in those proceedings, requesting that Subpart M procedures be applied as appropriate to the remainder of the pending proceeding.

Comment 10. Morgan, Lewis, & Bockius, a private law firm commenting on behalf of Alliant Utilities—IES Utilities and STP Nuclear Operating Company, endorsed the comments of NEI (*see* Comment 5, *supra*) in support of the rule. The commenter also made several suggestions for changes.

Commission response. The changes suggested by this commenter are similar to suggestions made in other comments described and responded to in the preceding discussion.

Comment 11. Shaw, Pittman, Potts & Trowbridge (''Shaw Pittman''), a private law firm commenting on behalf of itself and several utilities, strongly supported the proposed rule. Shaw Pittman believed, however, that several aspects of the rule require ''clarification and refinement.'' These aspects, together with the Commission's response, are as follows:

(1) Shaw Pittman expressed concern ''that the rule does not identify the circumstances that would permit the NRC Staff to delay the approval or denial of a license transfer request pending any requested hearing.'' The commenter noted that proposed § 2.1316(a) says that during the pendency of a hearing under Subpart M ''the staff is expected to promptly issue approval or denial of license transfer requests.'' The commenter believed that the final rule or its statement of consideration ''should describe the circumstances or the factors that the NRC Staff are to consider in deciding whether to postpone approval or denial of a transfer pending a requested hearing.''

Commission response. The Commission does not accept this suggestion. As noted previously (*see* response to Comment 5), the scope and focus of the Subpart M rulemaking are on procedures for the conduct of hearings, rather than the substantive questions involved in approval of license transfer applications. The Commission is confident that the present language of § 2.1316(a) adequately conveys to the NRC staff that staff action on license transfer requests

should not be delayed except for sound reasons. The Commission relies on the staff, subject to Commission oversight, to exercise good judgment in this regard. As the rule indicates, the Commission believes that staff approval or denial can usually be issued promptly, but it would be unwise for the Commission at this point to attempt to anticipate all the circumstances that might warrant delay in the staff's review or action on the application.

(2) Shaw Pittman commented that the Commission ''should clarify the evidentiary value of written position statements and oral presentations allowed under the present rule.'' The commenter would have the rule specify that the Commission cannot base a decision on ''written position statements and oral presentations, in and of themselves.'' The commenter would require parties to document and support their positions by written testimony with supporting affidavits.

Commission response. The Commission does not believe that extensive clarification is necessary. Setting out evidentiary requirements in more detail could be at variance with the Commission's intention to move away from time-consuming formality in its hearing processes. In making a decision based on the record produced in a Subpart M proceeding, the Commission will of course take proper account of the evidentiary value of the record material. Written statements of position and oral arguments will be treated as such statements and arguments are treated in the NRC's formal adjudications under Subpart G and informal proceedings under Subpart L, *i.e.* as arguments and positions of the parties but not as facts. Factual assertions unsupported by affidavits, expert testimony, or other appropriate evidentiary submissions are less likely to carry weight than assertions with proper evidentiary support.

(3) Shaw Pittman urged the Commission to revise the proposed rule expressly to allow parties to submit proposed questions to the Presiding Officer within seven days of the filing of rebuttal testimony. The commenter noted that under the proposed rule, rebuttal testimony and proposed questions for the Presiding officer to ask witnesses in the Presiding Officer's examination are to be filed at the same time. *See* § 2.1321(b) and § 2.1322(a)(2). Thus, there is no explicit provision for proposing questions directed to the rebuttal testimony itself, although the Presiding Officer has the discretion to provide for such questions. The commenter believed that the timeframe of the rule would reasonably allow for this additional filing without extending the date for commencement of the oral hearing beyond 65 days after the date of the Commission's notice granting a hearing.

Commission response. The Commission finds the commenter's point well-taken and has placed language in the final rule to authorize proposed questions directed to rebuttal testimony to be filed within seven days of the filing of the rebuttal testimony.

(4) Shaw Pittman finds confusing the language of proposed 10 CFR 2.1323(a) that ''[a]ll direct testimony in an oral hearing shall be filed no later than 15 days before the hearing.* * *'' The commenter believes this language ''could arguably be read to allow the filing of direct testimony subsequent to the 30 day deadline provided for by proposed 10 CFR 2.1322(a)(1).''

Commission response. The Commission does not see any reason for confusion. To be timely the filings in question must be made within 30 days after the date of the Commission's notice granting a hearing [§ 2.1322(a)] but in any event no later than 15 days before the hearing [§ 2.1323(a)]. There is no potential contradiction between the two provisions. Rather than being an unnecessary provision, as the commenter asserts, § 2.1323(a) assures that parties will receive filings in adequate time to prepare for the oral hearing.

(5) Shaw-Pittman asked that the Commission clarify in its promulgation of the final rule the extent to which license transfer applications filed before the effective date of the rule will be subject to the new Subpart M procedures. The commenter favored making the new rule immediately effective and applying the Subpart M procedures to pending applications.

Commission response. See the Commission's response to Comment 9.

Comment 12. GPU Nuclear stated its strong support for the rule and recommended that the new procedures be applied as soon as possible.

Commission response. See the Commission's response to Comment 9.

Comment 13. Duke Energy Company (''Duke''), represented by Winston & Strawn, supported the proposed rule but expressed concern about the elimination of cross-examination by parties under Subpart M. Duke stated that ''the final rule should retain provisions allowing the parties to present recommended questions to the presiding officer.'' Duke commented that the final rule ''should define with greater precision the types of issues appropriate for review * * *'' and suggested limiting the proceedings to issues associated with financial qualifications and decommissioning funding. Duke also commented that the final rule should explicitly grant parties to a contested license transfer hearing the right to appeal an adverse decision by the Commission. Duke suggested that the informal, legislative-style hearing process should be extended to other NRC adjudicatory proceedings.

Commission response. The proposed Subpart M rule provides for parties to submit proposed questions to the Presiding Officer. This will allow the parties to suggest what they believe to be appropriate questions for the witnesses but will allow the Presiding Officer better control of the examination of witnesses. This provision should effectively eliminate the need for objections and interruptions during witness examination. For these reasons the Commission has retained the proposed procedure in the final rule. The Commission rejects the commenter's suggestion that the rule should define and limit the issues appropriate for review, for reasons already discussed in previous responses to similar comments. The Commission also sees no point in addressing statutory appeal rights in the final rule. A party's right to judicial review of an adverse decision is set out in Section 189b. of the Atomic Energy Act in conjunction with Chapter 158 of title 28, United States Code, and the Administrative Procedure Act. Extension of the proposed procedures for license transfer applications to other types of NRC proceedings is beyond the scope of this rulemaking, but, as noted in more detail in response to an earlier comment, the Commission is taking steps to expand the use of similar procedures in other proceedings.

Comment 14. PECO Nuclear noted its view that the proposed rule is ''a positive step.'' The commenter suggested several minor changes in words and punctuation needed to clarify the text of the rule.

Commission response. The Commission has incorporated in the final rule the commenter's suggested minor changes, which do not affect the substance of the rule.

Comment 15. Wisconsin Electric Power Company supported the Commission's proposed rule and suggested certain ''clarifications and refinements.''

Commission response. The commenter's suggestions do not differ in substance from suggestions made by other commenters that the Commission has responded to above.

Other Comments.

Members of the NRC staff in Office of Nuclear Materials Safety and Safeguards submitted a comment asking that it be made clear that the proposed Subpart M applies to license transfers under 10 CFR Part 72 and that applications for transfers under Part 72 be noticed in the **Federal Register** pursuant to § 2.1301(b).

Commission response. The proposed rules were intended to apply to all license transfer applications, including those filed under Part 72. To make this clear, the Commission has included explicit references to Part 72 in this statement of consideration for the final rule. The Commission has also modified § 2.1301(b) to list transfer applications under Part 72 as one of the class of applications that will be noticed in the **Federal Register**.

III. Description of Final Rule

The procedures adopted in this rulemaking cover any direct or indirect license transfer for which NRC approval is required pursuant to the regulatory provisions under which the license was issued. NRC regulations and the Atomic Energy Act require approval of any transfer of control of a license. See AEA, Sec. 184, 42 U.S.C. 2234. This includes those transfers that require license amendments and those that do not. It should be recognized that not all license transfers will require license amendments. For example, the total acquisition of a licensee, without a change in the name of the licensee, (e.g., through the creation of a holding company which acquires the existing licensee but which, beyond ownership of the licensee, does not otherwise affect activities for which a license is required), would require NRC approval, but would not necessarily require any changes in the NRC license for the facilities owned by the licensee.

These procedures do not expand or change the circumstances under which NRC approval of a transfer is necessary nor do they change the circumstances under which a license amendment would be required to reflect an approved transfer. Amendments to licenses are required only to the extent that ownership or operating authority of a licensee, as reflected in the license itself, is changed by a transfer. A discussion of the process for issuing amendments associated with an approved transfer, when necessary, is provided below.

The procedures, similar to those used by the Commission in cases involving export licensing hearings under 10 CFR Part 110, provide for an informal type hearing for license transfers. These procedures provide opportunities for meaningful public participation while minimizing areas where a formal adjudicatory process could introduce delays without any commensurate benefit to the substance of the Commission's decisionmaking.

The Commission will either elect to develop an evidentiary record and render a final decision itself, or will appoint a Presiding Officer who will be responsible for collecting evidence and developing a record for submission to the Commission. For such proceedings, the Commission may appoint a Presiding Officer from the Atomic Safety and Licensing Board Panel (ASLBP), although the proposed regulations do not restrict the sources from which the Commission may select.

It should be noted that the regulations do not require the NRC staff to participate in the proceedings as a formal party unless the Commission directs the use of Subpart G procedures or otherwise directs the staff to participate as a party. The Commission expects, nevertheless, that, in most cases, the NRC staff will participate to the extent that it will offer into evidence staff's Safety Evaluation Report that supports its conclusions on whether to initially grant or deny the requested license transfer and provide one or more appropriate sponsoring witnesses. Greater NRC staff involvement may be directed by the Commission on its own initiative or at the staff's choosing, as circumstances warrant.

One aspect of the rule designed to improve efficiency is the decision to require oral hearings on all transfers where a hearing is to be held under Subpart M, with very limited exceptions. It has been the Commission's experience in Subpart L proceedings that intervenors are particularly interested in having the opportunity to make oral presentations or arguments for inclusion in the record. Even though such requests are rarely granted,[1] intervenors can and do introduce the issue of whether to have oral presentations in individual proceedings. Rather than have the issue of oral presentations become a point of contention in individual proceedings (which could introduce unnecessary delays in completing the record) the rule resolves this concern by ensuring that all parties have the opportunity to present oral testimony. The question of whether cross examination of witnesses should be allowed has also led to arguments in Subpart L proceedings.[2] The Commission has addressed this area of potential dispute by providing in Subpart M for questioning of witnesses only by the Presiding Officer. Although only the Presiding Officer may question witnesses, the rule specifically provides parties the opportunity to present recommended questions to the Presiding Officer.

Another aspect of the rule intended to improve the efficiency of the adjudicatory process is that, while it does not provide for any separate discovery, it does require that a Hearing Docket containing all relevant documents and correspondence be established and be made available at the Commission's Public Document Room. This approach is in keeping with establishment of a case file as described in the Commission's recent Statement of Policy on Conduct of Adjudicatory Proceedings, CLI–98–12 (63 FR 41872; August 5, 1998).

Finally, to improve the efficiency of the adjudicatory process the rule imposes schedular milestones for the filing of testimony and responses and for the commencement of oral hearings. Subject to the Presiding Officer's scheduling adjustments in particular proceedings, the procedures require initial testimony, statements of position on the issues, and responsive testimony to be filed within 50 days of the Commission's decision to grant a request for a hearing. The hearing will commence in just over two months from the Commission's decision to hold a hearing. Assuming that the NRC staff is able to complete its technical review and take initial action on the transfer application within three to four months of its notice of receipt of the application, these procedures are expected to result in the issuance of a final Commission decision on the license transfer within about six to eight months of the notice of receipt of the application in routine cases. Complex cases requiring more extensive review or the use of different hearing procedures may take more time.

Administrative License Amendments Associated With License Transfers

As discussed above, not all license transfers require license amendments. Only when the license specifically has references to entities or persons that no longer are accurate following the approved transfer will a situation exist that requires amendments to the license. Such amendments are essentially administrative in nature. That is, in determining whether to approve such amendments, the only issue is whether the license amendment accurately reflects the approved transfer. Substantive issues regarding requests for a hearing on the appropriateness of the

[1] Curators of the University of Missouri, CLI–95–1, 41 NRC 71 120 (1995).

[2] Id.

transfer itself may only be considered using the procedures in this rule. The Commission has previously noted that issuance of such an administrative amendment, following the review and approval of the transfer itself, ''presents no safety questions and clearly involves no significant hazards considerations.'' *Long Island Lighting Company*, *supra*, 35 NRC at 77, n.6.

Safety Evaluation Reports (SERs) prepared in connection with previous license transfers confirm that such transfers do not, as a general matter, have significant impacts on the public health and safety. Accordingly, the new regulations provide that conforming amendments to the license may be issued by the NRC staff at any time after the staff has reviewed and approved the proposed transfer, notwithstanding the pendency of any hearing under the proposed Subpart M. As is done currently, NRC staff approval of a transfer application will take the form of an order. Such order will also identify any license amendment issued.

The Commission, through this rulemaking, is making a generic finding that, for purposes of 10 CFR 50.58(b)(5), 50.91 and 50.92, and 72.46 and 72.50, administrative amendments which do no more than reflect an approved transfer and do not directly affect actual operating methods and actual operation of the facility do not involve a ''significant hazards consideration'' or a ''genuine issue consideration,'' respectively, and do not require that a hearing opportunity be provided prior to issuance. It must be emphasized that any post-effectiveness hearing on such administrative amendments will be limited to the question of whether the amendment accurately reflects the approved transfer. The Commission does note, however, that it retains the authority, as a matter of discretion, to direct completion of hearings prior to issuance of the transfer approval and any required amendments in individual cases and to direct the use of other hearing procedures, if the Commission believes it is in the interest of public health and safety to do so.

Environmental Issues

The NRC staff has completed many Environmental Assessments related to license transfers. These assessments have uniformly demonstrated that there are no significant environmental effects from license transfers. Indeed, as the Commission has noted previously, amendments effectuating an approved transfer present no safety questions and involve no significant hazards considerations.[3] Accordingly, the Commission has determined that a new categorical exclusion should be added to 10 CFR Part 51 which will obviate the need for the NRC staff to continue to conduct individual Environmental Assessments in each transfer case.

Limitation to License Transfers

The Commission wishes to emphasize that the proposed rules address only license transfers and associated administrative amendments to reflect transfers. Requests for license amendments that involve changes in actual operations or requirements directly involving health and safety-related activities will continue to be subject to the amendment processes currently in use in Parts 50 and 72, including the requirement for individualized findings under 10 CFR 50.58, 50.91 and 50.92 that address the necessity for pre-effectiveness hearings.

Basis for Immediate Effectiveness

The Commission has determined that this rule should become immediately effective upon publication. The Administrative Procedure Act relieves the agency of the requirement that publication of a substantive rule be made not less than thirty days before its effective date in the case of ''a substantive rule which...relieves a restriction'' or ''as otherwise provided by the agency for good cause found and published with the rule.'' 5 U.S.C. 553(d)(1) and 553(d)(3). The purpose of the thirty-day waiting period ''is to give affected parties a reasonable time to adjust their behavior before the final rule takes effect.'' *Omnipoint Corp.* v. *F.C.C.*, 78 F. 3d 620 (D.C. Cir. 1996). The rule deals primarily with procedures that will be used in future hearings on applications for license transfers. The rule adds no burden to the conduct of activities regulated by the NRC. Thus there is no need for NRC licensees or anyone else ''to adjust their behavior'' to achieve compliance with the rule. Moreover, comments by persons most likely to be affected by the rule (potential applicants) appear to favor the rule and its prompt implementation. The Commission therefore finds there is good cause to make this rule immediately effective. Alternatively, the Commission notes that the rule in effect ''relieves a restriction'' in that the hearing process established by Subpart M should be less burdensome for parties to license transfer proceedings than the procedures which the Commission has previously by practice applied. Thus the Commission's decision to dispense with the thirty day waiting period is also supported by 5 U.S.C. 553(d)(1) .

Finding of No Significant Environmental Impact and Categorical Exclusion

The Commission has determined under the National Environmental Policy Act (NEPA) of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR Part 51, that this rule falls within the categorical exclusion appearing at 10 CFR 51.22 (c)(1) for which neither an Environmental Assessment nor an Environmental Impact Statement is required.

Further, under its procedures for implementing NEPA, the Commission may exclude from preparation of an environmental impact statement, or an environmental assessment, a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in NRC proceedings. In this rulemaking, the Commission finds that the approval of a direct or indirect license transfer, as well as any required administrative license amendments to reflect the approved transfer, comprises a category of actions which do not individually or cumulatively have a significant effect on the human environment. Actions in this category are similar in that, under the AEA and Commission regulations, transfers of licenses (and associated administrative amendments to licenses) will not in and of themselves permit the licensee to operate the facility in any manner different from that which has previously been permitted under the existing license. Thus, the transfer will usually not raise issues of environmental impact that differ from those considered in initial licensing of a facility. In addition, the denial of a transfer would also have in and of itself no impact on the environment, since the licensee would still be authorized to operate the facility in accordance with the existing license.

Environment assessments that have been conducted regarding numerous license transfers under existing regulations have not demonstrated the existence of a major federal action significantly affecting the environment. Further, the final rule does not apply to any request for an amendment that would directly affect the actual operation of a facility. Amendments that directly affect the actual operation of a facility would be subject to consideration pursuant to the existing license amendment processes, including the requirements in 10 CFR Part 2,

[3] Long Island Lighting Company, supra, 35 NRC at 77, n. 6.

Subpart G or L as appropriate and applicable environmental review requirements of 10 CFR Part 51.

Paperwork Reduction Act Statement

The final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, et. seq.). Existing requirements for 10 CFR Part 51 were approved by the Office of Management and Budget, approval number 3150–0021.

Public Protection Notification

If an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Regulatory Analysis

To determine whether the amendments to 10 CFR Part 2 contained in this final rule were appropriate, the Commission considered the following options:

1. The No-Action Alternative

This alternative was not deemed acceptable for the following reasons. First, this option would leave reactor transfers subject to past practice which generally involved hearings using multi-member, multi-disciplined licensing boards, even though such transfers do not involve the type of complex technical questions for which multi-member boards of diverse background may provide a useful technical pool of experience.

Second, the formal adjudicatory hearing process would needlessly add formality and resource burdens to the development of a record for reaching a decision on applications for transfer approval without any commensurate benefit to the public health and safety or the common defense and security.

Third, the current process for materials licensees under 10 CFR Part 2, Subpart L, while not utilizing the multi-member licensing boards, does not necessarily result in uniform treatment of all license transfer requests, and provides at least the potential for more formal hearings. Even if the requests for more formal procedures are not granted in typical materials cases, the process of receiving motions for more formal procedures, allowing responses from all parties to those requests, and the need for parties' responses to those requests, and the need for the Presiding Officer to consider and rule on such requests introduces issues and litigation on matters not involving the merits of the particular application and thus introduces the potential for delays in materials license transfer proceedings, without clear benefit to the public health and safety or the common defense and security.

2. Use 10 CFR Part 2, Subpart G for All License Transfers

While assuring uniformity for all license transfer requests, this option would not result in an expeditious process that would avoid the use of multi-member licensing boards, which is unnecessary given the nature of typical transfer applications. It would also result in added formality and resources being devoted to materials license transfers on the part of all parties to the hearing, without any resulting benefit to public health and safety.

3. Use of 10 CFR Part 2, Subpart L for All License Transfers

This option was considered as viable to achieve uniformity and to avoid the need for multi-member licensing boards for conducting requested hearings. Subpart L provides for paper hearings unless oral presentations are ordered by the Presiding Officer. Further, Subpart L allows the Presiding Officer the option of recommending to the Commission that more formal procedures be used. Even though such requests are rarely granted, as a practical matter there are delays in the proceeding while parties petition the Presiding Officer and/or the Commission to have oral hearings and to use additional procedures, such as cross-examination and formal discovery. Such discretion in structuring individual hearings is appropriate where the breadth of potential actions and licensees (covering essentially all amendments for a wide variety of materials licensees) is governed by a single hearing process. This flexibility, however, inevitably leads to delays as each party to the hearings proposes and presents arguments to the Presiding Officer concerning how the hearing should be structured.

4. Use of a New Subpart M for all License Transfers

In the case of license transfer applications the Commission is concerned with only one type of approval, so the Commission has the ability to resolve through rulemaking many of these procedural points concerning the conduct of the hearing. The resolution of these issues will allow the parties in license transfer proceedings to move expeditiously to examination of the substantive issues in the proceeding. The Subpart M process, similar to a legislative-type hearing, will also result in the record promptly reaching the Commission, where a final agency determination can be made. The rule dictates that oral hearings be held on each application for which a hearing request is granted unless the parties unanimously agree to forgo the oral hearing. This will remove the potential for a delay while parties petition the Presiding Officer for an oral hearing. Further, the rule provides that the Presiding Officer will conduct all questioning of witnesses, and there are no provisions for formal discovery, although docket files with relevant materials will be publicly available. The rule resolves several areas of frequent dispute in subpart L proceedings and was seen, therefore, as being more appropriate for license transfer proceedings where a timely decision is important to the public interest. These efficiencies can be achieved without any negative effect on substantive decisonmaking or the rights of all parties to present relevant witnesses, written testimony, and oral arguments, which should result in a high quality record on substantive issues for use by the Commission in reaching a decision on contested issues.

5. Conclusion.

Based on the foregoing considerations, the Commission has decided to adopt Subpart M and the attendant conforming amendments to provide the procedures for actions on license transfer applications. This constitutes the NRC's regulatory analysis.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule does not change any requirements for submittal of license transfer requests to NRC, rather, the procedures designate how NRC will handle requests for hearings on applications for license transfers. Most requested hearings on license transfer applications involve reactor licensees which are large organizations which do not fall within the definition of a small business found in section 3 of the Small Business Action, 15 U.S.C. 632, or within the Small Business Standards set forth in 13 CFR Part 121 or in the size standards adopted by the NRC (10 CFR 2.810). Based on the historically low number of requests for hearings involving materials licensees, it is not expected that this rule will have any significant economic impact on a substantial number of small businesses.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109 and 72.62, does not apply to this proposed rule and a backfit analysis is not required, because these amendments do not involve any provisions that would impose backfits as defined in either 10 CFR 50.109 or 72.62. The rule does not constitute a backfit under either of these sections because it does not propose a change to or additions to requirements for existing structures, systems, components, procedures, organizations or designs associated with the construction or operation of a facility under Part 50 or 72.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

List of Subjects

10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalties, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 51

Administrative practice and procedure, Environmental impact statement, Nuclear materials, Nuclear power plants and reactors, Reporting and record keeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the Nuclear Regulatory Commission is adopting the following amendments to 10 CFR Parts 2 and 51:

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

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

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 114(f); Pub. L. 97–425, 96 Stat. 2213, as amended (42 U.S.C. 10143(f)); sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Section 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183i, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200–2.206 also issued under secs. 161 b, i, o, 182, 186, 234, 68 Stat. 948–951, 955, 83 Stat. 444, as amended (42 U.S.C. 2201 (b), (i), (o), 2236, 2282); sec. 206, 88 Stat 1246 (42 U.S.C. 5846). Sections 2.205(j) also issued under Pub. L. 101–410, 104 Stat. 90, as amended by section 3100(s), Pub. L. 104–134, 110 Stat. 1321–373 (28 U.S.C. 2461 note). Section 2.600–2.606 also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332). Section 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770, 2.780 also issued under 5 U.S.C. 557. Section 2.764 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553, Section 2.809 also issued under 5 U.S.C. 553, and sec. 29, Pub. L. 85–256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Subpart M also issued under sec. 184 (42 U.S.C. 2234) and sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91–560, 84 Stat. 1473 (42 U.S.C. 2135).

2. In § 2.101, paragraph (a)(1) is revised to read as follows:

§ 2.101 Filing of application.

(a)(1) An application for a license, a license transfer, or an amendment to a license shall be filed with the Director of the Office of Nuclear Reactor Regulation or Director of the Office of Nuclear Material Safety and Safeguards, as prescribed by the applicable provisions of this chapter. A prospective applicant may confer informally with the NRC staff prior to the filing of an application.

* * * * *

3. In § 2.1103, after the final sentence the following sentence is added to read as follows:

§ 2.1103 Scope.

* * * This subpart shall not apply to proceedings on applications for transfer of a license issued under Part 72 of this chapter. Subpart M of this part applies to license transfer proceedings.

4. In § 2.1201, paragraph (a)(1) is revised to read as follows:

§ 2.1201 Scope of subpart.

(a) * * *

(1) The grant, renewal or licensee-initiated amendment of a materials license subject to parts 30, 32 through 35, 39, 40, or 70 of this chapter, with the exception of a license amendment related to an application to transfer a license; or

* * * * *

5. In § 2.1205, paragraphs (a) and (b) are revised to read as follows:

§ 2.1205 Request for a hearing: petition for leave to intervene.

(a) Any person whose interest may be affected by a proceeding for the grant, renewal, or licensee-initiated amendment of a license subject to this subpart may file a request for a hearing.

(b) An applicant for a license, a license amendment, or a license renewal who is issued a notice of proposed denial or a notice of denial and who desires a hearing shall file the request for the hearing within the time specified in § 2.103 in all cases. An applicant may include in the request for hearing a request that the presiding officer recommend to the Commission that procedures other than those authorized under this subpart be used in the proceeding, provided that the applicant identifies the special factual circumstances or issues which support the use of other procedures.

* * * * *

6. In Part 2, a new Subpart M is added to read as follows:

Subpart M—Public Notification, Availability of Documents and Records, Hearing Requests and Procedures for Hearings on License Transfer Applications.

Sec.

Subpart M—Public Notification, Availability of Documents and Records, Hearing Requests and Procedures for Hearings on License Transfer Applications.

§ 2.1300 Scope of subpart M.

This subpart governs requests for, and procedures for conducting, hearings on any application for the direct or indirect transfer of control of an NRC license which transfer requires prior approval of the NRC under the Commission's regulations, governing statutes, or pursuant to a license condition. This subpart is to provide the only mechanism for requesting hearings on license transfer requests, unless contrary case specific orders are issued by the Commission.

§ 2.1301 Public notice of receipt of a license transfer application.

(a) The Commission will notice the receipt of each application for direct or indirect transfer of a specific NRC license by placing a copy of the application in the NRC Public Document Room.

(b) The Commission will also publish in the **Federal Register** a notice of receipt of an application for approval of a license transfer involving 10 CFR part 50 and part 52 licenses, major fuel cycle facility licenses issued under part 70, or part 72 licenses. This notice constitutes the notice required by § 2.105 with respect to all matters related to the application requiring NRC approval.

(c) Periodic lists of applications received may be obtained upon request addressed to the Public Document Room, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

§ 2.1302 Notice of withdrawal of an application.

The Commission will notice the withdrawal of an application by publishing the notice of withdrawal in the same manner as the notice of receipt of the application was published under § 2.1301.

§ 2.1303 Availability of documents in the Public Document Room.

Unless exempt from disclosure under part 9 of this chapter, the following documents pertaining to each application for a license transfer requiring Commission approval will be placed in the Public Document Room when available:

(a) The license transfer application and any associated requests;

(b) Commission correspondence with the applicant or licensee related to the application;

(c) **Federal Register** notices;

(d) The NRC staff Safety Evaluation Report (SER).

(e) Any NRC staff order which acts on the license transfer application; and

(f) If a hearing is held, the hearing record and decision.

§ 2.1304 Hearing procedures.

The procedures in this subpart will constitute the exclusive basis for hearings on license transfer applications for all NRC specific licenses.

§ 2.1305 Written comments.

(a) As an alternative to requests for hearings and petitions to intervene, persons may submit written comments regarding license transfer applications. The Commission will consider and, if appropriate, respond to these comments, but these comments do not otherwise constitute part of the decisional record.

(b) These comments should be submitted within 30 days after public notice of receipt of the application and addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff.

(c) The Commission will provide the applicant with a copy of the comments. Any response the applicant chooses to make to the comments must be submitted within 10 days of service of the comments on the applicant. Such responses do not constitute part of the decisional record.

§ 2.1306 Hearing request or intervention petition.

(a) Any person whose interest may be affected by the Commission's action on the application may request a hearing or petition for leave to intervene on a license application for approval of a direct or indirect transfer of a specific license.

(b) Hearing requests and intervention petitions must—

(1) State the name, address, and telephone number of the requestor or petitioner;

(2) Set forth the issues sought to be raised and

(i) Demonstrate that such issues are within the scope of the proceeding on the license transfer application,

(ii) Demonstrate that such issues are relevant to the findings the NRC must make to grant the application for license transfer,

(iii) Provide a concise statement of the alleged facts or expert opinions which support the petitioner's position on the issues and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the petitioner intends to rely to support its position on the issues, and

(iv) Provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact;

(3) Specify both the facts pertaining to the petitioner's interest and how the interest may be affected, with particular reference to the factors in § 2.1308(a);

(4) Be served on both the applicant and the NRC Office of the Secretary by any of the methods for service specified in § 2.1313.

(c) Hearing requests and intervention petitions will be considered timely only if filed not later than:

(1) 20 days after notice of receipt is published in the **Federal Register**, for those applications published in the **Federal Register**;

(2) 45 days after notice of receipt is placed in the Public Document Room for all other applications; or

(3) Such other time as may be provided by the Commission.

§ 2.1307 Answers and replies.

(a) Unless otherwise specified by the Commission, an answer to a hearing request or intervention petition may be filed within 10 days after the request or petition has been served.

(b) Unless otherwise specified by the Commission, a reply to an answer may be filed within 5 days after service of that answer.

(c) Answers and replies should address the factors in § 2.1308.

§ 2.1308 Commission action on a hearing request or intervention petition.

(a) In considering a hearing request or intervention petition on an application for a transfer of an NRC license, the Commission will consider:

(1) The nature of the Petitioner's alleged interest;

(2) Whether that interest will be affected by an approval or denial of the application for transfer;

(3) The possible effect of an order granting the request for license transfer on that interest, including whether the relief requested is within the Commission's authority, and, if so, whether granting the relief requested would redress the alleged injury; and

(4) Whether the issues sought to be litigated are—

(i) Within the scope of the proceeding;

(ii) Relevant to the findings the Commission must make to act on the application for license transfer;

(iii) Appropriate for litigation in the proceeding; and

(iv) Adequately supported by the statements, allegations, and documentation required by § 2.1306(b)(2) (iii) and (iv).

(b) Untimely hearing requests or intervention petitions may be denied unless good cause for failure to file on time is established. In reviewing untimely requests or petitions, the Commission will also consider:

(1) The availability of other means by which the requestor's or petitioner's interest will be protected or represented by other participants in a hearing; and

(2) The extent to which the issues will be broadened or final action on the application delayed.

(c) The Commission will deny a request or petition to the extent it pertains solely to matters outside its jurisdiction.

(d)(1) After consideration of the factors covered by paragraphs (a) through (c) of this section, the Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

(2) Hearings under this subpart will be oral hearings, unless, within 15 days of the service of the notice or order granting a hearing, the parties unanimously agree and file a joint motion requesting a hearing consisting of written comments. No motion to hold a hearing consisting of written comments will be entertained absent unanimous consent of all parties.

(3) A denial of a request for hearing and a denial of any petition to intervene will set forth the reasons for the denial.

§ 2.1309 Notice of oral hearing.

(a) A notice of oral hearing will—

(1) State the time, place, and issues to be considered;

(2) Provide names and addresses of participants,

(3) Specify the time limit for participants and others to indicate whether they wish to present views;

(4) Specify the schedule for the filing of written testimony, statements of position, proposed questions for the Presiding Officer to consider, and rebuttal testimony consistent with the schedule provisions of § 2.1321.

(5) Specify that the oral hearing shall commence within 15 days of the date for submittal of rebuttal testimony unless otherwise ordered;

(6) State any other instructions the Commission deems appropriate;

(7) If so determined by the NRC staff or otherwise directed by the Commission, direct that the staff participate as a party with respect to some or all issues.

(b) If the Commission is not the Presiding Officer, the notice of oral hearing will also state:

(1) When the jurisdiction of the Presiding Officer commences and terminates;

(2) The powers of the Presiding Officer;

(3) Instructions to the Presiding Officer to certify promptly the completed hearing record to the Commission without a recommended or preliminary decision.

§ 2.1310 Notice of hearing consisting of written comments.

A notice of hearing consisting of written comments will:

(a) State the issues to be considered;

(b) Provide the names and addresses of participants;

(c) Specify the schedule for the filing of written testimony, statements of position, proposed questions for the Presiding Officer to consider for submission to the other parties, and rebuttal testimony, consistent with the schedule provisions of § 2.1321.

(d) State any other instructions the Commission deems appropriate.

§ 2.1311 Conditions in a notice or order.

(a) A notice or order granting a hearing or permitting intervention shall—

(1) Restrict irrelevant or duplicative testimony; and

(2) Require common interests to be represented by a single participant.

(b) If a participant's interests do not extend to all the issues in the hearing, the notice or order may limit her/his participation accordingly.

§ 2.1312 Authority of the Secretary.

The Secretary or the Assistant Secretary may rule on procedural matters relating to proceedings conducted by the Commission itself under this subpart to the same extent they can do so under § 2.772 for proceedings under subpart G.

§ 2.1313 Filing and service.

(a) Hearing requests, intervention petitions, answers, replies and accompanying documents must be served as described in paragraph (b) of this section by delivery, facsimile transmission, e-mail or other means that will ensure receipt by close of business on the due date for filing. Any participant filing hearing requests, intervention petitions, replies and accompanying documents should include information on mail and delivery addresses, e-mail addresses, and facsimile numbers in their initial filings which may be used by the Commission, Presiding Officer and other parties for serving documents on the participant.

(b) All filings must be served upon the applicant; the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; and participants if any. If service to the Secretary is by delivery or by mail the filings should be addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff. E-mail filings may be sent to the Secretary at the following e-mail address: *SECY@NRC.GOV*. Facsimile transmission filings may be filed with the Secretary using the following number: 301–415–1101.

(c) Service is completed by:

(1) Delivering the paper to the person; or leaving it in her or his office with someone in charge; or, if there is no one in charge, leaving it in a conspicuous place in the office; or, if the recipient has no office or it is closed, leaving it at her or his usual place of residence with some occupant of suitable age and discretion;

(2) Depositing it in the United States mail, properly stamped and addressed; or

(3) Any other manner authorized by law, when service cannot be made as provided in paragraphs (c)(1) or (2) of this section.

(4) For facsimile transmission, sending copies to the facsimile machine of the person being served;

(5) For e-mail, sending the filing in electronic form attached to an e-mail message directed to the person being served.

(d) Proof of service, stating the name and address of the person served and the manner and date of service, shall be shown, and may be made by—

(1) Written acknowledgment of the person served or an authorized representative; or

(2) The certificate or affidavit of the person making the service.

(e) The Commission may make special provisions for service when circumstances warrant.

§ 2.1314 Computation of time.

(a) In computing time, the first day of a designated time period is not included and the last day is included. If the last day is a Saturday, Sunday or legal holiday at the place where the required action is to be accomplished, the time period will end on the next day which is not a Saturday, Sunday or legal holiday.

(b) In time periods of 7 days or less, Saturdays, Sundays and holidays are not counted.

(c) Whenever an action is required within a prescribed period following service of a paper, 3 days shall be added to the prescribed period if service is by regular mail.

§ 2.1315 Generic determination regarding license amendments to reflect transfers.

(a) Unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility or the license of an Independent Spent Fuel Storage Installation which does no more than conform the license to reflect the transfer action, involves respectively, ''no significant hazards consideration'' or ''no generic issue as to whether the health and safety of the public will be significantly affected.''

(b) Where administrative license amendments are necessary to reflect an approved transfer, such amendments will be included in the order that approves the transfer. Any challenge to the administrative license amendment is limited to the question of whether the license amendment accurately reflects the approved transfer.

§ 2.1316 Authority and role of NRC staff.

(a) During the pendency of any hearing under this subpart, consistent with the NRC staff's findings in its Safety Evaluation Report (SER), the staff is expected to promptly issue approval or denial of license transfer requests. Notice of such action shall be promptly transmitted to the Presiding Officer and parties to the proceeding.

(b) Except as otherwise directed in accordance with § 2.1309(a)(7), the NRC staff is not required to be a party to proceedings under this subpart but will offer into evidence its SER associated with the transfer application and provide one or more sponsoring witnesses.

(c) If the NRC staff desires to participate as a party, the staff shall notify the Presiding Officer and the parties and shall thereupon be deemed to be a party with all the rights and responsibilities of a party.

§ 2.1317 Hearing docket.

For each hearing, the Secretary will maintain a docket which will include the hearing transcript, exhibits and all papers filed or issued in connection with the hearing. This file will be made available to all parties in accordance with the provisions of § 2.1303 and will constitute the only discovery in proceedings under this subpart.

§ 2.1318 Acceptance of hearing documents.

(a) Each document filed or issued must be clearly legible and bear the docket number, license application number, and hearing title.

(b) Each document shall be filed in one original and signed by the participant or its authorized representative, with the address and date of signature indicated. The signature is a representation that the document is submitted with full authority, the person signing knows its contents and that, to the best of their knowledge, the statements made in it are true.

(c) A document not meeting the requirements of this section may be returned with an explanation for nonacceptance and, if so, will not be docketed.

§ 2.1319 Presiding Officer.

(a) The Commission will ordinarily be the Presiding Officer at a hearing under this part. However, the Commission may provide in a hearing notice that one or more Commissioners, or any other person permitted by law, will preside.

(b) A participant may submit a written motion for the disqualification of any person presiding. The motion shall be supported by an affidavit setting forth the alleged grounds for disqualification. If the Presiding Officer does not grant the motion or the person does not disqualify himself and the Presiding Officer or such other person is not the Commission or a Commissioner, the Commission will decide the matter.

(c) If any person presiding deems himself or herself disqualified, he or she shall withdraw by notice on the record after notifying the Commission.

(d) If a Presiding Officer becomes unavailable, the Commission will designate a replacement.

(e) Any motion concerning the designation of a replacement Presiding Officer shall be made within 5 days after the designation.

(f) Unless otherwise ordered by the Commission, the jurisdiction of a Presiding Officer other than the Commission commences as designated in the hearing notice and terminates upon certification of the hearing record to the Commission, or when the Presiding Officer is disqualified.

§ 2.1320 Responsibility and power of the Presiding Officer in an oral hearing.

(a) The Presiding Officer in any oral hearing shall conduct a fair hearing, develop a record that will contribute to informed decisionmaking, and, within the framework of the Commission's orders, have the power necessary to achieve these ends, including the power to:

(1) Take action to avoid unnecessary delay and maintain order;

(2) Dispose of procedural requests;

(3) Question participants and witnesses, and entertain suggestions as to questions which may be asked of participants and witnesses.

(4) Order consolidation of participants;

(5) Establish the order of presentation;

(6) Hold conferences before or during the hearing;

(7) Establish time limits;

(8) Limit the number of witnesses; and

(9) Strike or reject duplicative, unreliable, immaterial, or irrelevant presentations.

(b) Where the Commission itself does not preside:

(1) The Presiding Officer may certify questions or refer rulings to the Commission for decision;

(2) Any hearing order may be modified by the Commission; and

(3) The Presiding Officer will certify the completed hearing record to the Commission, which may then issue its decision on the hearing or provide that additional testimony be presented.

§ 2.1321 Participation and schedule for submission in a hearing consisting of written comments.

Unless otherwise limited by this subpart or by the Commission, participants in a hearing consisting of written comments may submit:

(a) Initial written statements of position and written testimony with supporting affidavits on the issues. These materials shall be filed within 30 days of the date of the Commission's Notice granting a hearing pursuant to § 2.1308(d)(1), unless the Commission or Presiding Officer directs otherwise.

(b) Written responses, rebuttal testimony with supporting affidavits directed to the initial statements and testimony of other participants, and proposed written questions for the Presiding Officer to consider for

submittal to persons sponsoring testimony submitted under paragraph (a) of this section. These materials shall to filed within 20 days of the filing of the materials submitted under paragraph (a) of this section, unless the Commission or Presiding Officer directs otherwise. Proposed written questions directed to rebuttal testimony for the Presiding Officer to consider for submittal to persons offering such testimony shall be filed within 7 days of the filing of the rebuttal testimony.

(c) Written concluding statements of position on the issues. These materials shall be filed within 20 days of the filing of the materials submitted under paragraph (b) of this section, unless the Commission or the Presiding Officer directs otherwise.

§ 2.1322 Participation and schedule for submissions in an oral hearing.

(a) Unless otherwise limited by this subpart or by the Commission, participants in an oral hearing may submit and sponsor in the hearings:

(1) Initial written statements of position and written testimony with supporting affidavits on the issues. These materials shall be filed within 30 days of the date of the Commission's notice granting a hearing pursuant to § 2.1308(d)(1), unless the Commission or Presiding Officer directs otherwise.

(2)(i) Written responses and rebuttal testimony with supporting affidavits directed to the initial statements and testimony of other participants;

(ii) Proposed questions for the Presiding Officer to consider for propounding to persons sponsoring testimony.

(3) These materials must be filed within 20 days of the filing of the materials submitted under paragraph (a)(1) of this section, unless the Commission or Presiding Officer directs otherwise.

(4) Proposed questions directed to rebuttal testimony for the Presiding Officer to consider for propounding to persons offering such testimony shall be filed within 7 days of the filing of the rebuttal testimony.

(b) The oral hearing should commence within 65 days of the date of the Commission's notice granting a hearing unless the Commission or Presiding Officer directs otherwise. Ordinarily, questioning in the oral hearing will be conducted by the Presiding Officer, using either the Presiding Officer's questions or questions submitted by the participants or a combination of both.

(c) Written post-hearing statements of position on the issues addressed in the oral hearing may be submitted within 20 days of the close of the oral hearing.

(d) The Commission, on its own motion, or in response to a request from a Presiding Officer other than the Commission, may use additional procedures, such as direct and cross-examination, or may convene a formal hearing under subpart G of this part on specific and substantial disputes of fact, necessary for the Commission's decision, that cannot be resolved with sufficient accuracy except in a formal hearing. The staff will be a party in any such formal hearing. Neither the Commission nor the Presiding Officer will entertain motions from the parties that request such special procedures or formal hearings.

§ 2.1323 Presentation of testimony in an oral hearing.

(a) All direct testimony in an oral hearing shall be filed no later than 15 days before the hearing or as otherwise ordered or allowed pursuant to the provisions of § 2.1322.

(b) Written testimony will be received into evidence in exhibit form.

(c) Participants may designate and present their own witnesses to the Presiding Officer.

(d) Testimony for the NRC staff will be presented only by persons designated by the Executive Director for Operations for that purpose.

(e) Participants and witnesses will be questioned orally or in writing and only by the Presiding Officer. Questions may be addressed to individuals or to panels of participants or witnesses.

(f) The Presiding Officer may accept written testimony from a person unable to appear at the hearing, and may request him or her to respond to questions.

(g) No subpoenas will be granted at the request of participants for attendance and testimony of participants or witnesses or the production of evidence.

§ 2.1324 Appearance in an oral hearing.

(a) A participant may appear in a hearing on her or his own behalf or be represented by an authorized representative.

(b) A person appearing shall file a written notice stating her or his name, address and telephone number, and if an authorized representative, the basis of her or his eligibility and the name and address of the participant on whose behalf she or he appears.

(c) A person may be excluded from a hearing for disorderly, dilatory or contemptuous conduct, provided he or she is informed of the grounds and given an opportunity to respond.

§ 2.1325 Motions and requests.

(a) Motions and requests shall be addressed to the Presiding Officer, and, if written, also filed with the Secretary and served on other participants.

(b) Other participants may respond to the motion or request. Responses to written motions or requests shall be filed within 5 days after service unless the Commission or Presiding Officer directs otherwise.

(c) The Presiding Officer may entertain motions for extension of time and changes in schedule in accordance with paragraphs (a) and (b) of this section.

(d) When the Commission does not preside, in response to a motion or request, the Presiding Officer may refer a ruling or certify a question to the Commission for decision and notify the participants.

(e) Unless otherwise ordered by the Commission, a motion or request, or the certification of a question or referral of a ruling, shall not stay or extend any aspect of the hearing.

§ 2.1326 Burden of proof.

The applicant or the proponent of an order has the burden of proof.

§ 2.1327 Application for a stay of the effectiveness of NRC staff action on license transfer.

(a) Any application for a stay of the effectiveness of the NRC staff's order on the license transfer application shall be filed with the Commission within 5 days of the issuance of the notice of staff action pursuant to § 2.1316(a).

(b) An application for a stay must be no longer than 10 pages, exclusive of affidavits, and must contain:

(1) A concise summary of the action which is requested to be stayed; and

(2) A concise statement of the grounds for a stay, with reference to the factors specified in paragraph (d) of this section.

(c) Within 10 days after service of an application for a stay under this section, any participant may file an answer supporting or opposing the granting of a stay. Answers must be no longer than 10 pages, exclusive of affidavits, and should concisely address the matters in paragraph (b) of this section, as appropriate. No further replies to answers will be entertained.

(d) In determining whether to grant or deny an application for a stay, the Commission will consider:

(1) Whether the requestor will be irreparably injured unless a stay is granted;

(2) Whether the requestor has made a strong showing that it is likely to prevail on the merits;

(3) Whether the granting of a stay would harm other participants; and

(4) Where the public interest lies.

§ 2.1328 Default.

When a participant fails to act within a specified time, the Presiding Officer may consider that participant in default, issue an appropriate ruling and proceed without further notice to the defaulting participant.

§ 2.1329 Waiver of a rule or regulation.

(a) A participant may petition that a Commission rule or regulation be waived with respect to the license transfer application under consideration.

(b) The sole ground for a waiver shall be that, because of special circumstances concerning the subject of the hearing, application of a rule or regulation would not serve the purposes for which it was adopted.

(c) Waiver petitions shall specify why application of the rule or regulation would not serve the purposes for which it was adopted and shall be supported by affidavits to the extent applicable.

(d) Other participants may, within 10 days, file a response to a waiver petition.

(e) When the Commission does not preside, the Presiding Officer will certify the waiver petition to the Commission, which, in response, will grant or deny the waiver or direct any further proceedings.

§ 2.1330 Reporter and transcript for an oral hearing.

(a) A reporter designated by the Commission will record an oral hearing and prepare the official hearing transcript.

(b) Except for any portions that must be protected from disclosure in accordance with law and policy as reflected in 10 CFR 2.790, transcripts will be placed in the Public Document Room, and copies may be purchased from the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

(c) Corrections of the official transcript may be made only as specified by the Secretary.

§ 2.1331 Commission action.

(a) Upon completion of a hearing, the Commission will issue a written opinion including its decision on the license transfer application and the reasons for the decision.

(b) The decision on issues designated for hearing pursuant to § 2.1308 will be based on the record developed at hearing.

PART 51—ENVIRONMENTAL PROTECTION REGULATIONS FOR DOMESTIC LICENSING AND RELATED REGULATORY FUNCTIONS

7. The authority citation for Part 51 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 2201, 2297f); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842).

Subpart A also issued under National Environmental Policy Act of 1969, secs. 102, 104, 105, 83 Stat. 853–854, as amended (42 U.S.C. 4332, 4334, 4335); and Pub. L. 95–604, Title II, 92 Stat. 3033–3041; and sec. 193, Pub. L. 101–575, 104 Stat. 2835 (42 U.S.C. 2243). Section 51.20, 51.30, 51.60, 51.80, and 51.97 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241, and sec. 148, Pub. L. 100–203, 101 Stat. 1330–223 (42 U.S.C. 10155, 10161, 10168). Section 51.22 also issued under sec. 274, 73 Stat. 688, as amended by 92 Stat. 3036–3038 (42 U.S.C. 10141). Section 51.43, 51.67, and 51.109 also under Nuclear Waste Policy Act of 1982, sec 114(f), 96 Stat. 2216, as amended (42 U.S.C. 10134).

8. In § 51.22, a new paragraph (c)(21) is added to read as follows:

§ 51.22 Criterion for categorical exclusion; identification of licensing and regulatory actions eligible for categorical exclusion or otherwise not requiring environmental review.

* * * * *

(c) * * *

(21) Approvals of direct or indirect transfers of any license issued by NRC and any associated amendments of license required to reflect the approval of a direct or indirect transfer of an NRC license.

* * * * *

Dated at Rockville, Maryland, this 27th day of November 1998.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 98–32211 Filed 12–2–98; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–23–AD; Amendment 39–10915; AD 98–24–28]

RIN 2120–AA64

Airworthiness Directives; Allison Engine Company 250–B and 250–C Series Turboshaft and Turboprop Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Allison Engine Company 250–B and 250–C series turboshaft and turboprop engines, that requires replacing existing beryllium copper main fuel control (MFC) bellows assemblies with Inconel 718 stainless steel welded MFC bellows assemblies. This amendment is prompted by reports of leaking MFC bellows assemblies resulting in an uncommanded minimum fuel flow condition, loss of engine fuel flow control and subsequent forced landing. The actions specified by this AD are intended to prevent MFC bellows assembly leakage, which can result in an uncommanded minimum fuel flow condition and subsequent loss of engine fuel flow control.

DATES: Effective January 7, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 7, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Allison Engine Company, P.O. Box 420, Speed Code U–15, Indianapolis, IN 46206–0420, telephone (317) 230–6674. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: John Tallarovic, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2350 E. Devon Avenue, Room 323, Des Plaines, IL 60018; telephone (847) 294–8180, fax (847) 294–7834.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Allison Engine Company 250–B and 250–C series turboshaft engines was published in the **Federal Register** on June 8, 1998 (63 FR 31138). That action proposed to require replacing the existing beryllium copper main fuel control (MFC) bellows assemblies at the next repair or overhaul of the MFC bellows assembly, or, since corrosion was a factor, by the calendar end-dates specified, whichever occurs first. Since that issuance of that proposal, the FAA has discovered that the turboprop aircraft were inadvertently omitted from the

applicability section, which has been corrected is this final rule.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. This final rule references only one Allison Commercial Engine Bulletin (CEB) CEB–A–282, Revision 2, dated April 15, 1998, that also serves as the seven other CEBs listed in paragraph (b) of the proposed rule. It serves as the cover document for the AlliedSignal Aerospace Equipment Systems service bulletin GT–242, revision 2, dated April 15, 1998, the manufacturer of the MFC. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 2,500 engines installed on aircraft of U.S. registry will be affected by this AD, that it will take no additional work hours per engine to accomplish the proposed actions at regularly scheduled overhaul, and required parts would cost approximately $1,495 per engine. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $3,737,500.

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

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

98–24–28 Allison Engine Company: Amendment 39–10915. Docket 98–ANE–23–AD.

Applicability: Allison Engine Company 250–B15, 250–B17, 250–B17F, series turboprop engines and 250–C18, 250–C20, 250–C20R, 250–C28, 250–C30 series turboshaft engines, installed on but not limited to AeroSpace Technologies of Australia Pty Ltd Models N22B, N22S, and N24A; Beech Aircraft Corporation Model 35; Cessna Aircraft Company Model 210; Maule Aerospace Technology Corp. Models MX–7–420 and MXT–7–420; Partenavia Construzioni Aeronauticas S.p.A. Models AP68TP 300 and AP68TP 600; Pilatus Britten-Norman Models BN–2T and BN–2T–4R; SIAI Marchetti S.r.l. Models SF600 and SF600A airplanes; AGUSTA Models A109, A109A, A109AII, A109C; Bell Helicopter Textron Models 47, 206, 206A, 206B, 206L, 206L–1, 206L–4, 230; Enstrom Helicopter Models TH–28 and 480; Eurocopter Canada Model BO 105 LS A–3; Eurocopter Deutschland Models BO–105A, BO–105C, BO–105S and BO–105LS A–1; Eurocopter France Models AS355E, AS355F, AS355F1 and AS355F2; Hiller Model FH–1100; McDonnell Douglas Helicopter Company Models 369D, 369E, 369F, 369H, 369HM, 369HS, 369HE, 369FF, 500N; Rogerson Hiller Corp. Model UH–12E, Schweizer Model 269D; and Sikorsky Model S–76A rotorcraft; and Lockheed Martin Tactical Defense System Model GZ–22 airship.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent main fuel control (MFC) bellows assembly leakage, which can result in an uncommanded minimum fuel flow condition and subsequent loss of engine fuel flow control, accomplish the following:

(a) Replace existing beryllium copper MFC bellows assemblies, part numbers (P/Ns) 2523722, 2539647, 2540539, 2540767, and 2542526, with Inconel 718 stainless steel welded MFC bellows assemblies, P/N 2543598, in accordance with Allison Commercial Engine Bulletin (CEB) CEB–A–282/AlliedSignal Aerospace Equipment Systems Service Bulletin (SB) GT–242, Revision 2, dated April 15, 1998, at the earlier of the following:

(1) The next time after the effective date of this AD the MFC is being repaired or overhauled; or

(2) The following populations of MFCs, as applicable

(i) All MFCs listed by P/Ns in Tables 1 and 2 of the CEB/SB by March 31, 1999; or

(ii) All MFCs listed by P/Ns in Table 3 of the CEB/SB by August 31, 1999.

(iii) All MFCs listed by P/Ns in Tables 4 and 5 of the CEB/SB by October 31, 1999.

Note 2: Allison CEB–A–282, Revision 2, dated April 15, 1998, also serves as CEB–A–1329 for the 250–C20 series engines, CEB–A–73–2053 for the 250–C28 series engines, CEB–A–73–3068 for the 250–C30 series engines, CEB–A–73–4029 for the 250–C20R series engines, Turboprop (TP) CEB–A–158 for the 250–B15G series engines, TP CEB–A–1286 for the 250–B17 series engines, and TP CEB–A–73–2014 for the 250–B17F series engines.

(b) Perform the replacement of MFC bellows assemblies required by paragraph (a) of this AD in accordance with the accomplishment instructions paragraph of Allison CEB–A–282/AlliedSignal Aerospace Equipment Systems Service Bulletin (SB) SB GT–242 Revision 2, dated April 15, 1998.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Chicago Aircraft Certification Office. Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Chicago Aircraft Certification Office.

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

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

(e) The actions required by this AD shall be done in accordance with the following Allison Engine Company CEB/AlliedSignal Aerospace Equipment Systems SB GT–242, Revision 2, dated April 15, 1998:

Document No.	Pages	Revision	Date
CEB–A–282	1–28 ...	2	April 15, 1998
Total Pages: 28.			

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Allison Engine Company, P.O. Box 420, Speed Code U–15, Indianapolis, IN 46206–0420, telephone (317) 230–6674. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(f) This amendment becomes effective on January 7, 1999.

Issued in Burlington, Massachusetts, on November 18, 1998.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 98–31702 Filed 12–2–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–59–AD; Amendment 39–10920; AD 98–24–34]

RIN 2120–AA64

Airworthiness Directives; Hamilton Standard 54H60 Series Propellers

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Hamilton Standard 54H60 series propellers. This action requires affected propeller blades to be removed from service and shipped to designated repair facilities for inspection for insufficient cold rolling of the beveled radius of the blade flange. Affected blades are identified by serial number. This amendment is prompted by reports of propeller blades that cracked due to incomplete cold rolling in the beveled radius area of the blade flange. The actions specified in this AD are intended to prevent propeller blade cracks due to incomplete cold rolling during manufacture, which can result in propeller blade separation and damage to the aircraft.

DATES: Effective December 18, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 18, 1998.

Comments for inclusion in the Rules Docket must be received on or before February 1, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–ANE–59–AD, 12 New England Executive Park, Burlington, MA 01803-5299. Comments may also be sent via the Internet using the following address: ''9-ad-engineprop@faa.dot.gov''. Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in this AD may be obtained from Hamilton Standard, Publications Distribution Group, One Hamilton Rd., Windsor Locks, CT 06096–1010 ; telephone (860) 654–6876, fax (860) 654–6906. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Frank Walsh, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7158, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) has received reports of 16 propeller blades with insufficient cold rolling in the beveled radius of the blade flange area. Two of these blades were found with cracks and two others experienced a blade fracture and separation. Incomplete cold rolling in the beveled radius area of the blade flange may have occurred during manufacture of the affected Hamilton Standard Models 54H60–77, –91, –117, –123, and –125 propellers. The FAA issued airworthiness directive AD 97–13–07 (62 FR 34619, June 27, 1997) to correct the unsafe condition in the most critical population. This AD expands the population to include 13,372 additional propeller blades that require removal for inspection, and, if necessary, repair. This condition, if not corrected, could result in propeller blade cracks due to incomplete cold rolling during manufacture, which can result in propeller blade separation and damage to the aircraft.

The FAA has reviewed and approved the technical contents of Hamilton Standard Alert Service Bulletin (ASB) No. 54H60–61–A134, Revision 1, dated June 24, 1998, and ASB No. 54H60–61–A135, dated June 24, 1998, that identify affected propeller blades by serial number (S/N), and list the designated repair facilities for shipment of blades following removal from service for inspection and repair.

Since an unsafe condition has been identified that is likely to exist or develop on other propellers of the same type design, this AD is being issued to prevent propeller blade cracking. This AD requires, for affected propeller blades identified by S/N, removal from service and shipment to designated repair facilities for inspection for incomplete cold rolling during manufacture, and, repair, if necessary. The propeller blades identified in ASB No. 54H60–61–A135, dated June 24, 1998 are to be inspected within 100 hours time in service (TIS) while the propeller blades identified in ASB No. 54H60–61–A134, Revision 1, dated June 24, 1998, are to be inspected within 4,500 hours time since overhaul or for blades that have never been overhauled, 4,500 hours time since new. In addition all propeller blades must be inspected or repaired, if necessary, prior to September 30, 2002. This calendar end-date was determined by engineering study and evaluations. The actions are required to be accomplished in accordance with the ASBs described previously.

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

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that

supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–ANE–59–AD.'' The postcard will be date stamped and returned to the commenter.

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

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

39.13 [Amended]

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

98–24–34 Hamilton Standard: Amendment 39–10920. Docket 98–ANE–59–AD.

Applicability: Hamilton Standard Models 54H60–77, –91, –117, –123, and –125 propellers, with propeller blades identified by serial number (S/N) in Hamilton Standard Alert Service Bulletin (ASB) No. 54H60–61–A134, Revision 1, dated June 24, 1998, and ASB No. 54H60–61–A135, dated June 24, 1998. These propellers are installed on but not limited to Lockheed L100, L188, L200, L288, L382, C130, P–3, and General Dynamics (Convair) CV580 and Guppy aircraft.

Note 1: This airworthiness directive (AD) applies to each propeller identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For propellers that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent propeller blade cracks due to incomplete cold rolling during manufacture, which can result in propeller blade separation and damage to the aircraft, accomplish the following:

(a) Within 100 hours time in service (TIS) after the effective date of this AD, or prior to September 30, 2002, whichever occurs first, remove from service affected propeller blades identified by S/N in Hamilton Standard ASB No. 54H60–61–A135, dated June 24, 1998, and ship to designated repair facilities listed in that ASB for inspection, and, if necessary, repair.

(b) For affected propeller blades identified by S/N in ASB No. 54H60–61–A134, Revision 1, dated June 24, 1998, remove from service and ship to designated repair facilities listed in that ASB for inspection, and, if necessary, repair, after the effective date of this AD, in accordance with paragraphs (b)(1) and (b)(2) of this AD, or prior to September 30, 2002, whichever occurs first.

(1) Remove from service within 100 hours TIS propellers that have greater than 4,400 hours time since overhaul (TSO), or for propellers that have never been overhauled remove from service propellers that have greater than 4,400 hours time since new (TSN).

(2) For propellers with less than 4,400 hours (TSO) remove from service prior to accumulating 4,500 hours TSO, or for propellers with less than 4,400 hours TSN that have never been overhauled remove from service prior to accumulating 4,500 hours TSN.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Boston Aircraft Certification Office. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Boston Aircraft Certification Office.

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

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

(e) The actions required by this AD shall be done in accordance with the following Hamilton Standard ASBs:

Document No.	Pages	Revision	Date
54H60–61–A134.	1–5	1	June 24, 1998
54H60–61–A134.	1–5	1	June 24, 1998
Total pages: 5.			
54H60–61–A135.	1–10	Original	June 24, 1998
Total pages: 10.			

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Hamilton Standard, Publications Distribution Group, One Hamilton Rd., Windsor Locks, CT 06096–1010; telephone (860) 654–6876, fax (860) 654–6906. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on December 18, 1998.

Issued in Burlington, Massachusetts, on October 20, 1998.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 98–31701 Filed 12–2–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–21–AD; Amendment 39–10919; AD 98–24–33]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9 and DC–9–80 Series Airplanes, Model MD–88 Airplanes, and C–9 (Military) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–9 and DC–9–80 series airplanes, Model MD–88 airplanes, and C–9 (military) series airplanes, that requires a one-time visual inspection to detect fatigue cracking of the lower left nose of certain longerons and the attaching frames; repair, if necessary; and installation of a preventive modification. This amendment is prompted by several reports of fatigue cracking of certain longerons and the attaching frames. The actions specified by this AD are intended to prevent such fatigue cracking, which could result in reduced structural integrity of the fuselage, and consequent loss of pressurization of the airplane.

DATES: Effective January 7, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 7, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from The Boeing Company, Douglas Products Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Brent Bandley, Aerospace Engineer, Airframe Branch, ANM–120L; FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (562) 627–5237; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9 and DC–9–80 series airplanes, Model MD–88 airplanes, and C–9 (military) series airplanes was published in the **Federal Register** on March 24, 1998 (63 FR 14047). That action proposed to require a one-time visual inspection to detect fatigue cracking of the lower left nose of certain longerons and the attaching frames; repair, if necessary; and installation of a preventive modification.

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

Support for the Proposal

Two commenters support the proposed rule.

Request To Provide Option for Other Inspection Techniques

One commenter requests that the FAA revise the proposal to provide the option of using a dye check or a non-destructive testing (NDT) inspection method instead of (or in conjunction with) the required visual inspection. The FAA does not concur with this request. An inspection procedure was established several years ago to address inspections of the affected longerons. The FAA finds that introducing a new inspection procedure at this point would not be feasible. However, the FAA would consider a request for approval of a different inspection technique, in accordance with the provision of paragraph (d) of this AD, provided that adequate justification accompanies the request.

Requests To Extend Compliance Time

One commenter states that the proposed grace period of 6,000 flight cycles is logistically impractical due to the heavy access required in the electrical/electric (E/E) equipment compartment to accomplish the inspection/modification. The commenter suggests that the compliance time for the modification be revised to coincide with the next scheduled inspection interval per Corrosion Task No. 45–53301 in the DC9/MD80 Corrosion Prevention and Control Document MDC–K4606, which is required by AD 92–22–08, amendment 39–8394 (57 FR 57895, December 8, 1992).

Another commenter also requests that, for airplanes that have accumulated 40,000 or more total landings, the FAA require an external eddy current inspection within 6,000 landings, and repetitive inspections every 2,500 landings until the terminating modification is accomplished. The commenter proposes that if a cracked longeron is found, only a repair per the SRM should be required prior to further flight—not the modification. The commenter suggests that the modification should be required at the next scheduled ''D'' check, but no later than 12,000 landings.

The commenter indicates that it inspects the subject longerons at an interval of approximately 11,000 landings. Based on this inspection experience and the damage tolerance characteristics (i.e., crack detectability, crack growth rate, and residual strength) of the fuselage skin and longerons, the commenter states that the proposed grace period of 6,000 landings for airplanes that have accumulated 40,000 or more total landings is too restrictive and not justified. The commenter believes that an equivalent level of safety can be maintained with a repetitive inspection that is based on damage tolerance principles, while minimizing the operational impact to operators.

Another commenter requests that, if no cracking is detected, the FAA allow the option of continuing repetitive inspections in lieu of accomplishing the modification prior to further flight, as specified in the proposal.

The FAA concurs partially. The FAA does not consider that repetitive inspections are warranted in this case since continual access to repetitively inspect the affected longerons is difficult. However, the FAA agrees that the proposed grace period can be extended. The FAA considers that an extension of that grace period to 12,000 landings will provide time for operators of large fleets to access, inspect, and modify. The FAA finds that such an extension of the grace period will not compromise the safety of the affected fleet. Paragraph (a)(2) of this AD has been revised accordingly.

Additionally, for airplanes that have been inspected prior to the effective date of this AD in accordance with Corrosion Task No. 45–53301 of DC9/MD80 Corrosion Prevention and Control Document MDC–K4606, the FAA has added a new paragraph (a)(1) to this final rule to require that the actions be accomplished at the next scheduled repetitive corrosion task inspection.

Requests To Revise Cost Impact Information

One commenter does not object to the proposed rule, but requests that the cost impact information be revised to agree with the estimates presented in the referenced service bulletin (33.3 and 41.8 work hours) to provide industry with a more consistent cost estimate. Another commenter indicates that, based on the access requirements and actual work hours expended for similar actions, the proposed actions would take approximately 80 work hours per airplane with an elapsed time of 40 hours. The commenter believes that it is important to reflect accurate cost impact figures in the final rule since it will have a significant economic impact on operators.

The FAA does not concur. The number of work hours necessary to accomplish the required actions, specified as 25 in the cost impact information, was provided to the FAA by the manufacturer based on the best data available to date. No change to the cost impact information has been made.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 2,000 Model DC–9, Model DC–9–80, and C–9 (military) series airplanes, and Model MD–88 airplanes, of the affected design in the worldwide fleet. The FAA estimates that 1,200 airplanes of U.S. registry will be affected by this AD, that it will take approximately 25 work hours per airplane (excluding work hours necessary to gain access and close up) to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $1,800,000, or $1,500 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

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

98–24–33 McDonnell Douglas: Amendment 39–10919. Docket 97–NM–21–AD.

Applicability: Model DC–9–10, –20, –30, –40, –50 and C–9 (military) series airplanes, as listed in McDonnell Douglas DC–9 Service Bulletin 53–256, Revision 1, dated November 29, 1994; Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) series airplanes and MD–88 airplanes, as listed in McDonnell Douglas MD–80 Service Bulletin 53–265, dated June 13, 1994; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking of longerons 22 through 26 and the attaching frames, which could result in reduced structural integrity of the fuselage, and consequent loss of pressurization of the airplane; accomplish the following:

(a) Perform a visual inspection to detect cracking of the left lower nose of longerons 22 through 26 (inclusive) and the respective attaching frames at station frames Y=160.000 and Y=200.000; in accordance with McDonnell Douglas DC–9 Service Bulletin 53–256, dated August 12, 1993, or Revision 1, dated November 29, 1994 [for Models DC–9, –10, –20, –30, –40, –50, and C–9 (military) series airplanes]; or McDonnell Douglas MD–80 Service Bulletin 53–265, dated June 13, 1994 (for Model DC–9–81, –82, –83, and –87 series airplanes, and MD–88 airplanes); as applicable. Perform the inspection at the time specified in paragraph (a)(1) or (a)(2) of this AD, as applicable.

(1) For airplanes that have been inspected prior to the effective date of this AD in accordance with Corrosion Prevention and Control Program Document MDC–K4606, Corrosion Task No. 45–53301: Perform the inspection at the next scheduled repetitive corrosion task inspection.

(2) For airplanes other than those identified in paragraph (a)(1) of this AD: Perform the inspection prior to the accumulation of 40,000 total landings, or within 12,000 landings after the effective date of this AD, whichever occurs later:

(b) If no cracking is detected: Prior to further flight, install clips and doublers under the longeron flanges and shim the longerons in accordance with McDonnell Douglas DC–9 Service Bulletin 53–256, dated August 12, 1993, or Revision 1, dated November 29, 1994 [for Models DC–9, –10, –20, –30, –40, –50, and C–9 (military) series airplanes]; or McDonnell Douglas MD–80 Service Bulletin 53–265, dated June 13, 1994 (for Model DC–9–81, –82, –83, and –87 series airplanes, and MD–88 airplanes); as applicable.

(c) If any cracking is detected: Prior to further flight, repair the cracks and install clips and doublers under the longeron

flanges and shim the longerons in accordance with McDonnell Douglas DC–9 Service Bulletin 53–256, dated August 12, 1993, or Revision 1, dated November 29, 1994 [for Models DC–9, –10, –20, –30, –40, –50, and C–9 (military) series airplanes]; or McDonnell Douglas MD–80 Service Bulletin 53–265, dated June 13, 1994 (for Model DC–9–81, –82, –83, and –87 series airplanes, and MD–88 airplanes); as applicable.

(d) 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 Aircraft 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 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The actions shall be done in accordance with McDonnell Douglas DC–9 Service Bulletin 53–256, dated August 12, 1993; McDonnell Douglas DC–9 Service Bulletin 53–256, Revision 1, dated November 29, 1994; or McDonnell Douglas MD–80 Service Bulletin 53–265, dated June 13, 1994; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from The Boeing Company, Douglas Products Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Captiol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on January 7, 1999.

Issued in Renton, Washington, on November 20, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–31698 Filed 12–2–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–72–AD; Amendment 39–10926; AD 98–22–11]

RIN 2120–AA64

Airworthiness Directives; AlliedSignal, Inc. Model T5317A–1 Turboshaft Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule, request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 98–22–11 that was sent previously to all known U.S. owners and operators of AlliedSignal, Inc. (formerly Textron Lycoming) model T5317A–1 turboshaft engines by individual letters. This AD requires, prior to further flight, a pressure test to determine if both fuel pumps in the regulator, Part Number (PN) 1–170–240–93, are producing fuel pressure, and, if necessary, replacement of the fuel regulator with serviceable part. In addition, this AD requires repetitive engine fuel pump pressure tests. This amendment is prompted by a report of an accident involving an AlliedSignal, Inc. (formerly Textron Lycoming) model T5317A–1 turboshaft engine installed on a Kaman Aerospace model K–1200 rotorcraft engaged in logging operations. The actions specified by this AD are intended to prevent loss of fuel flow from the engine fuel regulator due to failure of both primary and secondary fuel pump drive shaft splines. This condition, if not corrected, could result in engine failure and forced autorotation landing.

DATES: Effective December 18, 1998, to all persons except those persons to whom it was made immediately effective by priority letter AD 98–22–11, issued on October 30, 1998, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 18, 1998.

Comments for inclusion in the Rules Docket must be received on or before February 1, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 98–ANE–72–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: ''9-ad-engineprop@faa.gov.'' Comments sent via the Internet must contain the docket number in the subject line.

The applicable service information may be obtained from AlliedSignal, Inc., 111 South 34th Street, P.O. Box 52181, Phoenix, Arizona 85072–2181; telephone (602) 231–3838; fax (602) 231–3800. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Raymond Vakili, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712; telephone (562) 627–5262, fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: On October 30, 1998, the Federal Aviation Administration (FAA) issued priority letter airworthiness directive (AD) 98–22–11, applicable to AlliedSignal, Inc. (formerly Textron Lycoming) model T5317A–1 turboshaft engines, which requires, prior to further flight, a pressure test to determine if both fuel pumps in the regulator, PN 1–170–240–93, are producing fuel pressure, and if necessary, replacement of the fuel regulator with a serviceable part. In addition, this AD requires repetitive engine fuel pump pressure tests at intervals not to exceed 50 hours Time In Service (TIS). That action was prompted by an accident involving an AlliedSignal Inc. (formerly Textron Lycoming) model T5317A–1 turboshaft engine installed on a Kaman Aerospace model K–1200 rotorcraft engaged in logging operations. This condition, if not corrected, could result in engine failure and forced autorotation landing.

The FAA has reviewed and approved the technical contents of AlliedSignal Inc. Alert Service Bulletin (ASB) No. T5317A–1–A0106, Revision 1, dated October 23, 1998, that describes procedures for a pressure test to determine if both fuel pumps in the regulator, PN 1–170–240–93, are producing fuel pressure, and, if necessary, replacement of the fuel regulator with serviceable part.

Since the unsafe condition described is likely to exist or develop on other engines of the same type design, the FAA issued priority letter AD 98–22–11 to prevent engine failure and forced autorotation landing. The AD requires,

prior to further flight, a pressure test to determine if both fuel pumps in the regulator are producing fuel pressure, and if necessary, replacement of the fuel regulator with serviceable parts. In addition, this AD requires repetitive engine fuel pump pressure tests at intervals not to exceed 50 hours time-in-service (TIS). The actions are required to be accomplished in accordance with the ASB described previously.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on October 30, 1998, to all known U.S. owners and operators of AlliedSignal, Inc. (formerly Textron Lycoming) model T5317A–1 turboshaft engines. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to Section 39.13 of part 39 of the Federal Aviation Regulations (14 CFR part 39) to make it effective to all persons.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–ANE–72–AD.'' The postcard will be date stamped and returned to the commenter.

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

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

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

98–22–11 AlliedSignal, Inc.: Amendment 39–10926. Docket 98–ANE–72–AD.

Applicability: AlliedSignal, Inc. (formerly Textron Lycoming) model T5317A–1 turboshaft engines. These engines are installed on, but not limited to, Kaman Aerospace model K–1200 rotorcraft.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent engine failure and forced autorotation landing, accomplish the following:

(a) Prior to further flight, perform pressure tests to determine if both fuel pumps in the regulator, PN 1–170–240–93, are producing the specified fuel pressure in accordance with the accomplishment instructions paragraph of AlliedSignal Inc. Alert Service Bulletin (ASB) No. T5317A–1–A0106, Revision 1, dated October 23, 1998, Section 3, paragraphs A through F.

(b) If the observed pressures on the pressure gauges during the test do not read a minimum of 110 psig and within 50 plus or minus 2 psig of each other, replace the fuel regulator, PN 1–170–240–93, and repeat the requirements of paragraph (a) of this AD.

(c) Thereafter, perform pressure tests using the procedures of paragraph (a) of this AD at intervals not to exceed 50 hours Time In Service (TIS) since last pressure test.

(d) 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, Certification Office. Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

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

(e) The fuel pressure tests shall be done in accordance with the following AlliedSignal, Inc. alert service bulletin:

Document No.	Pages	Revision	Date
T5317A–1–A0106 ..... Total pages: 6.	1–6	1	October 23, 1998.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from AlliedSignal, Inc., 111 South 34th Street, P.O. Box 52181, Phoenix, Arizona 85072–2181; telephone (602) 231–3838; fax (602) 231–3800. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective December 18, 1998, to all persons except those persons to whom it was made immediately effective by priority letter AD 98–22–11, issued October 23, 1998, which contained the requirements of this amendment.

Issued in Burlington, Massachusetts, on November 25, 1998.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 98–32047 Filed 12–2–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–62–AD; Amendment 39–10922; AD 98–25–01]

RIN 2120–AA64

Airworthiness Directives; Air Tractor, Inc. AT–300, AT–400, and AT–500 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes Airworthiness Directive (AD) 96–23–19, which currently requires installing a new flap actuator overtravel stop and a roll pin through the overtravel stop and jack screw on certain Air Tractor, Inc. (Air Tractor) Models AT–300, AT–400, and AT–500 series airplanes. This AD requires replacing the existing flap actuator overtravel stop with a new one of improved design. This AD is the result of reports of the jack screw breaking through the roll pin hole on three of the affected airplanes that were already in compliance with AD 96–23–19. The actions specified by this AD are intended to prevent interference between the flap pushrod and the aileron pushrod caused by the flap actuator overtravel nut disengaging, which could result in loss of aileron control.

DATES: Effective January 19, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 19, 1999.

ADDRESSES: Service information that applies to this AD may be obtained from Air Tractor, Inc., P. O. Box 485, Olney, Texas 76374. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–62–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Bob May, Aerospace Engineer, FAA, Aircraft Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150; telephone: (817) 222–5156; facsimile: (817) 222–5960.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Air Tractor AT–300, AT–400, and AT–500 series airplanes was published in the **Federal Register** on July 21, 1998 (63 FR 39053). The NPRM proposed to supersede AD 96–23–19, Amendment 39–9823 (61 FR 58985, November 11, 1996), which currently requires installing a new flap actuator overtravel stop and a roll pin through the overtravel stop and jack screw on the affected airplanes.

The proposed AD would require replacing the existing flap actuator overtravel stop with a new one of improved design, part number (P/N) 70975–1. Accomplishment of the proposed action as specified in the NPRM would be in accordance with Snow Engineering Co. Service Letter #165, dated May 15, 1998.

The NPRM was the result of reports of the jack screw breaking through the roll pin hole on three of the affected airplanes that were already in compliance with AD 96–23–19.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 1,250 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 2 workhours per airplane to accomplish the replacement, and that the average labor rate is approximately $60 an hour. The manufacturer will supply parts at no cost to the owners/operators of the affected airplanes. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $150,000, or $120 per airplane.

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy

of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing airworthiness directive (AD) 96–23–19, Amendment 39–9823 (61 FR 58985, November 11, 1996), and by adding a new AD to read as follows:

98–25–01 Air Tractor, Inc.: Amendment 39–10922; Docket No. 98–CE–62–AD; Supersedes AD 96–23–19, Amendment 39–9823.

Applicability: The following model and serial numbered airplanes, certificated in any category, that do not have a part number (P/N) 70975–1 flap actuator overtravel stop installed in accordance with the *REWORK INSTRUCTIONS* section of Snow Engineering Co. Service Letter #165, dated May 15, 1998:

Models AT–300, AT–301, AT–302, AT–400, AT–400A, AT-401, AT–401A, AT–401B, AT–402, AT–402A, and AT–402B airplanes, serial numbers 300–0001 through 401B–1063; and

Models AT–501, AT–502, AT–502A, AT–502B, and AT-503A airplanes, serial numbers 502–0001 through 502B-0500.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 50 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.

To prevent interference between the flap pushrod and the aileron pushrod caused by the flap actuator overtravel nut disengaging, which could result in loss of aileron control, accomplish the following:

(a) Replace the existing flap actuator overtravel stop with a new one of improved design, P/N 70975–1. Accomplish this replacement in accordance with the *REWORK INSTRUCTIONS* section of Snow Engineering Co. Service Letter #165, dated May 15, 1998.

(b) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Fort Worth Airplane Certification Office (ACO), 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150.

(1) The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Fort Worth ACO.

(2) Alternative methods of compliance approved in accordance with AD 96–23–19 are not considered approved as alternative methods of compliance for this AD.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Fort Worth ACO.

(d) The replacement required by this AD shall be done in accordance with Snow Engineering Co. Service Letter #165, dated May 15, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Air Tractor Inc., P.O. Box 485, Olney, Texas 76374. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(e) This amendment supersedes AD 96–23–19, Amendment 39–9823.

(f) This amendment becomes effective on January 19, 1999.

Issued in Kansas City, Missouri, on November 24, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–32046 Filed 12–2–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–109–AD; Amendment 39–10925; AD 98–25–03]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company Model 172R Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Cessna Aircraft Company (Cessna) Model 172R airplanes that are not equipped with an autopilot. This AD requires inspecting the right wing for an incorrectly routed, frayed, or damaged aileron control cable, and re-routing any incorrectly routed cable or replacing any frayed or damaged cable. The AD also requires reporting any incorrectly routed, frayed, or damaged cable to the Federal Aviation Administration (FAA). This AD is the result of a report of an incorrectly routed aileron control cable in the right wing of an airplane of the same type design to those affected by this AD. The cable was routed over the aileron auto pilot actuator pulley and the cable was rubbing on the cable guard. The actions specified by this AD are intended to prevent loss of aileron control caused by a damaged or frayed aileron control cable, which could result in loss of directional control of the airplane.

DATES: Effective December 18, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 18, 1998.

Comments for inclusion in the Rules Docket must be received on or before January 22, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–109–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Service information that applies to this AD may be obtained from the Cessna Aircraft Company, P.0. Box 7706, Wichita, Kansas 67277; telephone: (316) 941–7550; facsimile: (316) 942–9008. This information may also be examined at the Federal Aviation

Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–109–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Joel M. Ligon, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209, telephone: (316) 946–4138; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Discussion

The FAA has received a report of an incorrectly routed aileron control cable in the right wing of a Cessna Model 172R airplane. The cable was routed over the aileron auto pilot actuator pulley and the cable was rubbing on the cable guard.

The FAA initially covered this issue with AD 98–13–41, Amendment 39–10634 (63 FR 34800, June 26, 1998). This AD requires, among other things, inspecting the right wing of certain Cessna Model 172R airplanes for an incorrectly routed, frayed, or damaged aileron control cable, and re-routing any incorrectly routed cable or replacing any frayed or damaged cable. Accomplishment of the inspection required by AD 98–13–41 is required in accordance with Cessna Service Bulletin SB98–27–05, dated June 1, 1998.

AD 98–13–41 also requires reporting any incorrectly routed, frayed, or damaged cable to the FAA.

The following serial numbers of the Cessna Model 172R airplanes were inadvertently left out of the Applicability of AD 98–13–41: 17280437; 17280439; 17280454; 17280456; and 17280459.

Cessna has revised Service Bulletin SB98–27–05 to include these serial numbers. Cessna Service Bulletin SB98–27–05 incorporates the following pages:

Pages	Revision Level	Date
1, 2, 9 and 10	Revision 1	August 17, 1998
3 through 8 ...	Original Issue	June 1, 1998

The FAA's Determination

After examining the circumstances and reviewing all available information related to the incidents described above, including the relevant service information, the FAA has determined that:

The inspections and possible correction and/or replacement of the right wing aileron control cable required by AD 98–13–41 should also apply to the 5 Model 172R airplanes previously referenced; and

AD action should be taken to prevent loss of aileron control caused by a damaged or frayed aileron control cable, which could result in loss of directional control of the airplane.

Explanation of the Provisions of the AD

Since an unsafe condition has been identified that is likely to exist or develop in these 5 Cessna Model 172R airplanes that are the same type design to those included in AD 98–13–41, the FAA is issuing an AD. This AD requires inspecting the right wing for an incorrectly routed, frayed, or damaged aileron control cable, and re-routing any incorrectly routed cable or replacing any frayed or damaged cable. The AD also requires reporting any incorrectly routed, frayed, or damaged cable to the FAA. Accomplishment of the inspection is required in accordance with the previously referenced service information. Accomplishment of the correction or replacement is required in accordance with the applicable maintenance manual.

Determination of the Effective Date of the AD

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

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 98–CE–109–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a significant regulatory action under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

98–25–03 Cessna Aircraft Company: Amendment 39–10925; Docket No. 98–CE–109–AD.

Applicability: Model 172R airplanes, serial numbers 17280437, 17280439, 17280454, 17280456, and 17280459; certificated in any category, that were not factory equipped with an autopilot.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 25 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.

To prevent loss of aileron control caused by a damaged or frayed aileron control cable, which could result in loss of directional control of the airplane, accomplish the following:

(a) Inspect the right wing for an incorrectly routed, frayed, or damaged aileron control cable, in accordance with the Accomplishment Instructions in Cessna Service Bulletin SB98–27–05, which incorporates the following pages:

Pages	Revision Level	Date
1, 2, 9 and 10	Revision 1	August 17, 1998
3 through 8 ...	Original Issue	June 1, 1998

(b) Prior to further flight, re-route any incorrectly routed cable and replace any frayed or damaged cable, in accordance with the applicable maintenance manual.

(c) If an incorrectly routed, damaged, or frayed cable is found during the inspection required by paragraph (a) of this AD, at the applicable time specified in paragraph (c)(1) or (c)(2) of this AD, submit a report of inspection findings to the Manager, Wichita Manufacturing Inspection Office, 1801 Airport Road, Room 101, Mid-Continent Airport, Wichita, Kansas, 67209; telephone: (316) 946–4175; facsimile: (316) 946–4452. The report must include the condition found, date of inspection, and the serial number of the airplane. 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.

(1) *For airplanes on which the inspection is accomplished after the effective date of this AD:* Submit the report within 10 days after performing the inspection required by paragraph (a) of this AD.

(2) *For airplanes on which the inspection has been accomplished prior to the effective date of this AD:* Submit the report within 10 days after the effective date of this AD.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas, 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

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

(f) The inspection required by this AD shall be done in accordance with Cessna Service Bulletin SB98–27-05, which incorporates the following pages:

Pages	Revision Level	Date
1, 2, 9 and 10	Revision 1	August 17, 1998
3 through 8 ...	Original Issue	June 1, 1998

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from The Cessna Aircraft Company, P.O. Box 7706, Wichita, Kansas 67277. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(g) This amendment becomes effective on December 18, 1998.

Issued in Kansas City, Missouri, on November 24, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–32044 Filed 12–2–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–107–AD; Amendment 39–10924; AD 98–25–02]

RIN 2120–AA64

Airworthiness Directives; BFGoodrich Avionics Systems, Inc. SKYWATCH SKY497 Installations with a Top-Mounted Antenna

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all BFGoodrich Avionics Systems, Inc. (BFGoodrich) SKYWATCH SKY497 installations with a top-mounted antenna that are installed on aircraft. This AD requires incorporating information into the airplane flight manual (AFM) that specifies verifying the correct antenna configuration each time an aircraft equipped with a SKY497 installation with a top-mounted antenna is powered-up. The AD also requires removing from service any of these SKY497 installations with an incorrect antenna configuration. This AD results from numerous reports of internal component failure of the above-referenced installations, which changed the antenna configuration (from TOP to BOTTOM mount). The actions specified by this AD are intended to prevent the display of target indicators on the wrong side of the aircraft caused by an internal component failure in the SKY497 installations with a top-mounted antenna, which could result in the pilot making an incorrect initial maneuver based on the displayed information while trying to visually acquire the aircraft.

DATES: Effective December 22, 1998.

Comments for inclusion in the Rules Docket must be received on or before January 29, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–107–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Service information that applies to this AD may be obtained from BFGoodrich Avionics Systems, Inc., 5353 52nd Street, Southeast, P.O. Box 873, Grand Rapids, Michigan 49588–0873; telephone: (800) 453–0288;

facsimile: (616) 285–4224. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–107–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Brenda Ocker, Aerospace Engineer, FAA, Chicago Aircraft Certification Office, 2300 East Devon Avenue, Des Plaines, Illinois 60018; telephone: (847) 294–7126; facsimile: (847) 294–7834.

SUPPLEMENTARY INFORMATION:

Discussion

BFGoodrich has communicated to the FAA 11 reports of internal component failure of BFGoodrich SKYWATCH SKY497 installations with a top-mounted antenna. When this failure occurs, the antenna configuration changes from the TOP to BOTTOM mount; e.g., the actual target at the 9 o'clock position relative to the aircraft shows on the SKY497 installation in the 3 o'clock position.

This condition, if not corrected in a timely manner, could result in the display of target indicators on the wrong side of the aircraft. The SkyWatch system is an advisory system and the pilot should not maneuver based on the displayed information alone. However, the pilot may make an incorrect initial maneuver based on the displayed information while trying to visually acquire the aircraft.

Relevant Service Information

BFGoodrich has issued Alert Service Bulletin SB #78A, dated October 21, 1998, which specifies procedures for verifying that the SKY497 antenna configuration is in the top mount position every time an affected aircraft is powered-up.

The FAA's Determination

After examining the circumstances and reviewing all available information related to the incidents described above, including the relevant service information, the FAA has determined that AD action should be taken to prevent the display of target indicators on the wrong side of the aircraft caused by the current design of the SKY497 installations with a top-mounted antenna. This could result in the pilot making incorrect aircraft maneuvers based on the displayed information.

Explanation of the Provisions of the AD

Since an unsafe condition has been identified that is likely to exist or develop in other aircraft equipped with SKY497 installations with a top-mounted antenna, the FAA is taking AD action. This AD requires incorporating information into the airplane flight manual (AFM) that specifies verifying the correct antenna configuration each time an aircraft equipped with a SKY497 installation with a top-mounted antenna is powered-up. The AD also requires removing from service any of these SKY 497 installations with an incorrect antenna configuration.

Determination of the Effective Date of the AD

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

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 98–CE–107–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a significant regulatory action under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

98–25–02 BFGoodrich Avionics Systems, Inc.: Amendment 39–10924, Docket No. 98-CE–107-AD.

Applicability: SKYWATCH SKY497 installations with a top-mounted antenna that are installed on, but not limited to, the following aircraft, all serial numbers, certificated in any category:

Manufacturer	Aircraft models and/or series
Raytheon	Beech 90, 100, 200, and 300 Series.
Cessna	172, 182, 206, 208, 210, 300, 400, and 500 Series.
Piper	PA–23, PA–31–360, PA–31T, PA–32, PA–34, PA–42, and PA–46.
Hawker	HS–700 and HS–800.
Mitsubishi	MU–2 Series.
Dassault	F10.
Mooney	M20 Series.
Bombardier	DHC–6 Series.
West- wind	1124.
Bell	407.
Eurocopter	AS365.
Socata	TBM700.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent the display of target indicators on the wrong side of the aircraft caused by an internal component failure in the SKY497 installations with a top-mounted antenna, which could result in the pilot making an incorrect initial maneuver based on the displayed information while trying to visually acquire the aircraft, accomplish the following:

(a) Within the next 25 hours time-in-service (TIS) after the effective date of this AD, place the information in the Appendix to this AD into the Limitations Section of the airplane flight manual (AFM).

(1) This information specifies verifying the correct antenna configuration each time an aircraft equipped with a SKY497 installation with a top-mounted antenna is powered-up.

(2) This information is a duplication of the information presented in BFGoodrich Alert Service Bulletin #78A, dated October 21, 1998.

(b) If an incorrect antenna configuration is found during any of the power-up procedures specified in the AFM information required by this AD, prior to further flight, remove the SKY497 installation from service.

(c) Inserting the information into the Limitations Section of the AFM as required by paragraph (a) of this AD may be performed by the owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 FR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Chicago Aircraft Certification Office (ACO), 2300 East Devon Avenue, Des Plaines, Illinois 60018. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Chicago ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Chicago ACO.

(f) The service information referenced in this AD may be obtained from BFGoodrich Avionics Systems, Inc. 5353 52nd Street, Southeast, P.O. Box 873, Grand Rapids, Michigan 49588–0873. This document or other information related to this AD may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri.

(g) This amendment becomes effective on December 22, 1998.

BILLING CODE 4910–13–U

APPENDIX TO AD 98-25-02; AMENDMENT 39-10924; DOCKET NO. 98-CE-107-AD.

POWER-UP PROCEDURES FOR SKYWATCH SKY497 INSTALLATIONS WITH A TOP-MOUNTED ANTENNA

The following power-up procedure must be accomplished each time the system is powered-up:

1. If a WX-1000 is installed with the SKYWATCH, ensure that the STORMSCOPE/CWS switch is in the CWS position.
2. At the SKYWATCH display, access the service menu by holding the left two buttons depressed and switch the system on. Hold the buttons until the Service Menu is displayed. The Service Menu is shown in figure 1.

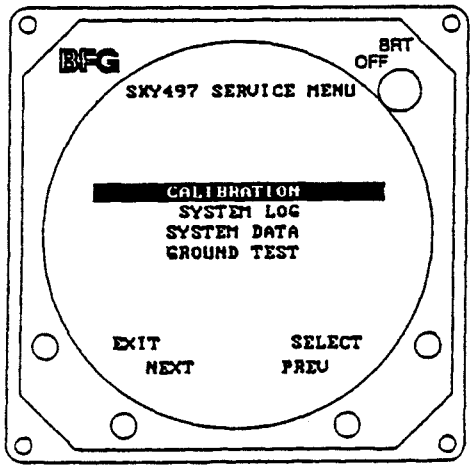

Figure 1.

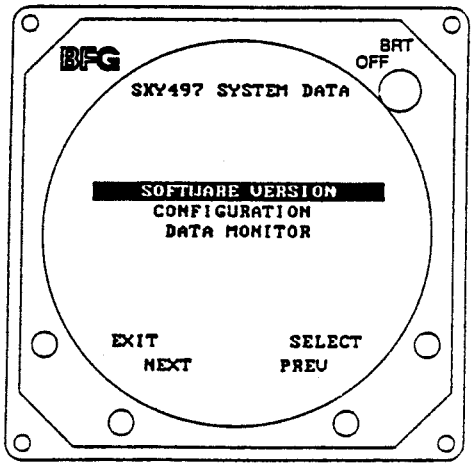

Figure 2.

3. Highlight SYSTEM DATA (press NEXT button two times) and then press SELECT. The SYSTEM DATA screen, as shown in figure 2 will be displayed.
4. Highlight CONFIGURATION by pressing the NEXT button and then press SELECT. The configuration display consists of 4 pages. Advance to Page 3 of 4 (see figure 3) by pressing the NEXT button two times.
5. Verify that the antenna position is configured for TOP mount (i.e., as shown in figure 3).

APPENDIX TO AD 98-25-02; AMENDMENT 39-10924; DOCKET NO. 98-CE-107-AD.

POWER-UP PROCEDURES FOR SKYWATCH SKY497 INSTALLATIONS WITH A TOP-MOUNTED ANTENNA (Continued)

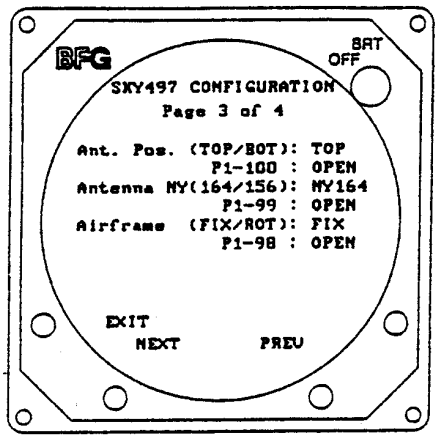

Figure 3.

6. If the antenna configuration is correct, press EXIT until the start-up screen (see figure 4) is displayed.

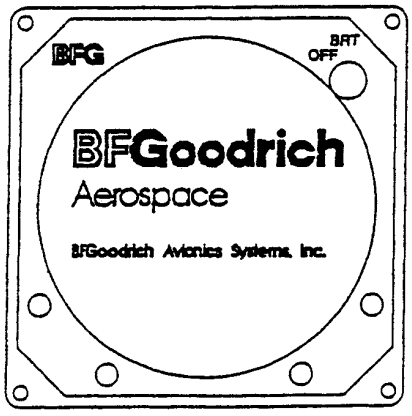

Figure 4.

7. If a WX-1000 is installed, position the STORMSCOPE/CWS switch to the STORMSCOPE position and exit the STORMSCOPE service menu by pressing the EXIT button.
8. If the antenna configuration is not correct (i.e., configured for BOTtom mount), turn SKYWATCH off and return the unit for service.

Issued in Kansas City, Missouri, on November 24, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–32101 Filed 12–2–98; 8:45 am]

BILLING CODE 4910–13–C

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–258–AD; Amendment 39–10927; AD 98–25–04]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–90–30 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–90–30 series airplanes, that requires repetitive inspections to detect debris in the areas behind the aft lavatory toilet shroud, behind the aft lavatory modules, and below the cabin floor aft of the aft cargo compartment bulkhead; and removal of debris. This amendment also requires modification of the lavatory toilet shroud assemblies and modification of the lavatory entry door louvers, which terminates the repetitive inspections. This amendment is prompted by reports of paper debris collecting below the cabin floor. The actions specified by this AD are intended to prevent paper debris from collecting below the cabin floor, which could result in a potential fire hazard or possible loss of elevator control system redundancy.

DATES: Effective January 7, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 7, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from The Boeing Company, Douglas Products Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1-L51 (2–60). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Albert H. Lam, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5346; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–90–30 series airplanes was published in the **Federal Register** on May 20, 1998 (63 FR 27692). That action proposed to require repetitive inspections to detect debris in the areas behind the aft lavatory toilet shroud, behind the aft lavatory modules, and below the cabin floor aft of the aft cargo compartment bulkhead; and removal of debris. That action also proposed to require modification of the lavatory toilet shroud assemblies and modification of the lavatory entry door louvers, which would terminate the repetitive inspections.

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

Support for the Proposal

One commenter supports the proposed rule.

Request To Withdraw the Proposed Rule

One commenter [The Boeing Company, Douglas Products Division (DPD)] ''takes serious issue'' with a statement that appears in the Summary section of the preamble of the proposed rule. That statement specifies that the proposed rule is prompted by reports of paper debris collecting on the hot pneumatic ducts below the cabin floor. The commenter indicates that it has never seen or reported paper on the pneumatic duct, nor has the commenter received such reports from others. In addition, the commenter states that a lit cigarette has always been suggested as the potential fire hazard not paper debris on the ducts.

The FAA infers from the commenter's remarks that it requests the proposed AD be withdrawn. The FAA does not concur. The FAA acknowledges that it has not received reports of paper debris collecting on the hot pneumatic ducts. Since paper debris collecting below the cabin floor poses a potential fire hazard and could result in possible loss of elevator control system redundancy, the FAA must issue this final rule to correct that unsafe condition.

However, the FAA has received reports of paper debris collecting below the cabin floor, and has revised the Summary section and the unsafe condition of this final rule to clarify this information.

Request To Remove Reporting Requirement

One commenter has no objection to the proposed inspection and modifications specified in the proposal. However, the commenter requests that the proposed rule provide relief from the reporting requirement specified in McDonnell Douglas Alert Service Bulletin MD90–25A017, which is referenced in the proposed rule as the appropriate source of service information. The commenter suggests either exempting operators from the reporting requirement, or only requiring operators to report initial inspection results to McDonnell Douglas. The commenter states that reporting both positive and negative findings of initial and repetitive inspections, as specified in the alert service bulletin, seems to be more of an industry evaluation to determine the viability of the AD, rather than an AD-mandated issue.

The FAA concurs with the commenter's request. The FAA points out that the proposed rule does not specify a requirement for reporting inspection findings to the manufacturer. The alert service bulletin referenced by the commenter is cited in the AD to provide procedures for accomplishment of the required inspection. However, to eliminate any confusion concerning a reporting requirement, this final rule has been revised to cite specific paragraphs of the alert service bulletin that are required to be accomplished. Additionally, the issuance date of Revision R01 of the alert service bulletin has been changed from October 15, 1997, to October 16, 1997, in this final rule.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden

on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 55 Model MD–90–30 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 19 airplanes of U.S. registry will be affected by this AD.

It will take approximately 5 work hours per airplane to accomplish the required inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection on U.S. operators is estimated to be $5,700, or $300 per airplane, per inspection cycle.

It will take approximately 1 work hour per airplane to accomplish the required modification of the toilet shroud assemblies, at an average labor rate of $60 per work hour. Required parts will be supplied by the manufacturer at no cost to operators. Based on these figures, the cost impact of this modification on U.S. operators is estimated to be $1,140, or $60 per airplane.

It will take approximately 1 work hour per airplane to accomplish the required modification of the lavatory entry door louvers, at an average labor rate of $60 per work hour. Required parts will be supplied by the manufacturer at no cost to operators. Based on these figures, the cost impact of this modification on U.S. operators is estimated to be $1,140, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

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

98–25–04 McDonnell Douglas: Amendment 39–10927. Docket 97–NM–258–AD.

Applicability: Model MD–90–30 series airplanes; as listed in paragraph 1.A.1. of McDonnell Douglas Alert Service Bulletin MD90–25A017, Revision R01, dated October 16, 1997, McDonnell Douglas Service Bulletin MD90–25–022, Revision R01, dated October 15, 1997, and McDonnell Douglas Service Bulletin MD90–25A023, Revision R01, dated October 15, 1997; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent a potential fire hazard or the possible loss of elevator control system redundancy due to paper debris collecting below the cabin floor, accomplish the following:

(a) Within 450 flight hours or 3 months after the effective date of this AD, whichever occurs later, perform an inspection to detect paper and lint debris in the areas behind the aft lavatory toilet shroud, behind the aft lavatory modules, and below the cabin floor aft of the aft cargo compartment bulkhead, in accordance with paragraphs 3.A.1 through 3.A.15 inclusive of the Accomplishment Instructions of McDonnell Douglas Alert Service Bulletin MD90–25A017, Revision R01, dated October 16, 1997. If any debris is found, prior to further flight, remove it in accordance with the alert service bulletin. Repeat the inspection thereafter at intervals not to exceed 450 flight hours.

(b) Within 12 months after the effective date of this AD, modify the lavatory toilet shroud assemblies in accordance with paragraph 3. (''Accomplishment Instructions'') of McDonnell Douglas Service Bulletin MD90–25–022, Revision R01, dated October 15, 1997.

(c) Within 12 months after the effective date of this AD, modify the lavatory entry door louvers in accordance with paragraph 3. (''Accomplishment Instructions'') of McDonnell Douglas Service Bulletin MD90–25–023, Revision R01, dated October 15, 1997.

(d) Modification of the toilet shroud assemblies and the lavatory entry door louvers in accordance with paragraphs (b) and (c) of this AD constitutes terminating action for the repetitive inspection requirements of paragraph (a) of this AD.

(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 Aircraft 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 2: 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 sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) The actions shall be done in accordance with McDonnell Douglas Alert Service Bulletin MD90–25A017, Revision R01, dated October 16, 1997; McDonnell Douglas Service Bulletin MD90–25–022, Revision R01, dated October 15, 1997; and McDonnell Douglas Service Bulletin MD90–25–023, Revision R01, dated October 15, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from The Boeing Company, Douglas Products Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the

Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on January 7, 1999.

Issued in Renton, Washington, on November 25, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–32098 Filed 12–2–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–264–AD; Amendment 39–10928; AD 98–25–05]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A321–111, –112, and –131 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A321–111, –112, and –131 series airplanes. This action requires repetitive inspections to detect fatigue cracking in the area surrounding certain attachment holes of the forward pintle fittings of the main landing gear (MLG) and the actuating cylinder anchorage fittings on the inner rear spar; and repair, if necessary. This amendment also provides for optional terminating action for the repetitive inspections. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified in this AD are intended to detect and correct fatigue cracking on the inner rear spar of the wings, which could result in reduced structural integrity of the airplane.

DATES: Effective December 18, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 18, 1998.

Comments for inclusion in the Rules Docket must be received on or before January 4, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–264–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A321–111, –112, and –131 series airplanes. The DGAC advises that, during full-scale testing of a Model A320 test article, fatigue cracking was detected between 64,120 and 82,607 total simulated flight cycles. Investigation revealed that the fatigue cracks originated at the attachment holes of the forward pintle fittings and the actuating cylinder anchorage fittings. Such fatigue cracking on the inner rear spar of the wings, if not detected and corrected, could result in reduced structural integrity of the airplane.

Similar Airplane Models

The inner rear spar construction of the wings of Model A321 series airplanes is similar in design to that of Model A320 series airplanes. Therefore, Model A321 series airplanes may be subject to the same unsafe condition revealed on the Model A320 series airplanes.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A320–57–1101, dated July 24, 1997, which describes procedures for repetitive ultrasonic inspections to detect fatigue cracking in the area surrounding certain attachment holes of the forward pintle fittings of the main landing gear (MLG) and the actuating cylinder anchorage fittings on the inner rear spar.

Airbus also has issued Service Bulletin A320–57–1100, including Appendix 1, both dated July 28, 1997. This service bulletin describes procedures for visual and eddy current inspections to detect cracking in the area surrounding certain attachment holes of the forward pintle fittings of the MLG and the actuating cylinder anchorage fittings on the inner rear spar; follow-on corrective actions, if necessary; and rework of the attachment holes, which eliminates the need for the repetitive ultrasonic inspections described in Airbus Service Bulletin A320–57–1101.

Accomplishment of the actions specified in Airbus Service Bulletin A320–57–1101 or A320–57–1100 is intended to adequately address the identified unsafe condition. The DGAC classified Airbus Service Bulletin A320–57–1101 as mandatory and issued French airworthiness directive 98–212–116(B), dated June 3, 1998, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.19) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to detect and correct fatigue cracking on the inner rear spar of the wings, which could result in reduced structural integrity of the airplane. This AD requires accomplishment of the actions specified in Airbus Service Bulletin A320–57–1101 described previously, except as discussed below. This AD also provides for optional terminating action for the repetitive inspections required by this AD.

Operators should note that, in consonance with the findings of the DGAC, the FAA has determined that the repetitive inspections required by this AD can be allowed to continue in lieu of accomplishment of a terminating action. In making this determination, the FAA considers that, in this case, long-term continued operational safety will be adequately assured by accomplishing the repetitive inspections

to detect cracking before it represents a hazard to the airplane.

Differences Between Rule and Service Bulletin

Operators also should note that, although the service bulletin specifies that the manufacturer may be contacted for disposition of cracking conditions in the area surrounding certain attachment holes of the forward pintle fittings of the MLG, this AD requires the repair of the fatigue cracking to be accomplished in accordance with a method approved by either the FAA, or the DGAC (or its delegated agent). In light of the type of repair that will be required to address the identified unsafe condition, and in consonance with existing bilateral airworthiness agreements, the FAA has determined that, for this AD, a repair approved by either the FAA or the DGAC is acceptable for compliance with this AD.

Cost Impact

None of the airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 20 work hours to accomplish the required inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection proposed by this AD would be $1,200 per airplane, per inspection cycle.

Should an operator elect to accomplish the optional terminating action that is provided by this AD action, it would take approximately 520 work hours to accomplish, at an average labor rate of $60 per work hour. The cost of required parts would be approximately $17,540 per airplane. Based on these figures, the cost impact of the optional terminating action would be $48,740 per airplane.

Determination of Rule's Effective Date

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, prior notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–264–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

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

98–25–05 Airbus Industrie: Amendment 39–10928. Docket 98–NM–264–AD.

Applicability: Model A321–111, –112, and –131 series airplanes; except those on which Airbus Modification 24977 has been accomplished during production, or on which the action described in Airbus Service Bulletin A320–57–1100, dated July 28, 1997 (Airbus Modification 26010) has been accomplished; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking on the inner rear spar of the wings, which could result in reduced structural integrity of the airplane, accomplish the following:

(a) Prior to the accumulation of 20,000 total flight cycles, or within 120 days after the effective date of this AD, whichever occurs later, perform an ultrasonic inspection to detect fatigue cracking in the area

surrounding certain attachment holes of the forward pintle fittings of the main landing gear (MLG) and the actuating cylinder anchorage fittings on the inner rear spar, in accordance with Airbus Service Bulletin A320–57–1101, dated July 24, 1997.

(1) If no cracking is detected, prior to further flight, repair the sealant in the inspected areas and repeat the ultrasonic inspections thereafter at intervals not to exceed 7,700 flight cycles.

(2) If any cracking is detected, prior to further flight, repair in accordance with a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Direction Générale de l'Aviation Civile (DGAC) (or its delegated agent).

(b) Accomplishment of visual and eddy current inspections to detect cracking in the area surrounding certain attachment holes of the forward pintle fittings of the MLG and the actuating cylinder anchorage fittings on the inner rear spar; follow-on corrective actions, as applicable; and rework of the attachment holes; in accordance with Airbus Service Bulletin A320–57–1100, dated July 28, 1997, constitutes terminating action for the repetitive inspection requirements of this AD. If any cracking is detected during accomplishment of any inspection described in the service bulletin, and the service bulletin specifies to contact Airbus for appropriate action: Prior to further flight, repair in accordance with a method approved by either the Manager, International Branch, ANM–116, or the DGAC (or its delegated agent).

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) Except as provided by paragraphs (a)(2) and (b) of this AD, the actions shall be done in accordance with Airbus Service Bulletin A320–57–1101, dated July 24, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in French airworthiness directive 98–212–116(B), dated June 3, 1998.

(f) This amendment becomes effective on December 18, 1998.

Issued in Renton, Washington, on November 25, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–32099 Filed 12–2–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ACE–44]

Remove Class D Airspace; Fort Leavenworth, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments; extension of comment period.

SUMMARY: This notice announces an extension of the comment period on a Direct final rule; request for comments which proposed to remove the Class D airspace at Fort Leavenworth, KS. This action is being taken due to a delay in distribution of the Direct final rule; request for comments document.

DATES: Comments must be received on or before December 10, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, ACE–520, Federal Aviation Administration, Docket No. 98–ACE–44, 601 East 12th Street, Kansas City, MO 64106.

FOR FURTHER INFORMATION CONTACT:

Kathy Randolph, (816) 426–3408.

SUPPLEMENTARY INFORMATION:

Background

Airspace Docket No. 98–ACE–44, published on October 28, 1998 (63 FR 57585) proposed to remove the Class D airspace at Fort Leavenworth, KS. This action will extend the comment period closing date on that airspace docket from November 17, 1998, to December 10, 1998, to allow for a 44-day comment period instead of the existing 20 day comment period.

List of Subjects in 14 CFR Part 71

Airpsace, Incorporation by reference, Navigation (air).

Extension of Comment Period

The comment period closing date on Airspace Docket No. 98–ACE–44 is hereby extended to December 10, 1998.

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

Issued in Kansas City, MO, on November 17, 1998,

Christopher R. Blum,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 98–32138 Filed 12–2–98; 8:45 am]

BILLING CODE 4910–13–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[SIPTRAX No. PA–4082a; FRL–6194–3]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Approval of VOC and NO_x RACT Determinations for Individual Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to the State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. This revision establishes and requires volatile organic compounds (VOC) and nitrogen oxides (NO_x) reasonably available control technology (RACT) for five major sources located in Pennsylvania. EPA is approving these source-specific plan approvals, operating and compliance permits that establish the above-mentioned RACT requirements in accordance with the Clean Air Act.

DATES: This direct final rule is effective on February 1, 1999 without further notice, unless EPA receives adverse written comment by January 4, 1999. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to Kathleen Henry, Air Protection Division, Mailcode 3AP11, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street,

Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Linda Miller (215) 814–2068, at the EPA Region III office or via e-mail at miller.linda@epamail.epa.gov. While information may be requested via e-mail, any comments must be submitted in writing to the above Region III address.

SUPPLEMENTARY INFORMATION:

I. Background

On May 31, 1995, November 15, 1995, March 21, 1996, and September 13, 1996, the Commonwealth of Pennsylvania submitted formal revisions to its State Implementation Plan (SIP). The SIP revision establishes and requires volatile organic compounds (VOC) and nitrogen oxides (NO_x) reasonably available control technology (RACT) for five major sources located in Pennsylvania. Each source subject to this rulemaking will be identified and discussed below. Any plan approvals and operating permits submitted coincidentally with those being approved in this document, and not identified below, will be addressed in a separate rulemaking action. Pursuant to sections 182(b)(2) and 182(f) of the Clean Air Act (CAA), Pennsylvania is required to implement RACT for all major VOC and NO_x sources by no later than May 31, 1995. The major source size is determined by its location, the classification of that area and whether it is located in the ozone transport region (OTR), which is established by the CAA. The Pennsylvania portion of the Philadelphia ozone nonattainment area consists of Bucks, Chester, Delaware, Montgomery, and Philadelphia Counties and is classified as severe. The remaining counties in Pennsylvania are classified as either moderate or marginal nonattainment areas or are designated attainment for ozone. However, under section 184 of the CAA, at a minimum, moderate ozone nonattainment area requirements (including RACT as specified in sections 182(b)(2) and 182(f)) apply throughout the OTR. Therefore, RACT is applicable statewide in Pennsylvania. The Pennsylvania submittals that are the subject of this document are meant to satisfy the RACT requirements for five sources in Pennsylvania.

Summary of SIP Revision

The details of the RACT requirements for the source-specific plan approvals, operating and compliance permits can be found in the docket and accompanying technical support document (TSD) and will not be reiterated in this document. Briefly, EPA is approving a revision to the Pennsylvania SIP pertaining to the determination of RACT for five major sources. Several of the plan approvals, compliance and operating permits contain conditions irrelevant to the determination of VOC or NO_x RACT. Consequently, these provisions are not being included in this approval for source-specific VOC or NO_x RACT.

RACT Determinations

The following table identifies the individual plan approvals, operating and compliance permits EPA is approving. The specific emission limitations and other RACT requirements for these sources are summarized in the accompanying technical support document, which is available upon further request from the EPA Region III office listed in the **ADDRESSES** section of this document.

PENNSYLVANIA—VOC AND NO_x RACT Determinations for Individual Sources

Source	County	Plan Approval (PA #) Operating Permit (OP #) Compliance Permit (CP #)	Source type	"Major source" pollutant
Columbia Gas Transmission Corportation-Artemas Compressor Station.	Bedford	PA 05–2006	Natural Gas Transmission	NO_x.
Columbia Gas Transmission Corportation-Donegal Compressor Station.	Washington	PA 63–000–631	Natural Gas Transmission	NO_x and VOC.
Columbia Gas Transmission Corportation-Gettysburg Compressor Station.	Adam	OP 01–2003	Natural Gas Transmission	NO_x.
Columbia Gas Transmission Corportation-Eagle Compresor Station.	Chester	OP 15–631	Natural Gas Transmission	NO_x and VOC.
Columbia Gas Transmission Corportation-Downingtown Compressor Station.	Chester	CP 15–0020	Natural Gas Transmission	NO_x.

EPA is approving this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the rule should adverse comments be filed. This rule will be effective February 1, 1999 without further notice unless the Agency receives adverse comments by January 4, 1999.

If EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on February 1, 1999 and no further action will be taken on the proposed rule. If adverse comments are received that do not pertain to all paragraphs subject to this rule, those paragraphs not affected by the adverse comments will be finalized in the manner described here. Only those paragraphs that receive adverse comments will be withdrawn in the manner described here.

II. Final Action

EPA is approving two plan approvals, two operating permits and one compliance permit for NO_x and/or VOC RACT for five individual sources.

III. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from review under E.O. 12866, entitled ''Regulatory Planning and Review.''

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.'' Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that the EPA determines (1) is ''economically significant,'' as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to Executive Order 13045 because it is not an economically significant regulatory action as defined by Executive Order 12866, and it does not address an environmental health or safety risk that would have a disproportionate effect on children.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.'' Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* versus *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804, however, exempts from section 801 the following types of rules: rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability.

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 1, 1999. 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 may be filed, and shall not postpone the effectiveness of such rule or action. This action to approve VOC and NO_X RACT determinations for a number of individual sources in Pennsylvania as a revision to the Commonwealth's SIP may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: November 13, 1998.

William Wisnewski,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401 et seq.

Subpart NN—Pennsylvania

2. Section 52.2020 is amended by adding paragraph (c)(137) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(137) Revisions to the Pennsylvania Regulations, Chapter 129.91 pertaining to VOC and NO_X RACT, submitted on May 31, 1995, November 15, 1995, March 21, 1996 and September 13, 1996 by the Pennsylvania Department of Environmental Protection.

(i) Incorporation by reference.

(A) Four letters submitted by the Pennsylvania Department of Environmental Protection transmitting source-specific VOC and/or NO_X RACT determinations in the form of plan approvals, operating or compliance permits on the following dates: May 31, 1995, November 15, 1995, September 13, 1996 and March 21, 1996.

(B) Plan approvals (PA), Operating permits (OP), Compliance Permits (CP):

(*1*) Columbia Gas Transmission Corporation—Artemas Compressor Station, Bedford County, PA O5–2006, effective April 19, 1995; except for the plan approval expiration date and item (or portions thereof) Nos. 4 and 13 relating to non-RACT provisions.

(*2*) Columbia Gas Transmission Corporation—Donegal Compressor Station, Washington County, PA 63–000–631, effective July 10, 1995; except for the plan approval expiration date and item (or portions thereof) Nos. 9 and 20 relating to non-RACT provisions.

(*3*) Columbia Gas Transmission Corporation—Gettysburg Compressor Station, Adam County, OP 01–2003, effective April 21, 1995; except for the operating permit expiration date and item (or portions thereof) No. 13 relating to non-RACT provisions.

(*4*) Columbia Gas Transmission Corporation—Eagle Compressor Station, Chester County, OP 15–022, effective February 1, 1996; except for the operating permit expiration date and item (or portions thereof) Nos. 9 and 10 relating to non-RACT provisions.

(*5*) Columbia Gas Transmission Corporation—Downingtown Compressor Station, Chester County, CP–15–0020, effective September 15, 1995; except for the compliance permit expiration date and item (or portions thereof) Nos. 2 and 6 relating to non-RACT provisions.

(ii) Additional Material—Remainder of the Commonwealth of Pennsylvania's May 31, 1995, November 15, 1995, March 21, 1996 and September 13, 1996 VOC and NO_X RACT SIP submittals.

[FR Doc. 98–32006 Filed 12–2–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 162–0109; FRL–6194–5]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Santa Barbara County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing a limited approval and limited disapproval of a revision to the California State Implementation Plan (SIP) proposed in the **Federal Register** on August 11, 1998. The revised rule controls VOC emissions from sources coating metal parts and products in the Santa Barbara County Air Pollution Control District. EPA's final action will incorporate this rule into the federally approved SIP. The intended effect of finalizing this action is to regulate emissions of volatile organic compounds (VOCs) according to the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA is finalizing a simultaneous limited approval and limited disapproval under CAA provisions regarding EPA action on SIP submittals and general rulemaking authority because this revision, while strengthening the SIP, also does not meet fully the CAA provisions regarding plan submissions and requirements for nonattainment areas. Because of this limited disapproval, EPA will be required to impose highway funding or emission offset sanctions under the CAA unless the State submits and EPA approves corrections to the identified deficiencies within 18 months of the effective date of this disapproval. Moreover, EPA will be required to promulgate a Federal implementation plan (FIP) unless the deficiencies are corrected within 24 months of the effective date of this disapproval.

EFFECTIVE DATE: This action is effective on January 4, 1999.

ADDRESSES: Copies of the rule revisions and EPA's evaluation report for this rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are available for inspection at the following locations:

Rulemaking Office, (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105;

Environmental Protection Agency, Air Docket (6102), 401 ''M'' Street, S.W., Washington, D.C. 20460;

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95814; and,

Santa Barbara County Air Pollution Control District 26 Castilian Drive, Suite B–23, Goleta, CA 93117.

FOR FURTHER INFORMATION CONTACT: Jerald S. Wamsley, Rulemaking Office, (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1226.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rule being approved into the California SIP is Santa Barbara County Air Pollution Control District (SBCAPCD) Rule 330—Surface Coating

of Metal Parts and Products. This rule was submitted by the California Air Resource Board to EPA on October 13, 1995.

II. Background

On August 11, 1998 in 63 FR 42784, EPA proposed granting limited approval and limited disapproval and including within the California SIP Santa Barbara County Air Pollution Control District's (SBCAPCD) Rule 330—Surface Coating of Metal Parts and Products. SBCAPCD revised and adopted Rule 330 on April 21, 1995. The California Air Resource Board submitted Rule 330 to EPA on October 13, 1995. This rule was submitted in response to EPA's 1988 SIP Call and the CAA section 182(a)(2)(A) requirement that nonattainment areas fix their reasonably available control technology (RACT) rules for ozone in accordance with EPA guidance that interpreted the requirements of the pre-amendment Act. A detailed discussion of the background for Rule 330 and nonattainment areas is provided in the proposed rule cited above.

EPA evaluated Rule 330 for consistency with the requirements of the CAA and EPA regulations and EPA's interpretation of these requirements as expressed in the various EPA policy guidance documents referenced in the proposed rule. EPA is finalizing the limited approval of Rule 330 to strengthen the SIP and finalizing the limited disapproval requiring the correction of the remaining deficiencies. Rule 330 contains the following deficiencies:

—the rule allows the use of up to 200 gallons per year of non-compliant coating exceeding USEPA's 55 gallon per year limit; and,

—the rule does not require a metal parts and products coating operation to record its daily use of non-compliant coatings.

A detailed discussion of Rule 330's deficiencies can be found in the Technical Support Document for Rule 330 (7/98), which is available from the U.S. EPA, Region 9 office.

III. Response to Public Comments

A 30-day public comment period was provided in 63 FR 42784. EPA received no comment letters on this August 11, 1998 proposal for a limited approval and limited disapproval.

IV. EPA Action

EPA is finalizing a limited approval and a limited disapproval of SBCAPCD, Rule 330—Surface Coating of Metal Parts and Products. The limited approval of this rule is finalized under section 110(k)(3) given EPA's authority, pursuant to section 301(a), to adopt regulations necessary to further air quality by strengthening the SIP. EPA's approval is limited in the sense that although Rule 330 strengthens the SIP, it does not meet the section 182(a)(2)(A) CAA requirement because of the rule's deficiencies discussed in the proposed rule. Thus, to strengthen the SIP, EPA is granting limited approval of Rule 330 under sections 110(k)(3) and 301(a) of the CAA. This action approves the Rule 330 into the SIP as a federally enforceable rule.

At the same time, EPA is finalizing a limited disapproval of Rule 330 because it contains deficiencies that have not been corrected as required by section 182(a)(2)(A) of the CAA; and, as such, the rule does not fully meet the requirements of Part D of the Act. As stated in the proposed rule, upon the effective date of this final rule, the 18 month clock for sanctions and the 24 month FIP clock will begin. If the State does not submit the required corrections and EPA does not approve the submittal within 18 months of the effective date of the final rule, either the highway sanction or the offset sanction will be imposed at the 18 month mark. It should be noted that Rule 330 has been adopted by the SBCAPCD and is in effect within the SBCAPCD. EPA's limited disapproval action will not prevent the SBCAPCD, State of California, or EPA from enforcing this rule.

V. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, Regulatory Planning and Review.

B. Executive Order 12875

Under E.O. 12875, Enhancing the Intergovernmental Partnership, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 12875 requires EPA to provide the OMB a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under E.O. 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that

significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or, to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major'' rule as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 1, 1999. 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 may 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 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compound.

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

Dated: November 18, 1998.

Laura Yoshii,

Acting Regional Administrator, Region 9.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c) (225)(i)(F) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(225) * * *

(i) * * *

(F) * * *

(*1*) Rule 330, adopted on April 21, 1995.

* * * * *

[FR Doc. 98–32004 Filed 12–2–98; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

30 CFR Part 602; 43 CFR Part 3195

[WO–130–1820–00–24 1A]

RIN 1004–AD24

Helium Contracts

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Land Management (BLM) is finalizing the interim rule that was published in the **Federal Register** on July 28, 1998 (63 FR 40175). This action implements the requirements of the Helium Privatization Act of 1996 by establishing procedures for the helium program, defining the obligations of the Federal helium suppliers and users, and removing the Bureau of Mines regulations governing helium distribution contracts. The effect of this action is to adopt the interim rule as a final rule without change.

DATES: This rule is effective on December 3, 1998.

FOR FURTHER INFORMATION CONTACT: Shirlean Beshir, Regulatory Affairs Group (WO–630), Bureau of Land Management, Mail Stop 401LS, 1849 ''C'' Street, NW, Washington, DC 20240; telephone (202) 452–5033 (Commercial or FTS) and Timothy R. Spisak, (806) 324–2656 (Commercial or FTS).

SUPPLEMENTARY INFORMATION:

I. Background

These regulations are issued by BLM to implement the requirements of the Helium Privatization Act of 1996, Public Law 104–273 (the Act). BLM adds these regulations as a new Part 3195 to BLM's oil and gas regulations. This action implements the requirements of the Act by:

- Establishing procedures for the helium program;
- Defining the obligations of Federal helium suppliers and users; and
- Removing the Bureau of Mines regulations at 30 CFR 602 governing helium distribution contracts.

On July 28, 1998, BLM published an interim rule in the **Federal Register** (63 FR 40175). The written comment period on the interim rule closed August 27, 1998. BLM received public comments from one private industry supplier, which we considered in finalizing the rule.

II. Discussion of Final Rule and Response to Comments

A. Legal Basis for the Final Rule

The Act requires that:

- BLM discontinue producing, marketing, and selling refined helium.
- Persons who supply a major helium requirement to Federal agencies contract with BLM to purchase an equivalent amount of crude helium from BLM.
- BLM use a legislatively mandated formula for determining the minimum price for crude helium.

Accordingly, this action implements the requirements of the Act by establishing procedures for the helium program, defining the obligations of the Federal helium suppliers and users, and removing the Bureau of Mines regulations governing helium distribution contracts (5 U.S.C. 301).

B. General and Specific Comments

The private industry supplier raised the following concerns:

- The interim rule does not address pre-existing contracts executed under Bureau of Mines regulations;
- Whether the pre-existing contracts should be terminated or rebid under the new regulations;
- Whether the pre-existing contracts should be allowed to run their course; and
- How should BLM handle the situation where a distributor, who is not an approved Federal helium supplier, is supplying helium to Federal agencies.

Any pre-existing contracts (pre-existing contracts) between former helium distributors and the BLM that were in place were cancelled effective April 1, 1998. Thus, those distributors lost the ability to act as an authorized Federal helium supplier on April 1, 1998. Therefore, if any such distributors wish to continue to sell a major helium requirement to Federal agencies to complete contractual obligations entered into prior to April 1, 1998, or to enter into new contracts to sell major helium requirements to Federal agencies, they must execute an In-Kind Crude Helium Sales Contract with BLM to allow them to do so. Further, as the disposition of pre-existing contracts was covered in the interim rule, no change to the rule is necessary. Accordingly, the interim rule adding 43 CFR Part 3195 and removing 30 CFR Part 602 which was published in the **Federal Register** (63 FR 40175) on July 28, 1998, is hereby adopted as a final rule without change.

III. Procedural Matters

Executive Order 12866

This final rule is not a significant rule and was not subject to review by the Office of Management and Budget under Executive Order 12866. This final rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities. The final rule merely provides the BLM a means to document and bill sales of refined helium to Federal agencies and their contractors. The total maximum dollar value of the crude helium sales is estimated at about $15 million annually. The crude helium sales required by the Act replace the BLM refined helium sales being discontinued by the same Act. The final rule adds a small administrative cost to track crude and refined helium sales. This final rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. This rule does not alter the budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. This rule merely fulfills the requirements of the Act, and does not raise novel legal or policy issues.

Regulatory Flexibility Act

The Department certifies that this document 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.*). This final rule outlines the reporting requirements of Federal helium users and suppliers. In addition, this rule raises refined helium sales thresholds from those contained in the prior regulations. The prior provisions would have required more small refined helium distributors to participate in refined helium sales reporting and subsequent crude helium purchases.

Small Business Regulatory Enforcement Fairness Act

The Department has determined that this final rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This final rule is not a major rule because total annual helium sales under the Act are not likely to exceed $15 million, well below the $100 million statutory threshold. Furthermore, any increases in cost will be borne by the Federal Government and in any event are mandated by the Act. Any effect on competition is the result of the Act. The final rule merely provides BLM a means to document and bill sales of refined helium to Federal agencies and their contractors. The crude helium sales required by the Act replace the BLM refined helium sales being discontinued by the same Act. This rule adds a small administrative cost to track crude and refined helium sales.

Unfunded Mandates Reform Act

This final rule does not impose an unfunded mandate on State, local, or tribal governments, or the private sector of more than $100 million per year. The final rule does not have a significant or unique effect on State, local, or tribal governments, or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required. The final rule merely provides the BLM a means to document and bill sales of crude helium to Federal helium suppliers based on their sales of refined helium to Federal agencies and their contractors. The total maximum dollar value of the crude helium sales is estimated at about $15 million annually. The crude helium sales required by the Act would replace the BLM refined helium sales being discontinued by the same Act. This rule adds a small administrative cost to track crude and refined helium sales.

Executive Order 12630

In accordance with Executive Order 12630, the final rule does not have significant takings implications. A takings implication assessment is not required. Since the final rule defines the obligations arising under future contracts, there will be no private property rights impaired as a result.

Executive Order 12612

In accordance with Executive Order 12612, the final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This final rule does not impose any obligations on any other Government nor preempt any regulatory authority of any State.

Executive Order 12988

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this final rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

The information required by these regulations is the same as the information required by the In-Kind Crude Helium Sales Contracts. The information collections contained in the In-Kind Crude Helium Sales Contracts have been approved by OMB under Approval No. 1004–0179 which expires May 31, 2001. The In-Kind Crude Helium Sales Contracts require Federal helium suppliers and Federal agencies to which the Federal helium suppliers sell the helium to provide specific information to BLM.

National Environmental Policy Act

This final rule does not constitute a major Federal action significantly affecting the quality of the human environment. However, BLM has prepared an Environmental Assessment (EA) in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C). BLM has placed the EA and Finding of No Significant Impact (FONSI) on file in the BLM Administrative Record at the address specified previously.

Author. The principal author of this final rule is Shirlean Beshir, Regulatory Affairs Group, Room 401LS, Bureau of Land Management, 1849 C Street, NW, Washington, DC 20240; Telephone: (202) 452–5033 (Commercial or FTS).

List of Subjects

30 CFR Part 602

Government contracts, helium, reporting and recordkeeping requirements.

43 CFR Part 3195

Government contracts, mineral royalties, oil and gas exploration, public lands-mineral resources, reporting and recordkeeping requirements, and surety bonds.

Dated: November 23, 1998.

Sylvia V. Baca,

Acting Assistant Secretary, Land and Minerals Management.

Accordingly, under the authority of 5 U.S.C. 301 and for the reasons stated above, BLM adopts without change as a final rule the interim rule that removed 30 CFR Chapter VI, Part 602; and added 43 CFR Chapter II, Part 3195, which was published at 63 FR 40175, on July 28, 1998.

[FR Doc. 98–31850 Filed 12–2–98; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–98–4807]

RIN 2127–AF51

Federal Motor Vehicle Safety Standards; Compressed Natural Gas Fuel Containers

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

ACTION: Final rule.

SUMMARY: This final rule deletes the material and manufacturing process requirements in the standard on compressed natural gas fuel container integrity. The agency believes that this amendment will facilitate technological innovation, without adversely affecting safety.

DATES: This final rule is effective January 4, 1999. Petitions for Reconsideration must be received by January 19, 1999.

ADDRESSES: Petitions should refer to the docket number of this rule and be submitted to: Administrator, National Highway Traffic Safety Administration, 400 7th Street, SW, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: For non-legal issues: Mr. Charles Hott, NPS–12, Office of Crashworthiness Standards, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590 (Telephone 202–366–0247) (FAX 202–366–4329).

For legal issues: Ms. Nicole H. Fradette, NCC–20, Rulemaking Division, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590 (Telephone 202–366–2992) (FAX 202–366–3820).

SUPPLEMENTARY INFORMATION:

I. Background

Federal Motor Vehicle Safety Standard No. 304, Compressed natural gas fuel container integrity, serves to reduce the risk of deaths and injuries occurring from fires resulting from fuel leakage during and after motor vehicle crashes. The Standard was patterned after the American National Standards Institute's (ANSI's) voluntary industry standard known as ANSI/NGV2 and developed by the Natural Gas Vehicle Coalition (NGVC). Standard No. 304 specifies detailed material and manufacturing process requirements for different types of CNG containers, including those made with aluminum alloys. The Standard also specifies burst, bonfire, and pressure cycling tests for the purpose of ensuring the durability, initial strength, and venting of CNG containers.

- The burst test evaluates a container's initial strength and resistance to degradation over time by specifying, for each type of container, a unique safety factor for determining the internal hydrostatic pressure that the container must withstand during the burst test. This requirement helps to ensure that a container's design and selected material are sufficiently strong over the life of the container.
- The bonfire test evaluates a container's pressure relief characteristics when pressure builds up in a container, primarily due to an increase in temperature.
- Finally, the pressure cycling test evaluates a container's durability by requiring a container to withstand without leakage, 18,000 cycles of pressurization and depressurization. This requirement helps to ensure that a CNG container is capable of sustaining the cycling loads imposed on the container during refueling over its entire service life.

In addition, the Standard specifies labeling requirements for CNG fuel containers.

Standard No. 304 specifies certain material and manufacturing characteristics for aluminum containers using alloy 6010 and alloy 6061, based on the specifications set forth in ANSI/NGV2. The material characteristics specify the percentage of various elements, including magnesium, silicon, copper, and manganese. On November 24, 1995, NHTSA issued a final rule amending the labeling and the bonfire test requirements in Standard No. 304, Compressed Natural Gas fuel container integrity. In the final rule, the agency decided to defer consideration of two

rulemaking petitions to add additional aluminum alloys to Standard No. 304, until the new version of the ANSI/NGV industry standard was issued. Northwest Aluminum Association requested that the standard be amended to add 6069 aluminum alloy, and Luxfer requested the addition of 7032 aluminum alloy. In explaining its decision to defer consideration of the petitions, the agency noted that the new ANSI/NGV2 industry standard may not specify CNG fuel container material and may be more performance-oriented than the current version, thereby allowing manufacturers more flexibility to improve container design with respect to cost and performance. The agency also noted that adopting some of the new provisions of the revised voluntary industry standard may eliminate the need to amend the standard to allow the use of two new aluminum alloys in CNG containers.

II. Summary of NPRM

In a May 30, 1997 notice of proposed rulemaking (NPRM), NHTSA proposed amending Standard No. 304 to eliminate the Standard's detailed material and manufacturing process requirements. The agency explained it had tentatively determined that CNG fuel container manufacturers should be allowed to use materials other than those materials currently listed in the standard. NHTSA explained that such an amendment would provide manufacturers with the flexibility to design lighter weight, higher capacity fuel containers using the latest innovations, without having to petition the agency to amend the standard each time a new material or manufacturing process is developed.

The agency also noted that the proposal to remove the material and manufacturing requirements was consistent with the proposed revision to ANSI/NGV, which removed many of the design restrictions that were in the 1992 version of NGV2 on which Standard No. 304 was initially modeled. In October 1996, the ANSI committee working on the revised standard completed its revisions and sent the revised document to its members for review. The proposed revision of ANSI/NGV2 removed many of the detailed material and manufacturing restrictions, but retained the impurity limits for certain materials. NHTSA explained that it understood that although the industry had not reached a consensus with respect to certain environment testing procedures, the industry had tentatively agreed to eliminate the material and manufacturing requirements.

NHTSA also stated it believed that eliminating the material and manufacturing process requirements would have no detrimental affect on safety. The agency explained that Standard No. 304's performance requirements, including those requirements that evaluate initial strength and resistance to degradation over time, would still apply to CNG containers. Thus, CNG container manufacturers would have to comply with the standard's pressure cycling, burst, and bonfire tests. NHTSA further explained that such containers would be subject to recall if they failed for any reason, including the degradation of material.

NHTSA proposed deleting the following sections from the standard:

- Section S5.2 *Material designations.* This section specifies the material requirements for the various types of CNG fuel containers.
- Section S5.3 *Manufacturing processes for composite containers.* This section specifies the manufacturing process for each type of composite CNG fuel container.
- Section S5.4 *Wall thickness* and Section S5.5 *Composite Reinforcement for Type 2, Type 3, and Type 4 containers.* These sections contain the design criteria for specifying the wall thicknesses and stresses for each type of CNG fuel container. These sections also specify procedures for designing CNG fuel container walls along with the theoretical formula for calculating maximum wall stress.
- Section S5.6 *Thermal Treatment,* and S5.7 *Yield Strength.* These sections contain detailed manufacturing process requirements for chrome-moly and carbon-boron steels, including specifying the temper temperatures for each steel.

In June 1998, ANSI published the new ANSI/NGV2 industry standard. The new standard is similar to the proposed standard in that much of the design restrictive language has been removed. ANSI/NGV2 now specifies that the material composition for steels should be known and defined by at least the contents of certain elements such as carbon, manganese, aluminum and the other alloying elements that are added to enhance the material properties. For aluminum, ANSI/NGV2 simply states that it should be in line with the Aluminum Association's practice and the 6xxx series with yield strengths above 250 MPa should not be used. It also specifies impurity limits for steels and aluminums.

III. Summary of Comments

Eight comments were submitted in response to the NPRM from the following companies/organizations: Chrysler Corporation (Chrysler), General Motors (GM), Gas Technology Canada (GTC), the Natural Gas Vehicle Coalition (NGVC), Lincoln Composites (Lincoln), Pressed Steel Tank Co. (PST), Structural Composites Industries (SCI), and New York City Transit (NY Transit).

Chrysler, GM, and GTC supported the proposed rule. Chrysler and GM stated that deleting the material and manufacturing process requirements would facilitate technological innovation without reducing safety. GTC stated that CNG containers sold in Canada that are manufactured from at least four material types that are not offered for sale in the United States have performed well in service. GTC cautioned, however, that additional performance tests might be needed to prevent in-service failures. Chrysler also commented that S7.2.2 of Standard No. 304 refers to S5.5.1, which is proposed for deletion, and suggested that S7.2.2 be revised accordingly.

NGVC and Lincoln also supported NHTSA's efforts to facilitate technological innovation, but were concerned that deletion of the material performance requirements without including the additional tests from the draft revision of ANSI/NGV2 industry standard, could lead to a serious safety problem. The latest draft standard, while deleting many of the specific material design requirements, includes the following three enhanced material performance test requirements:

1. Sulfide stress cracking resistance of high strength steels using the methods of NACE Standard TM0177–90;
2. Sustained load cracking for aluminum alloys in accordance with Annex D of ISO/DIS 7866; and
3. Intercrystalline corrosion and stress corrosion tests for aluminum alloys in accordance with Annex A of ISO/DIS 7866.

NGVC stated that these tests are needed to ensure the integrity of the materials that were previously excluded by the standard while Lincoln argued that these requirements were needed to reduce the risk of in-service leakage or rupture and inadequate shear strength of resins over the life of the CNG container. NGVC argued that NHTSA should retain Standard No. 304's current requirements until the industry's revision of ANSI/NGV2 is complete. Lincoln argued that NHTSA should simply amend Standard No. 304 to include the materials requested by Northwest Aluminum Association and Luxfer, aluminum alloys 6069 and 7032 respectively, rather than delete the material and manufacturing requirements.

PST supported removing the thermal treatment, wall thickness, and manufacturing process requirements from the standard, but argued that the standard should continue to limit materials to specific alloys and reinforcing fibers. PST argued that most

CNG container failures occurred because the CNG manufacturer used materials with insufficient toughness, damage tolerance, long term stability and environmental resistance. PST argued that a single safety factor cannot protect against such material deficiencies. PST further claimed that high-strength aluminum alloys were originally excluded from Standard No. 304 because of their susceptibility to sustained load cracking (SLC) and stress corrosion cracking (SCC). PST noted that the draft ISO/DIS 7866 standard, which is included in the proposed revision to NGV2, includes material tests intended to exclude SLC and SCC susceptible materials. PST argued that NHTSA should evaluate the SLC, SCC and accelerated stress rupture tests, and amend the standard to include these tests, as well as a resistance to impact requirement. Finally, PST asserted that the agency must address the potential failure modes of organic reinforcing fibers, stainless steels, copper alloys and other materials, if the agency is going to permit the use of these materials. PST stated that the time and the cost involved with developing adequate performance tests for all of these materials was high and any resulting economic benefits questionable.

SCI opposed the proposed rule and argued that Standard No. 304's current performance tests are insufficient to prevent time related failures resulting from corrosion, stress rupture, viscoelastic yielding, and aging. SCI stated that the small sample size and short time period involved with testing made it too difficult and complex to test for such time related failures. SCI also argued that the history of CNG fuel containers demonstrated that the standard's current test requirements were insufficient to prevent catastrophic failures, such as battery fluid field failures occurring from in-service abuse or impact damage from roadway debris.

While New York City Transit stated that it did not oppose the proposed changes, it did express concern that Standard No. 304 is insufficient to prevent CNG container failures. NYCT's concern is based on the fact that nearly six percent of one model of CNG fuel containers produced by a particular manufacturer has experienced failures after only a few years in service. NYCT stated that 31 of its CNG transit buses were equipped with these containers and that it was unable to retrofit the containers because the manufacturer is out of business.

IV. Agency Decision

The agency is deleting the material and manufacturing process requirements from Standard No. 304 and amending S7.2.1 and S7.2.2 of the standard to eliminate any reference to those requirements. NHTSA believes that the deletion of these requirements will facilitate technological innovation without having an adverse affect on safety.

For the following reasons, the agency is not replacing the deleted requirements with other requirements, as suggested by some commenters. First, the agency has concluded that Standard No. 304's current testing requirements—pressure cycling, burst, and bonfire—are sufficient to ensure an appropriate level of safety for CNG fuel containers. The tests indirectly ensure that the containers are manufactured using appropriate materials and wall thicknesses. The agency believes, therefore, that the Standard's design and material requirement are unnecessary and restrict the ability of manufacturers to use the latest technology in manufacturing CNG fuel containers.

Second, NHTSA has no evidence indicating the existence of a safety problem that would be addressed by including additional tests, such as those contained in the proposed NGV2 revision, in the Standard.[1] NHTSA knows of six CNG fuel container ruptures that have occurred since 1993. According to a safety bulletin published by the Gas Research Institute in October 1996, all six ruptures could have been prevented if appropriate precautions had been taken. Mishandling, misuse, and improper placement and maintenance of the CNG fuel containers caused the failures. In four of the cases, the CNG fuel container did not have a shield surrounding it to protect it from impact damage. A vehicle design change would address this problem. In the other two cases, the CNG fuel containers ruptured after prolonged exposure to acidic fluids. In those two cases, the shielding surrounding the CNG fuel containers lacked adequate drainage. Consequently, acidic fluids accumulated in the area beneath the containers and damaged the CNG fuel containers. NHTSA believes that the proper placement and shielding of the CNG fuel containers along with a periodic inspection of the container, as directed by the CNG fuel containers label, could have prevented these failures. None of the additional testing provisions in the new ANSI/NGV2 industry standard would have prevented these cylinder failures. The agency, therefore, does not believe that inclusion of the additional tests is necessary.

Finally, NHTSA agrees with the comments of SCI that testing for such time related failures as corrosion, stress rupture, viscoelastic yielding, and aging may be impracticable due to the small sample size and short time period involved with testing. Thus, even if there were a safety problem that could not be addressed by the standard's current testing requirements, NHTSA believes it would be inappropriate to require these particular tests given the current uncertainty concerning their effectiveness.

The agency does not believe that manufacturers will fail to exercise care in selecting appropriate materials to manufacture CNG containers. NHTSA does, however, stress that any CNG fuel containers that might be found in the future to have an unanticipated safety related failure would be subject to recall. NHTSA, therefore, will continue to monitor the performance of CNG fuel containers closely and should a safety problem arise, NHTSA will take the appropriate regulatory or enforcement action.

While NHTSA understands NYCT's concern that one particular model of CNG containers leaked an excessive amount of gas after only a few years in service, NHTSA notes that a defective manufacturing process, unique to the particular manufacturer, rather than a defective design, was the cause of these failures. No other CNG containers experienced such failures.[2] Neither the Standard as currently drafted nor as revised by this notice would have prevented the failure of this particular model of CNG fuel container.

V. Effective Date

The statute under which the agency conducts its vehicle safety rulemaking requires that each order (i.e., final rule) take effect no sooner than 180 days from the date the order is issued unless good cause is shown that an earlier effective date is in the public interest. In the NPRM, NHTSA tentatively concluded that there was good cause not to provide the 180 day lead time since the proposed amendment would delete certain requirements and have no mandatory effect on manufacturers.

[1] The agency notes that while several of the commenters stated that NHTSA should amend Standard No. 304 to require additional tests to prevent in-service failures of CNG containers, none provided evidence indicating the existence of a safety problem with in-service failures that was not addressed by the Standard's current tests and would be addressed by the inclusion of additional tests.

[2] The agency notes that the manufacturer of these six containers went out of business and that other transit fleets who had purchased the faulty containers retrofitted their buses with new CNG containers.

NHTSA, therefore, proposed a 30 day effective date and sought comment on whether that date was appropriate or whether more lead time was necessary. No comments were submitted opposing the proposed effective date. NHTSA has, therefore, determined that there is good cause for an effective date 30 days after publication of the final rule.

VI. Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule was reviewed under E.O. 12866. NHTSA has analyzed this rule and determined that it is not ''significant'' within the meaning of the Department of Transportation's regulatory policies and procedures. This final rule allows manufacturers to use materials other than those materials currently listed in Standard No. 304. This rulemaking action will provide manufacturers with the flexibility to design lighter weight, higher capacity fuel containers. The performance requirements in Standard No. 304 are met by CNG fuel container manufacturers, who produce and test containers in accordance with ANSI/NGV2. A full regulatory evaluation is not required because the rule will not significantly affect costs or benefits.

Regulatory Flexibility Act

NHTSA has considered the effects of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). I hereby certify that the final rule would not have a significant economic impact on a substantial number of small entities.

The following is NHTSA's statement providing the factual basis for the certification (5 U.S.C. 605(b)). The final rule primarily affects manufacturers of CNG containers. The Small Business Administration's size standards (13 CFR Part 121) are organized according to Standard Industrial Classification Codes (SIC). SIC Code 3714 ''Motor Vehicle Parts and Accessories'' has a small business size standard of 750 employees or fewer.

The agency believes that this final rule will not have a significant economic impact on a substantial number of small businesses because the manufacturers of CNG containers currently manufacture according to the ANSI/NGV2 industry standard, and this rulemaking is consistent with those requirements. NHTSA has stated that this final rule deletes certain requirements and does not require any CNG container design changes. The changes will not affect the cost of new CNG containers.

Paperwork Reduction Act

NHTSA has analyzed this rule under the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and determined that it will not impose any information collection requirements as that term is defined by the Office of Management and Budget (OMB) in 5 CFR part 1320.

National Environmental Policy Act

Finally, the agency has considered the environmental implications of this final rule in accordance with the National Environmental Policy Act of 1969 and determined that it will not significantly affect the human environment.

The Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually. Annual expenditures from this final rule will not exceed the $100 million threshold.

Executive Order 12612 (Federalism)

The agency has analyzed this rule in accordance with the principles and criteria set forth in Executive Order 12612. NHTSA has determined that this rule will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Civil Justice Reform

This rule has no retroactive effect. NHTSA is not aware of any state law that would be preempted by this rule. This rule does not repeal any existing Federal law or regulation. It modifies existing law only to the extent that it deletes the material and manufacturing process requirements in Standard No. 304, Compressed natural gas fuel container integrity. This rule does not require submission of a petition for reconsideration or the initiation of other administrative proceedings before a party may file suit in court.

List of Subjects in 49 CFR Part 571

Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

In consideration of the foregoing, the agency is amending part 571 of title 49 of the Code of Federal Regulations as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

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

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50

2. Section 571.304 is amended by removing S5.2 through S5.7.3 and by revising S7.2, S7.2.1, and S7.2.2 to read as follows:

§ 571.304 Standard No. 304; Compressed natural gas fuel container integrity.

* * * * *

S7.2 *Hydrostatic burst test.*

S7.2.1 Each Type 1 CNG fuel container shall not leak when subjected to burst pressure and tested in accordance with S8.2. Burst pressure shall not be less than 2.25 times the service pressure for non-welded containers and shall not be less than 3.5 times the service pressure for welded containers.

S7.2.2 Each Type 2, Type 3, or Type 4 CNG fuel container shall not leak when subjected to burst pressure and tested in accordance with S8.2. Burst pressure shall not be less than the value specified in Table 1 times the service pressure, as follows:

TABLE 1.—STRESS RATIOS

Material	Type 2	Type 3	Type 4
E–Glass	2.65	3.5	3.5
S–Glass	2.65	3.5	3.5
Aramid	2.25	3.0	3.0
Carbon	2.25	2.25	2.25

Issued on: November 23, 1998.

Ricardo Martinez,

Administrator.

[FR Doc. 98–31773 Filed 12–2–98; 8:45 am]

BILLING CODE 4910–59–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 217 and 227

[Docket No. 950427117–8292–05; I.D. 112398G]

RIN 0648–AH97

Sea Turtle Conservation; Shrimp Trawling Requirements

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; request for comments.

SUMMARY: NMFS notifies fishermen that it has renewed the authorization for shrimp trawlers to use limited tow times as an alternative to the otherwise required use of Turtle Excluder Devices (TEDs) in the inshore waters of Mississippi. Its previous authorization expired on November 23, 1998. NMFS also has extended the same authorization in Alabama inshore waters which otherwise would expire December 1, 1998 (63 FR 62959, November 10, 1998). The intent of this action is to provide adequate protection for threatened and endangered sea turtles when debris conditions may make TED-use impracticable.

DATES: The renewal and the extention are both effective from November 30, 1998 through December 30, 1998. Comments on this notification are requested and must be received by December 30, 1998.

ADDRESSES: Comments on this action should be addressed to the Chief, Endangered Species Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Charles A. Oravetz, 727–570–5312, or Barbara A. Schroeder, 301–713–1401.

SUPPLEMENTARY INFORMATION:

Background

All sea turtles that inhabit U.S. waters are listed as either endangered or threatened under the Endangered Species Act of 1973 (ESA). The Kemp's ridley (*Lepidochelys kempii*), leatherback (*Dermochelys coriacea*), and hawksbill (*Eretmochelys imbricata*) are listed as endangered. Loggerhead (*Caretta caretta*) and green (*Chelonia mydas*) turtles are listed as threatened, except for populations of green turtles in Florida and on the Pacific coast of Mexico, which are listed as endangered.

The incidental take of these species, as a result of shrimp trawling activities, has been documented in the Gulf of Mexico and along the Atlantic. Under the ESA and its implementing regulations, taking sea turtles is prohibited, with exceptions identified in 50 CFR 227.72. Existing sea turtle conservation regulations (50 CFR part 227, subpart D) require most shrimp trawlers operating in the Gulf and Atlantic areas to have a NMFS approved TED installed in each net rigged for fishing, year-round.

The regulations provide for the use of limited tow times as an alternative to the use of TEDs for vessels with certain specified characteristics or under certain special circumstances. The provisions of 50 CFR 227.72(e)(3)(ii) specify that the Assistant Administrator for Fisheries, NOAA (Assistant Administrator), may authorize ''compliance with tow time restrictions as an alternative to the TED requirement, if [he] determines that the presence of algae, seaweed, debris or other special environmental conditions in a particular area makes trawling with TED-equipped nets impracticable.'' The provisions of 50 CFR 227.72(e)(3)(i) specify the maximum tow times that may be used when authorized as an alternative to the use of TEDs. The tow times may be no more than 55 minutes from April 1 through October 31, and no more than 75 minutes from November 1 through March 31. NMFS has selected these tow time limits to minimize the level of mortality of sea turtles that are captured by trawl nets not equipped with TEDs.

Recent Events

On September 27, Hurricane Georges hit the Mississippi and Alabama coasts. The hurricane remained nearly stationary over the coastal area and south Alabama for about 2 days and deposited as much as 36 inches (91 cm) of rain on some areas. The combination of heavy rains and hurricane storm surge produced severe flooding in south Mississippi, Alabama, and Louisiana rivers. This flooding deposited large amounts of debris in the inshore waters of those states.

After the hurricane, NMFS was notified by the Director of the Marine Resources Division of the Alabama Department of Conservation and Natural Resources (Alabama Director), the Director of the Mississippi Department of Marine Resources (Mississippi Director), and the Secretary of the Louisiana Department of Wildlife and Fisheries that the debris conditions created great difficulty for shrimpers in inshore waters by fouling the trawl nets and clogging the TEDs. As a result of the special environmental conditions that may have made trawling with TED-equipped nets impracticable, the Assistant Administrator issued emergency notifications to authorize the use of restricted tow times as an alternative to the use of TEDs in the inshore waters of the three affected states. In Alabama inshore waters, the authorization was effective from October 7, 1998, through November 5, 1998 (63 FR 5505, October 14, 1998), and was then extended through November 30 (63 FR 62959, November 10, 1998) after the Alabama Director informed NMFS that the debris conditions in Mississippi Sound had been worsening as debris had been flushed out of Mobile Bay and into Mississippi Sound. In Mississippi inshore waters and Louisiana inshore waters northeast of the Mississippi River, the use of limited tow times as an alternative to TEDs was authorized from October 23 through November 22, 1998 (63 FR 57620, October 28, 1998).

NMFS has received letters from the Mississippi Director and the Alabama Director, dated November 17 and November 19, 1998, respectively, stating that excessive debris conditions continue to exist. The letter from the Alabama Director requested the extension of the authorization to use limited tow times as an alternative to the use of TEDs in Alabama inshore waters and the letter from the Mississippi Director requested the renewal of the authorization to use limited tow times as an alternative to the use of TEDs in Mississippi inshore waters. The letter from the Alabama Director stated that many nearshore areas remain untrawlable despite shrimpers' efforts so far to remove the debris.

Special Environmental Conditions

The Assistant Administrator finds that special environmental conditions following Hurricane Georges have persisted in Alabama and Mississippi inshore waters and may make trawling with TED-equipped nets impracticable. Therefore, the Assistant Administrator, by this notice, renews the authorization to use restricted tow times as an alternative to the use of TEDs in the inshore waters of Mississippi and extends the authorization to use restricted tow times as an alternative to

the use of TEDs in the inshore waters of Alabama. The states of Mississippi and Alabama are continuing to monitor the situation and are cooperating with NMFS in determining the ongoing extent of the debris problem in their inshore waters. Moreover, both states' enforcement officers have assisted with the enforcement of the restricted tow times. In his November 19 letter, the Alabama Director reported that compliance with the tow times has been excellent, according to the enforcement officers, and the attitude and cooperation of the fishermen have been very good. He stated that Alabama enforcement officers will continue to monitor the area for the duration of this exemption extension. In Mississippi, the Department of Wildlife, Fisheries, and Parks, Marine Enforcement Division reported to the Mississippi Director that compliance with the tow time limits has also been excellent. Ensuring compliance with tow time restrictions is critical to effective sea turtle protection, and the enforcement effort undertaken by the states and the compliance among the fishermen are important factors enabling NMFS to issue this authorization.

Continued Use of TEDs

NMFS encourages shrimp trawlers in Mississippi and Alabama inshore waters who are authorized under this notification to use restricted tow times to continue to use TEDs if possible. NMFS' studies have shown that the problem of clogging by seagrass, algae, or by other debris is not unique to TED-equipped nets. When fishermen trawl in problem areas, they may experience clogging with or without TEDs. A particular concern of fishermen, however, is that clogging in a TED-equipped net may hold open the turtle escape opening and increase the risk of shrimp loss. On the other hand, TEDs also help exclude certain types of debris and allow shrimpers to conduct longer tows.

NMFS' gear experts provide several operational recommendations that may allow some fishermen to continue using TEDs without resorting to restricted tow times. Hard TEDs that are made of either solid rod or hollow pipe in a bottom-opening configuration and that incorporate a bent angle at the escape opening are recommended. In addition, the installation angle of a hard TED in the trawl extension is an important performance element in excluding debris from the trawl. High installation angles can result in debris clogging the bars of the TED; NMFS recommends an installation angle of 45°, relative to the normal horizontal flow of water through the trawl, to optimize the TED's ability to exclude turtles and debris. Furthermore, the use of accelerator funnels, which are allowable modifications to hard TEDs, is not recommended in areas with heavy amounts of debris or vegetation. Finally, the webbing flap that is usually installed to cover the turtle escape opening may be modified to help exclude debris quickly; the webbing flap can either be cut horizontally to shorten it so that it does not overlap the frame of the TED or be slit in a fore-and-aft direction to facilitate the exclusion of debris.

All of the preceding recommendations represent legal configurations of TEDs for shrimpers in the inshore areas of Alabama (not subject to special requirements effective in the Gulf Shrimp Fishery-Sea Turtle Conservation area). This notice extends, through December 30, 1998, the authorization to use restricted tow times as an alternative to the otherwise required use of TEDs in the inshore waters of Alabama and renews the same authorization in Mississippi inshore waters, effective from November 30, 1998 through December 30, 1998. This notice does not authorize any other departure from the TED requirements, including any illegal modifications to TEDs. In particular, if TEDs are installed in trawl nets, they may not be sewn shut.

Alternative to Required Use of TEDs

The authorization provided by this notification applies to all shrimp trawlers that would otherwise be required to use TEDs in accordance with the requirements of 50 CFR 227.72(e)(2) who are operating in inshore waters of Mississippi or Alabama, in areas which the states have opened to shrimping. ''Inshore waters,'' as defined at 50 CFR 217.12, means the marine and tidal waters landward of the 72 COLREGS demarcation line (International Regulations for Preventing Collisions at Sea, 1972), as depicted or noted on nautical charts published by NOAA (Coast Charts, 1:80,000 scale) and as described in 33 CFR part 80. Instead of the required use of TEDs, shrimp trawlers, through December 30, 1998, may opt to comply with the sea turtle conservation regulations by using restricted tow times. If they do so, their tow times must not exceed 75 minutes, measured from the time trawl doors enter the water until they are retrieved from the water.

Additional Conditions

NMFS expects that shrimp trawlers operating in Mississippi and Alabama inshore waters without TEDs, in accordance with this authorization, will retrieve debris that is caught in their nets and return it to shore for disposal or to other locations defined by the Mississippi or Alabama Director, rather than simply disposing the debris at sea. Proper disposal of debris should help the restoration of the shrimping grounds in the wake of the hurricane. Shrimp trawlers are reminded that regulations under 33 U.S.C. 1901 *et seq.* (Act to Prevent Pollution From Ships) may apply to disposal at sea.

Alternative to Required Use of TEDs; Termination

The Assistant Administrator, at any time, may modify this authorization through publication of a notice in the **Federal Register**, if the Assistant Administrator determines that the alternative authorized is not sufficiently protecting turtles, as evidenced by observed lethal takes of turtles onboard shrimp trawlers, elevated sea turtle strandings, or insufficient compliance with the authorized alternative. If necessary, the Assistant Administrator could modify the affected area or impose any necessary additional or more stringent measures, including more restrictive tow times or synchronized tow times. The Assistant Administrator may also terminate this authorization at any time for these same reasons, or if compliance cannot be monitored effectively, or if conditions do not make trawling with TEDs impracticable. This authorization will expire automatically December 31, 1998, unless it is extended through another notice published in the **Federal Register**.

Classification

This action has been determined to be not significant for purposes of E.O. 12866.

The Assistant Administrator has determined that this action is necessary to respond to an emergency situation to allow more efficient fishing for shrimp while providing adequate protection for endangered and threatened sea turtles pursuant to the ESA and other applicable law.

Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator finds that there is good cause to waive prior notice and opportunity to comment on this action. It would be contrary to the public interest to provide prior notice and opportunity for comment because doing so would prevent the agency from providing relief within the necessary timeframe. The Assistant Administrator finds that an unusually large amount of debris exists in the aftermath of Hurricane Georges, creating a special

environmental conditions that may make trawling with TED-equipped nets impracticable and that the use of limited tow times for the described area and time instead of TEDs would adequately protect threatened and endangered sea turtles. Notice and comment are contrary to the public interest in this instance.

Because this action relieves a restriction it is not subject to a delay in effective date under 5 U.S.C. 553(d)(1).

As prior notice and an opportunity for public comment are not required to be provided for this notification by 5 U.S.C. 553 or by any other law, the analytical requirements of 5 U.S.C. 601 *et seq.* are inapplicable.

The Assistant Administrator prepared an Environmental Assessment (EA) for the final rule requiring TED use in shrimp trawls and creating the regulatory framework for the issuance of notices such as this (57 FR 57348, December 4, 1992). Copies of the EA are available (see **ADDRESSES**).

Dated: November 27, 1998.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 98–32189 Filed 11–30–98; 3:45 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 971208298–8055–02; I.D. 113098A]

Fisheries of the Exclusive Economic Zone Off Alaska; Yellowfin Sole Fishery by Vessels Using Trawl Gear in Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing directed fishing for yellowfin sole by vessels using trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 1998 Pacific halibut bycatch allowance specified for the trawl yellowfin sole fishery.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), November 30, until 1200 hrs, A.l.t., December 31, 1998.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and CFR part 679.

The prohibited species bycatch mortality allowance of halibut for the BSAI trawl yellowfin sole fishery, which is defined at § 679.21(e)(3)(iv)(B)(*1*), was established by the Final 1998 Harvest Specifications of Groundfish (63 FR 12689, March 16, 1998) as 930 mt.

In accordance with § 679.21(e)(7)(v), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 1998 halibut bycatch allowance specified for the trawl yellowfin sole fishery in the BSAI has been caught. Consequently, the Regional Administrator is closing directed fishing for yellowfin sole by vessels using trawl gear in the BSAI.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent exceeding the 1998 Pacific halibut bycatch allowance of halibut specified for the trawl yellowfin sole fishery. Providing prior notice and an opportunity for public comment on this action is impracticable and contrary to the public interest. The fleet will soon take the apportionment. Further delay would only result in the 1998 Pacific halibut bycatch allowance of halibut being exceeded and disrupt the FMP's objective of limiting trawl Pacific halibut mortality. NMFS finds for good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by 50 CFR 679.21 and is exempt from review under E.O. 12866.

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

Dated: November 30, 1998.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–32190 Filed 11–30–98; 3:32 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 63, No. 232
Thursday, December 3, 1998

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.

OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2604

RIN 3209–AA22

Proposed Amendments to the Office of Government Ethics Freedom of Information Act Regulation

AGENCY: Office of Government Ethics (OGE).

ACTION: Proposed rule amendments.

SUMMARY: The Office of Government Ethics is proposing to amend its rules under the Freedom of Information Act (FOIA) primarily to effectuate various provisions under the 1996 Electronic FOIA Amendments. The proposed revisions include the new response time for FOIA requests, procedures for requesting expedited processing, additional categories of documents available in OGE's FOIA reading room facility, the availability of certain public information on OGE's Web site, and express inclusion of electronic records and automated searches along with paper records and manual searches. In addition, OGE's proposed amendments would increase the general FOIA search fees somewhat. Finally, OGE is proposing some other updating revisions and corrections. This rulemaking only deals with such matters at OGE; it is not an executive branchwide regulation.

DATES: Comments from the public and the agencies are invited and are due by February 1, 1999.

ADDRESSES: William E. Gressman, Associate General Counsel, Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917.

FOR FURTHER INFORMATION CONTACT: Mr. Gressman at the Office of Government Ethics; telephone: 202–208–8000, ext. 1110; TDD: 202–208–8025; FAX: 202–208–8037; Internet E-mail address: usoge@oge.gov (for E-mail messages, the subject line should include the following reference—Proposed Amendments to the OGE FOIA Regulation).

SUPPLEMENTARY INFORMATION: In this rulemaking, the Office of Government Ethics is proposing to amend its regulation at 5 CFR part 2604 under the Freedom of Information Act (FOIA), 5 U.S.C. 552. These proposed amendments do not concern separate subpart G of part 2604, which sets forth certain duplication and mailing fees this Agency can charge under the Ethics in Government Act of 1978 (the Ethics Act), 5 U.S.C. appendix, for large requests for copies of Standard Form 278 Executive Branch Personnel Public Financial Disclosure Reports that are on file at OGE.

The primary focus of these proposed amendments is to effectuate for this Agency various provisions under the 1996 Electronic FOIA Amendments, Public Law No. 104–231. Thus, in a proposed newly redesignated paragraph (a)(1) of § 2604.305, OGE would codify in its FOIA regulations the new statutorily prescribed general 20 working day response time for responding to FOIA requests. The Office of Government Ethics has already been administratively adhering to the new time period (though many requests are still answered in less time), along with the various other requirements of the Electronic FOIA Amendments. The prior statutory response time was 10 working days.

In addition, OGE proposes to add a new paragraph (a)(2) to § 2604.305 to codify the provision for response to requests for expedited processing within 10 calendar days. Pursuant to the Electronic FOIA Amendments, a person can request expedited processing of his or her FOIA request based upon a showing of ''compelling need,'' which the requester must certify in writing to be true and complete to the best of his or her knowledge and belief. Compelling need is defined in the amended FOIA as circumstances in which a failure to obtain records requested on an expedited basis could reasonably be expected to present an imminent threat to the life or physical safety of an individual or, for a person primarily engaged in disseminating information, an urgency to inform the public about actual or alleged Federal Government activity. The Office of Government Ethics is then to respond to expedited processing requests within 10 calendar days, as it has been doing as a matter of administrative practice. These provisions would be codified in new proposed paragraph (e) of § 2604.301 of OGE's FOIA regulation.

The Office of Government Ethics has decided not to propose multitrack processing of its FOIA requests. The Electronic FOIA Amendments provide that an agency can provide by regulation for multiple ''tracks'' in responding to FOIA requests, depending on the amount of time and work entailed in responding to differing kinds of requests. Since OGE only receives a limited number of FOIA requests each year (currently running at the rate of about 35–45) and is able to respond to them on a timely basis, this Agency does not need to provide for separate processing tracks for more complicated versus simpler FOIA requests. Moreover, in that regard, OGE does not have a FOIA backlog.

The Electronic FOIA Amendments require that deleted portions of copies of documents released in part be identified and that a volume estimation of materials withheld in whole be given, unless exempt information would thereby be revealed. The Office of Government Ethics would codify this requirement in proposed new paragraph (b)(3) of § 2604.303 of its FOIA regulation. In a separate, unrelated proposed revision to § 2604.303, paragraph (a) would be revised to provide expressly that OGE could alternatively consult with another Government agency at which responsive records originated and then decide whether to grant or deny the request, in lieu of the usual course of referring the FOIA request to the originating agency for its direct response to the requester.

The general requirement to honor a form or format request, unless the record requested is not readily reproducible in the requested form or format, would be set forth in paragraph (c) of § 2604.302, as proposed to be revised. The definitions of the terms ''records'' and ''search'' in § 2604.103 are proposed to be amended to more explicitly include electronic records and automated searches (along with paper records and manual searches).

The Office of Government Ethics would also clarify in revised subpart B and § 2604.201 headings and text that, as a small agency with a limited FOIA practice, it has a FOIA public reading

room *facility*, rather that a ''room'' per se. Thus, upon request, OGE makes available information required to be made available under FOIA paragraph (a)(2) and certain other publicly available information in its reception or conference room areas. Such materials created by OGE since October 1, 1996 (and in certain cases before then, if feasible), are also available via computer telecommunications on OGE's Internet Web site at the following address: http://www.usoge.gov. The Web site is referenced in new proposed paragraph (a)(2) of § 2604.201 of the OGE FOIA regulation. The Electronic FOIA Amendments also added a new category of such publicly available materials, copies of records created by OGE which are requested and released to individual FOIA requesters which, because of the nature of their subject matter, OGE determines have become or are likely to become the subject of subsequent requests for substantially the same records, together with a general index thereof. In accordance with Department of Justice guidance, any such materials must be the subject of at least three FOIA requests. The Office of Government Ethics would add reference to such documents at proposed new paragraph (b)(4) of § 2604.201 of its FOIA regulation. Further, OGE would add a new paragraph (d) to § 2604.201 regarding permissible deletions from records covered in this section in order to prevent a clearly unwarranted invasion of personal privacy.

In § 2604.501(b)(1)(i), OGE is proposing to raise the hourly rate for manual searches for responsive records by a homogeneous class of OGE personnel by 10% to reflect increased salaries and overhead since the OGE FOIA regulations were issued in February 1995. The new proposed rates would be $11.00 an hour (versus $10.00 currently) for such searches by clerical staff and $22.00 an hour (versus $20.00) for such searches by professional staff. The charge for individual staff searches would remain unchanged at the particular salary rate (basic pay plus 16%) of the individual employee making the search.

Finally, OGE is proposing to make a couple of updating changes and corrections to its FOIA regulation, including adding its current telephone and FAX numbers.

Matters of Regulatory Procedure

Executive Order 12866

In issuing these proposed amendments to its Freedom of Information Act regulation, OGE has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. These proposed amendments have also been reviewed by the Office of Management and Budget under that Executive order.

Regulatory Flexibility Act

As Office of Government Ethics Director, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this notice of proposed rulemaking will not have a significant economic impact on a substantial number of small entities because it would only affect Freedom of Information Act matters at OGE.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because these proposed amendments do not contain any information collection requirements that require the approval of the Office of Management and Budget.

List of Subjects in 5 CFR Part 2604

Administrative practice and procedure, Archives and records, Confidential business information, Conflict of interests, Freedom of Information, Government employees.

Approved: October 5, 1998.

Stephen D. Potts,

Director, Office of Government Ethics.

For the reasons set forth in the preamble, the Office of Government Ethics is proposing to amend 5 CFR part 2604 as follows:

PART 2604—[AMENDED]

1. The authority citation for part 2604 continues to read as follows:

Authority: 5 U.S.C. 552; 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235.

§ 2604.103 [Amended]

2. In § 2604.103, the text of the definition of the term ''Records'' is amended by adding, in the second parenthetical, between the words ''as'' and ''punchcards'' the words ''electronic documents, electronic mail,'', and the text of the definition of the term ''Search'' is amended by adding between the words ''material'' and ''that'' the words ''manually or by automated means''.

3. The heading of subpart B is revised to read as follows:

Subpart B—FOIA Public Reading Room Facility and Web Site; Index Identifying Information for the Public

4. Section 2604.201 is amended by:

a. Revising the heading;

b. Redesignating paragraph (a) as paragraph (a)(1) and adding a new paragraph (a)(2);

c. Adding the word ''facility'' after the word ''room'' at each place it appears in newly redesignated paragraph (a)(1), including the heading thereof, and in paragraphs (b) and (c);

d. Removing the telephone number ''(202) 523–5757'' and the FAX number ''(202) 523–6325'' in the second sentence of newly redesignated paragraph (a)(1) and adding in their place the new telephone number ''202–208–8000'' and FAX number ''202–208–8037'', respectively;

e. Removing the word ''and'' at the end of paragraph (b)(3);

f. Redesignating paragraph (b)(4) as paragraph (b)(5); and

g. Adding new paragraphs (b)(4) and (d).

The revision and additions read as follows:

§ 2604.201 Public reading room facility and Web site.

(a) * * *

(2) *Web site.* The records listed in paragraph (b) of this section, which are created on or after November 1, 1996, or which OGE is otherwise able to make electronically available (if feasible), along with the OGE FOIA and Public Records Guide and OGE's annual FOIA reports, are also available via OGE's Web site (Internet address: http://www.usoge.gov).

(b) * * *

(4) Copies of records created by OGE that have been released to any person under subpart C of this part which, because of the nature of their subject matter, OGE determines have become or are likely to become the subject of subsequent requests for substantially the same records, together with a general index of such records; and

* * * * *

(d) OGE may delete from the copies of materials made available under this section any identifying details necessary to prevent a clearly unwarranted invasion of personal privacy. Any such deletions will be explained in writing and the extent of such deletions will be indicated on the portion of the records that are made available or published, unless the indication would harm an interest protected by the FOIA exemption pursuant to which the deletions are made. If technically feasible, the extent of any such deletions will be indicated at the place in the records where they are made.

5. Section 2604.301 is amended by removing the telephone number ''(202) 523–5757'' in the first sentence of

paragraph (a) and adding in its place the following text (with the new telephone and FAX numbers) ''202–208–8000, or FAX, 202–208–8037'', and by adding a new paragraph (e) to read as follows:

§ 2604.301 Requests for records.

* * * * *

(e) *Seeking expedited processing.* (1) A requester may seek expedited processing of a FOIA request if a compelling need for the requested records can be shown.

(2) ''Compelling need'' means:

(i) Circumstances in which failure to obtain copies of the requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(ii) An urgency to inform the public about an actual or alleged Federal Government activity, if the request is made by a person primarily engaged in disseminating information.

(3) A requester seeking expedited processing should so indicate in the initial request, and should state all the facts supporting the need to obtain the requested records quickly. The requester must also certify in writing that these facts are true and correct to the best of the requester's knowledge and belief.

6. Section 2604.302 is amended by revising the heading and first sentence of paragraph (b) and revising paragraph (c) to read as follows:

§ 2604.302 Response to requests.

* * * * *

(b) *Referral to, or consultation with, another agency.* When a requester seeks access to records that originated in another Government agency, OGE will normally refer the request to the other agency for response; alternatively, OGE may consult with the other agency in the course of deciding itself whether to grant or deny a request for access to such records. * * *

* * * * *

(c) *Honoring form or format requests.* In making any record available to a requester, OGE will provide the record in the form or format requested, if the record already exists or is readily reproducible by OGE in that form or format. If a form or format request cannot be honored, OGE will so inform the requester and provide a copy of a nonexempt record in its existing form or format or another convenient form or format which is readily reproducible. OGE will not, however, generally develop a completely new record (as opposed to providing a copy of an existing record in a readily reproducible new form or format, as requested) of information in order to satisfy a request.

* * * * *

7. Section 2604.303 is amended by removing the word ''and'' following paragraph (b)(2), redesignating paragraph (b)(3) as paragraph (b)(4), and adding a new paragraph (b)(3) to read as follows:

§ 2604.303 Form and content of responses.

* * * * *

(b) * * *

(3) When only a portion of a document is being withheld, the amount of information deleted and the FOIA exemption(s) justifying the deletion will generally be indicated on the copy of the released portion of the document. If technically feasible, such indications will appear at the place in the copy of the document where any deletion is made. If a document is withheld in its entirety, an estimate of the volume of the withheld material will generally be given. However, neither an indication of the amount of information deleted nor an estimation of the volume of material withheld will be included in a response if doing so would harm an interest protected by any of the FOIA exemptions pursuant to which the deletion or withholding is made; and

* * * * *

8. Section 2604.305 is amended by redesignating paragraph (a) as paragraph (a)(1), by removing the number ''10'' in newly redesignated paragraph (a)(1) and adding in its place the number ''20'', and by adding a new paragraph (a)(2) to read as follows:

§ 2604.305 Time limits.

(a) * * *

(2) *Request for expedited processing.* When a request for expedited processing under § 2604.301(e) is received, the General Counsel will respond within ten calendar days from the date of receipt of the request, stating whether or not the request for expedited processing has been granted. If the request for expedited processing is denied, any appeal of that decision will be acted upon expeditiously.

* * * * *

§ 2604.402 [Amended]

9. Section 2604.402 is amended by removing the initial lower case ''e'' in the word ''exemption'' in the first sentence of paragraph (b) and adding in its place an upper case ''E''.

§ 2604.501 [Amended]

10. Section 2604.501 is amended by removing the dollar amounts ''$10.00'' and ''$20.00'' from the second sentence of paragraph (b)(1)(i) and adding in their place the dollar amounts ''$11.00'' and ''$22.00'', respectively, and by removing the citation to ''§ 2604.104(q)'' in the first sentence of paragraph (b)(3) and adding in its place the citation ''§ 2604.103''.

11. Subpart F is revised to read as follows:

Subpart F—Annual OGE FOIA Report

§ 2604.601 Electronic posting and submission of annual OGE FOIA report.

On or before February 1 of each year, OGE shall electronically post on its Web site and submit to the Office of Information and Privacy at the United States Department of Justice a report of its activities relating to the Freedom of Information Act (FOIA) during the preceding fiscal year.

§ 2604.602 Contents of annual OGE FOIA report.

(a) The Office of Government Ethics will include in its annual FOIA report the following information for the preceding fiscal year:

(1) The number of FOIA requests for records pending before OGE as of the end of the fiscal year;

(2) The median number of calendar days that such requests had been pending before OGE as of that date;

(3) The number of FOIA requests for records received by OGE;

(4) The number of FOIA requests that OGE processed;

(5) The median number of calendar days taken by OGE to process different types of requests;

(6) The number of determinations made by OGE not to comply with FOIA requests in full or in part;

(7) The reasons for each such determination;

(8) A complete list of all statutes upon which OGE relies to authorize withholding of information under FOIA Exemption 3, 5 U.S.C. 552(b)(3);

(9) A description of whether a court has upheld the decision of the agency to withhold information under each such statute;

(10) A concise description of the scope of any information withheld under each such statute;

(11) The number of appeals made by persons under 5 U.S.C. 552(a)(6);

(12) The result of such appeals;

(13) The reason for the action upon each appeal that results in a denial of information;

(14) The total amount of fees collected by OGE for processing requests; and

(15) The number of full-time staff of OGE devoted to processing requests for records under the FOIA; and

(16) The total amount expended by OGE for processing such requests.

(b) In addition, OGE will include in the report such additional information about its FOIA activities as is appropriate and useful in accordance with Justice Department guidance and as otherwise determined by OGE.

[FR Doc. 98–32193 Filed 12–2–98; 8:45 am]

BILLING CODE 6345–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Domestic Licensing of Production and Utilization Facilities; Public Workshop Meeting

AGENCY: Nuclear Regulatory Commission.

ACTION: Advance notice of public workshop meeting.

SUMMARY: The Commission has requested the staff to develop and assess options on incorporating risk insights in the Code of Federal Regulations 10 CFR 50.59. This regulation permits licensees to implement certain changes that do not require prior NRC approval. On or about December 19, 1998, the staff will place in the public document room (PDR) a draft report that identifies options for incorporating risk insights into the existing § 50.59 process. At the same time that the document is placed in the PDR, the staff will issue a notice to hold a public workshop on January 19, 1998, at the NRC auditorium, in Rockville, Maryland. That notice will also solicit comments on this program.

WORKSHOP MEETING INFORMATION: A 1-day workshop will be held to review the subject document, address comments and answer questions. Persons other than NRC staff and NRC contractors interested in making a presentation at the workshop should notify Jack Guttmann, US Nuclear Regulatory Commission, MS T10E50, phone (301) 415–7732, e-mail jxg@nrc.gov.

DATES: January 19, 1999.

AGENDA: To be published in January, 1999.

REGISTRATION: No registration fee is required for this workshop. Interested parties who plan to attend the meeting should preregister in order to ensure adequate space. Persons interested in attending the workshop should notify Jack Guttmann, at US Nuclear Regulatory Commission, MS T10E50, Washington, D.C., 20555, or by phone (301) 415–7732, or by e-mail jxg@nrc.gov.

Dated at Rockville, Maryland, this 20th day of November, 1998.

For the Nuclear Regulatory Commission.

Mary Drouin

Acting Branch Chief, Probabilistic Risk Analysis Branch Division of Systems Technology, Office of Nuclear Regulatory Research.

[FR Doc. 98–31933 Filed 12–1–98; 8:45 am]

BILLING CODE 7590–01–p

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 2, 157, 284, 375, 380, 381, and 385

[Docket No. RM98–9–000]

Revision of Existing Regulations Under Part 157 and Related Sections of the Commission's Regulations Under the Natural Gas Act; Notice of Extension of Time

November 24, 1998.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of Extension of Time.

SUMMARY: The Federal Energy Regulatory Commission issued a Notice of Proposed Rulemaking that proposes to update its regulations governing the filing of applications for the construction and operation of facilities to provide service or to abandon facilities or service under section 7 of the Natural Gas Act (63 FR 55682 October 16, 1998). The date for filing comments is being extended at the request of various interested parties.

DATES: Comments are extended to and including December 22, 1998.

ADDRESSES: Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: David P. Boergers, Secretary, 888 First Street, NE, Washington, DC 20426, (202) 208–0400.

[Docket No. RM98–9–000]

On November 24, 1998, the Interstate Natural Gas Association of America, the American Gas Association, the Process Gas Consumers Group and American Iron and Steel Institute (hereafter ''Petitioners'') filed a joint motion for an extension of time for the filing of comments in response to the Commission's Notice of Proposed Rulemaking issued September 30, 1998, in the above-docketed proceeding.

In its motion, Petitioners state that due to the shear number of ongoing rulemaking proceedings at the Commission and the onset of the Thanksgiving holiday season, additional time is needed within which to prepare and file comments. The motion also states that an extension of time will not unduly delay Commission action on the matters related to this proceeding. Petitioners motion further states that they are authorized to represent that the American Petroleum Association of America and the Natural Gas Supply Association have been contacted and they do not oppose the request for additional time.

Upon consideration, notice is hereby given that an extension of time for the filing of comments is granted to and including December 22, 1998.

David P. Boergers,

Secretary.

[FR Doc. 98–32159 Filed 12–2–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 931

[SPATS No. NM–039–FOR]

New Mexico Regulatory Program

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

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: Office of Surface Mining Reclamation and Enforcement (OSM) is announcing receipt of a proposed amendment to the New Mexico regulatory program (hereinafter, the ''New Mexico program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to or additions of rules pertaining to the definitions of ''material damage'' and ''occupied residential dwelling and associated structures,'' adjustment of bond amounts for subsidence damage, subsidence control buffer zones, and impoundments meeting the class B or C criteria for dams in Technical Release-60 published by the U.S. Natural Resources Conservation Service (NRCS). The amendment is intended to revise the New Mexico program to be consistent with the corresponding Federal regulations.

DATES: Written comments must be received by 4:00 p.m., m.s.t., January 4, 1999. If requested, a public hearing on the proposed amendment will be held

on December 28, 1998. Requests to present oral testimony at the hearing must be received by 4:00 p.m., m.s.t., on December 18, 1998.

ADDRESSES: Written comments should be mailed or hand delivered to Willis L. Gainer at the address listed below.

Copies of the New Mexico program, the proposed amendment, and all written comments received in response to this document 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.

Willis L. Gainer, Chief, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 505 Marquette Avenue, NW., Suite 1200, Albuquerque, New Mexico 87102.

Mining and Minerals Division, New Mexico Energy & Minerals Department, 2040 South Pacheco Street, Santa Fe, New Mexico 87505, Telephone: (505) 827–5970.

FOR FURTHER INFORMATION CONTACT: Willis L. Gainer, Telephone: (505) 248–5096, Internet address: WGAINER@OSMERE.GOV.

SUPPLEMENTARY INFORMATION:

I. Background on the New Mexico Program

On December 31, 1980, the Secretary of the Interior conditionally approved the New Mexico program. General background information on the New Mexico program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the New Mexico program can be found in the December 31, 1980, **Federal Register** (45 FR 86459). Subsequent actions concerning New Mexico's program and program amendments can be found at 30 CFR 931.11, 931.15, 931.16, and 931.30.

II. Proposed Amendment

By letter dated November 13, 1998, New Mexico submitted a proposed amendment (administrative record No. NM–804) to its program pursuant to SMCRA (30 U.S.C. 1201 *et seq.*). New Mexico submitted the proposed amendment in response to the required program amendments at 30 CFR 931.16(w), (x), and (aa). The provisions of Title 19, Chapter 8, Part 2, of the New Mexico Administrative Code (19 NMAC 8.2) that New Mexico proposes to revise or add are: 19 NMAC 8.2 107.M. (1), 107.O.(2), 909.E. (5), 2017.D through 2017.G, 2071.A through 2071.D, and 2072.

Specifically, New Mexico proposes to revise:

19 NMAC 8.2 107.M.(1) and 107.O.(2), the definitions of ''material damage'' and ''occupied residential dwelling and associated structures,'' by adding a reference in each definition to its rules at 2069 through 2072, concerning subsidence control;

19 NMAC 909.E.(5), concerning ponds, impoundments, banks, dams, and embankments, by adding the requirement that if the structure meets the Class B or C criteria for dams in TR–60 or meets the size or other criteria of 30 CFR 77.216(a), each plan required under 909.B, C, and E shall include a stability analysis of the structure;

19 NMAC 2017.D by adding the requirement that impoundments that meet the Class B or C criteria for dams in TR–60 be certified by a qualified registered professional engineer;

19 NMAC 2017.F.(2)(i), (ii), and (iii), by adding the requirement that the minimum design precipitation event for a spillway be, respectively, the: (1) 100-year 6-hour event for an impoundment meeting the Class B or C criteria for dams in TR–60, (2) 25-year 6-hour event for temporary impoundments not meeting the Class B or C criteria for dams in TR–60, and (3) 50-year 6-hour event for permanent impoundments not meeting the Class B or C criteria for dams in TR–60;

19 NMAC 2017.G(4) and (5), respectively, by correcting a typographical error and by adding the requirement that impoundments meeting the Class B or C criteria for dams in TR–60 be examined in accordance with 30 CFR 77.216–3;

19 NMAC 2071, concerning subsidence buffer zones, by adding at 2071.A through 2071.D, the requirements, that: (1) Unless otherwise approved, underground mining shall not be conducted beneath or adjacent to any perennial stream or impoundment having a storage volume of 20 acre-feet or more, (2) underground mining activities beneath any aquifer that serves as a significant source of water supply to a public water system shall be conducted so as to avoid disruption of the aquifer and consequent exchange of ground water between the aquifer and other strata, (3) unless, otherwise approved, underground mining activities shall not be conducted beneath or in close proximity to any public buildings, and (4) underground mining shall be suspended under urbanized areas, cities, towns, and communities and adjacent to industrial or commercial buildings, major impoundments or permanent streams, if imminent danger is found to inhabitants of urbanized areas, cities, towns, or communities; and

19 NMAC 2072 by adding the requirement that when subsidence related contamination, diminution, or interruption to a water supply protected under 2069(a) through (d) occurs, the Director of the New Mexico program must require the permittee to obtain additional performance bond in the amount of the estimated costs of the repairs or of the estimated cost to replace the protected water supply.

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 New Mexico program.

1. 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 Albuquerque Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

2. Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., m.s.t., on December 18, 1998. Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**. 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 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.

3. 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

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) 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 1255) and the Federal regulations at 30 CFR 730.11, 732.11, 732.15, and 732.17(h)(1), 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.

3. 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)).

4. 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.*).

5. 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 that 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.

6. Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 931

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 24, 1998.

Russell F. Price,

Acting Regional Director, Western Regional Coordinating Center.

[FR Doc. 98–32188 Filed 12–2–98; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 931

[NM–037–FOR]

New Mexico Regulatory Program

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

ACTION: Proposed rule; reopening and extension of public comment period on proposed amendment.

SUMMARY: Office of Surface Mining Reclamation and Enforcement (OSM) is announcing receipt of revisions and additional explanatory information pertaining to previously proposed amendment to the New Mexico regulatory program (hereinafter, the ''New Mexico program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The revisions and additional explanatory information for New Mexico's proposed rules pertain to permit application contents for operations exclusively under reclamation and the timing of backfilling and grading. The amendment is intended to revise the New Mexico program to incorporate the additional flexibility afforded by the revised Federal regulations, as amended, and improve operational efficiency.

DATES: Written comments must be received by 4:00 p.m., m.s.t. December 18, 1998.

ADDRESSES: Written comments should be mailed or hand delivered to Willis L. Gainer at the address listed below.

Copies of the New Mexico program, the proposed amendment, and all written comments received in response to this document 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.

Willis L. Gainer, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 505 Marquette Avenue, NW., Suite 1200, Albuquerque, New Mexico 87102

Mining and Minerals Division, New Mexico Energy & Minerals Department 2040 South Pacheco Street, Santa Fe, New Mexico 87505, Telephone: (505) 827–5970

FOR FURTHER INFORMATION CONTACT: Willis L. Gainer, Telephone: (505) 248–5096, Internet address WGAINER@OSMRE.GOV.

SUPPLEMENTARY INFORMATION:

I. Background on the New Mexico Program

On December 31, 1980, the Secretary of the Interior conditionally approved the New Mexico program. General background information on the New Mexico program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the New Mexico program can be found in the December 31, 1980, **Federal Register** (45 FR 86459). Subsequent actions concerning New Mexico's program and program amendments can be found at 30 CFR 931.11, 931.15, 931.16, and 931.30.

II. Proposed Amendment

By letter dated March 11, 1996, New Mexico submitted a proposed amendment (administrative record No. NM–773) to its program pursuant to

SMCRA (30 U.S.C. 1201 *et seq.*). OSM announced receipt of the proposed amendment in the March 26, 1996, **Federal Register** (61 FR 13117; administrative record No. NM–802), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy. Because no none requested a public hearing or meeting, none was held. The public comment period ended on April 25, 1996.

During its review of the amendment, OSM identified concerns relating to the provisions of Coal Surface Mining Commission (CSMC) Rules 80–1–5–23(a) and 80–1–15–11 through 80–1–15–27, minimum requirements for permit applications concerning coal mining operations exclusively under reclamation, and CSMC Rule 80–1–20–101(a)(1) and (3), timing of backfilling and grading. OSM notified New Mexico of the concerns by letter dated May 15, 1996 (administrative record No. NM–885).

Please note that by letter dated January 6, 1998, New Mexico submitted a proposed amendment (administrative record No. NM–795) to recodify the New Mexico Surface Coal Mining Regulations. New Mexico recodified its rules from Coal Surface Mining Code Rule 80–1 (CSMC Rule 80–1), sections 1 through 15 and sections 19 through 34, to Title 19 (Natural Resources and Wildlife), Chapter 8, (Coal Mining), Part 2 (Cold Surface Mining) of the New Mexico Administrative Code (19 NMAC 8.2), Subparts 1 through 34. No substantive changes to the text of the rules were proposed. OSM approved the recodification of New Mexico's rules on June 8, 1998 (63 FR 31112, administrative record No. NM–805). For purposes of clarity, OSM will hereinafter give both the recodified and the old citations of New Mexico's proposed revisions that are the subject of this document.

New Mexico responded in a letter dated November 9, 1998, by submitting a revised amendment and additional explanatory information (administrative record No. NM–803). New Mexico proposes to further revise its program by (1) withdrawing it's proposed revision of 19 NMAC 8.2 505.A (old CSMC Rule 80–1–5–23(a)) and withdrawing in its entirety the proposed addition of Subpart 15 (old CSMC Rules 80–1–15–11 through 80–1–15–27), concerning minimum requirements for permit applications pertaining to coal mining operations exclusively under reclamation, and (2) revising and submitting additional explanatory information for 19 NNMAC 8.2 2054.A (old CSMC Rules 80–1–20–101(a)), concerning the timing of backfilling and grading.

Specifically, New Mexico proposes to:

(1) Withdraw it's proposed revision at 19 NMAC 8.2 505.A (old CSMC Rule 80–1–5–23(a)) and withdraw in its entirety the proposed addition of Subpart 15 (old CSMC Rules 80–1–15–11 through 80–1–15–27), concerning minimum requirements for permit applications pertaining to coal mining operations exclusively under reclamation;

(2) Submit additional explanatory information for 19 NMAC 8.2 2054.A (old CSMC Rules 80–1–20–101(a)), pertaining to timing of backfilling and grading; and

(3) Further amended proposed 19 NMAC 8.2 2054.A by (a) revising 2054.A(2), pertaining to open pit mining, to allow for an annual backfilling and grading schedule based on either time or distance; (b) revising 2054.A(4), pertaining to surface areas disturbed incidental to underground mining activities, to require backfilling and grading in accordance with an annual time schedule; and (c) adding 2054.A(5), pertaining to any final pit at the completion of mining activities, to require that rough backfilling and grading occur in accordance with a time schedule approved by the Director of the New Mexico program.

III. Public Comment Procedures

OSM is reopening the comment period on the proposed New Mexico program amendment to provide the public an opportunity to reconsider the adequacy of the proposed amendment in light of the additional materials submitted. 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 New Mexico program.

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 Alburquerque Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

IV. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) 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 sepcific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) 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.

3. 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)).

4. 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.*).

5. 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 that 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.

6. Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 931

Intergovermental relations, Surface mining, Underground mining.

Dated: November 24, 1998.

Russell F. Price,

Acting Regional Director, Western Regional Coordinating Center

[FR Doc. 98–32187 Filed 12–2–98; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[SIPTRAX No. PA4082b; FRL–6194–4]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Approval of VOC and NOX RACT Determinations for Individual Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania for the purpose of establishing volatile organic compound (VOC) and nitrogen oxides (NO_X) reasonably available control technology (RACT) for five major sources located in Pennsylvania. In the Final Rules section of this **Federal Register**, EPA is approving the Commonwealth's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule and the accompanying technical support document. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. If adverse comments are received that do not pertain to all paragraphs subject to this rulemaking action, those paragraphs not affected by the adverse comments will be finalized in the manner described here. Only those paragraphs that receive adverse comments will be withdrawn in the manner described here.

DATES: Written comments must be received by January 4, 1999.

ADDRESSES: Written comments on this action should be addressed to Kathleen Henry, Air Protection Division, Mailcode 3AP11, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Linda Miller, (215) 814–2068, at the EPA Region III office or via e-mail at miller.linda@epamail. epa.gov. While information may be requested via e-mail, comments must be submitted in writing to the above Region III address.

SUPPLEMENTARY INFORMATION: For additional information pertaining VOC and NOx RACT determinations for individual sources located in Pennsylvania, see the Direct Final rule located in the Rules and Regulations section of this **Federal Register**.

Dated: November 13, 1998.

William Wisnewski,

Acting Regional Administrator, Region III.

[FR Doc. 98–32006 Filed 12–2–98; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3100, 3106, 3130, and 3160

[AA–610–08–4111–2410]

RIN 1004–AC54

Oil and Gas Leasing; Onshore Oil and Gas Operations

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: The Bureau of Land Management (BLM) is reopening the public comment period under a proposed rule published in the **Federal Register** on January 13, 1998, (63 FR 1936), concerning lessee responsibility for oil and gas drainage. BLM is reopening the comment period for 60 days in order to consult with Indian Tribes, pursuant to Executive Order 13084, on the issue of whether the proposed rule should apply to Tribal and individual Indian oil and gas leases. BLM seeks further public comments solely on the issue of the appropriateness of applying the proposed rule to Indian oil and gas leases.

DATES: Comments must be received on or before February 1, 1999. BLM will not necessarily consider comments received after this time in developing the final rule or include them in the administrative record.

ADDRESSES: If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to the Bureau of Land Management, Administrative Record, 1849 ''C'' Street, NW, Room 401LS, Washington, DC 20240. You may also comment via the Internet to WOComment@wo.blm.gov. Please submit comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include ''Attn: AC54'' and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at (202) 452–5030.

Comments, including names and street addresses of respondents, will be available for public review at this address during regular business hours (7:45 a.m. to 4:15 p.m.), Eastern Time, Monday through Friday, except holidays. BLM will also post all comments on its home page (www.blm.gov) at the end of the comment period. Individual respondents may request confidentiality, which BLM will consider on a case-by-case basis. If you wish to request that BLM consider withholding your name, home street address, Internet address, or personal telephone number from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

Finally, you may hand-deliver comments to BLM at 1620 L Street, NW, Room 401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Donnie Shaw, Fluid Minerals Group, Bureau of Land Management, Mail Stop 401LS, 1849 ''C'' Street, NW, Washington, DC 20240; telephone (202) 452–0340 (Commercial or FTS). Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: On January 13, 1998, (63 FR 1936), BLM published the drainage proposed rule in the **Federal Register**. The comment period was extended for 60 days in a notice published on February 24, 1998, (63 FR 9171). BLM is reopening the comment period for 60 days in order to consult with Indian Tribes, pursuant to Executive Order 13084, on the issue of whether the proposed rule should apply to Tribal and individual Indian oil and gas leases. Comments were solicited on this question in the original Notice of Proposed Rulemaking, but only one comment was received.

BLM seeks further public comments solely on the issue of the appropriateness of applying the proposed rule to Indian oil and gas leases. Specifically, BLM seeks comment on the issue of whether the proposed amendments to 43 CFR 3100.5 through 3100.80 should apply to both Federal and Indian leases. Should BLM determine to make those amendments applicable to Indian leases as well as Federal leases, the proposed amendments would be made in Part 3160 and replace 3162.2(a) and (b).

BLM is not considering applying to Indian oil and gas leases the proposed revisions to 43 CFR Subpart 3106 governing the obligations of Federal oil and gas assignors and assignees. Instead, Indian oil and gas leases are governed by the obligations in 25 CFR 211.53 and 212.53.

The proposed rule would clarify the responsibilities of oil and gas lessees for protecting Federal and Indian oil and gas resources from drainage by operations on nearby lands that would result in lower royalties to the Federal Government and Indian mineral owners. It would specify when the obligations of the lessee or operating rights owner to protect against drainage begin and end and what steps should be taken to determine if drainage is occurring.

Dated: November 23, 1998.

Sylvia V. Baca,

Acting Assistant Secretary, Land and Minerals Management.

[FR Doc. 98–31846 Filed 12–2–98; 8:45 am]

BILLING CODE 4310–84–p

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018—AF30

Endangered and Threatened Wildlife and Plants; Proposed Special Regulations for the Preble's Meadow Jumping Mouse

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Preble's Meadow Jumping Mouse (*Zapus hudsonius preblei*) (Preble's) was listed as a threatened species under the Endangered Species Act (Act) of 1973 (16 U.S.C. sections 1531 to 1544) on May 13, 1998. At the time the Preble's was listed, a special rule for the conservation of Preble's was not promulgated and therefore virtually all of the restrictions of the Act became applicable to the species. This proposed rule would establish special standards for the conservation of the Preble's over the next 18 months, long enough to devise a more comprehensive and lasting approach for preserving the species.

DATES: Your comments on the proposed rule must be received by February 1, 1999 to receive consideration by the Service.

ADDRESSES: You should send your comments concerning this proposal to LeRoy Carlson, Field Supervisor, Colorado Field Office, Ecological Services, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225–0207. Comments and materials received are available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service's Colorado Field Office, 755 Parfet Street, Suite 361, Lakewood, Colorado.

FOR FURTHER INFORMATION CONTACT: LeRoy W. Carlson, Field Supervisor, Colorado Field Office (see **ADDRESSES** section), telephone 303/275–2370.

SUPPLEMENTARY INFORMATION:

Background

The Preble's meadow jumping mouse (*Zapus hudsonius preblei*), a subspecies of the meadow jumping mouse (*Zapus hudsonius*) is known to occur only in portions of Colorado and Wyoming. The final rule listing Preble's as a threatened species under the Endangered Species Act was published in the **Federal Register** on May 13, 1998 (63 FR 26517). Section 4(d) of the Act (16 U.S.C. section 1533) provides that whenever a species is listed as a threatened species, the Secretary of the Interior will issue regulations deemed necessary and advisable to provide for the conservation of the species. This is done in either of two ways.

First, the Fish and Wildlife Service (Service) has issued regulations that generally apply to threatened wildlife virtually all the prohibitions that section 9 of the Act (16 U.S.C. section 1538) establishes with respect to endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to ''take'' any listed wildlife species; i.e., to harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect any threatened or endangered species or to attempt to engage in any such conduct [16 U.S.C. section 1532 (19)].

The Service's regulations for threatened wildlife, however, also provide that a ''special rule'' under section 4(d) of the Act can be tailored for a particular threatened species. In that case, the general regulations applying most section 9 prohibitions to threatened species do not apply to that species, and the special rule is to contain the prohibitions (and exemptions) necessary and appropriate to conserve that species.

At the time Preble's was listed, we did not promulgate a special section 4(d) rule and, therefore, the section 9 prohibitions, including the take prohibitions, became applicable to the species. We are now proposing to issue this special rule for the Preble's to replace those general prohibitions with special measures tailored to the conservation of this species.

We anticipate that this proposed rule will prohibit actions that threaten the Preble's, to the extent necessary to provide for the conservation of the Preble's. It also provides flexibility to private landowners for ongoing activities that will not jeopardize the species. We also believe that this rule would garner the support of State and local governments, private landowners, and other interested parties for a lasting, cooperative approach for the long-term conservation of the species.

This proposed rule is best understood in the context of other regulations and actions, already in place or in development, to provide for conservation of the Preble's.

First, it is important to understand that an activity now prohibited under the general regulations or that would be prohibited under this special rule may still be allowed under section 10 of the Act. That section provides for a person to obtain from us in appropriate

circumstances a permit allowing the ''incidental'' taking of Preble's. One of the purposes of this proposed rule is to enable us to make, in advance, general decisions that certain types of activities are consistent with the conservation of Preble's, without requiring people to seek individual Section 10 permits authorizing those activities. Additional activities that would result in the take of Preble's still could be permitted by us under section 10 of the Act.

Currently, the State of Colorado, the Service, and various local governmental entities are working together to develop one or more plans to conserve the Preble's and its habitat. This collaborative approach is expected to result in the development of one or more habitat conservation plans and applications to the Service for incidental take permits under section 10 of the Act. These habitat conservation plans will provide the foundation upon which to build a lasting, effective, and efficient recovery program for the Preble's.

Under this planning process, we have held three rounds of public meetings in each of the five geographic subareas that comprise the known range of the Preble's in Colorado. Key riparian areas important to Preble's that require protection have been identified, threats to the Preble's have been ranked in importance, and preliminary strategies to minimize or mitigate adverse impacts to the Preble's have been discussed by stakeholders. Nine Colorado counties and five Colorado cities have passed resolutions supporting this planning process and have indicated that they will consider using their regulations, incentives, and ordinances to protect the Preble's. We are also working with local governments in Wyoming on similar conservation planning efforts.

Both this long-term cooperative approach and this short-term special rule are consistent with the spirit and intent of the November 29, 1995, Memorandum of Agreement between the Secretary of the Interior and the Governor of Colorado. This agreement commits the Service and the State to use the flexibility in State and Federal laws and regulations and promotes participation of a broad spectrum of partners to achieve long-term conservation and development solutions. By involving and taking advantage of the land use planning and other authorities and resources of State and local governments, we believe that we can more effectively provide for the long-term conservation of the Preble's than relying just on our own authorities and resources. One of the purposes of this special rule is to begin allowing for that cooperation among us, the States, and local governments.

The second important component of the context for this special rule is that Federal agencies are required under section 7 of the Act to consult with us to ensure that their actions are not likely to jeopardize the Preble's. For consultations that involve the use of Federal land, we expect that those lands will be managed to contribute to the conservation of the species to the maximum extent possible, lessening the burden on others. Other types of consultations involve actions similar to those that are considered under the section 10 process. For example, many of the activities likely to affect the Preble's will be undertaken wholly or partly in riparian areas, and will be subject to permitting requirements of the Clean Water Act, such as § 404 dredge-and-fill permits to be issued by the Army Corps of Engineers. We expect to apply the same type of approach reflected in this proposed rule, when appropriate, to those consultations.

Third, a variety of Federal, State, and local programs are available to help conserve the Preble's through the acquisition and preservation of its habitat. These include the Service's Partners for Fish and Wildlife Program, the Natural Resource Conservation Service's wetland/riparian habitat protection programs, grant programs administered by Great Outdoors Colorado, city and county open space programs, and activities of local land trusts. In particular, our Partners for Fish and Wildlife Program has proven to be an especially effective approach for wildlife conservation on agricultural lands by providing funding for restoration of wetland and riparian habitats. We intend to dedicate additional funds to our Partners for Fish and Wildlife Program for the conservation of the Preble's on private lands.

Provisions of the Rule

Term of the Rule

We are proposing the conditions contained in this rule to be enforced for a period of 18 months. It is expected that during this time period, comprehensive habitat conservation plans for the Preble's will be developed.

Take Prohibitions

We are proposing that virtually all of the prohibitions under section 9 of the Act that apply to endangered species continue to apply to the Preble's, to the same extent as they apply to other threatened species under our general regulations, except that certain activities would be exempted. This would make it illegal for any person subject to the jurisdiction of the United States to take any Preble's; i.e., to harass, harm, pursue, hunt, shoot, wound, trap, kill, or collect them or to attempt any of these actions. It would also make it illegal to 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 Preble's, or to possess, sell, deliver, carry, transport, or ship any Preble's that have been taken illegally.

Exempted Activities

We are proposing to include in this rule the following exemptions, provided that the activities resulting in such take are conducted in accordance with the requirements identified in this special rule.

1. Activities Outside of Mouse Protection Areas and Potential Mouse Protection Areas

In this rule, we are proposing to exempt all incidental take outside of specified Mouse Protection Areas and Potential Mouse Protection Areas (which are further explained below). As with many other listed species, the Service maintains records of known occurrence of the Preble's, as well as information on high potential habitat areas throughout its range. Mouse Protection Areas are areas where mice have been documented since 1992 and reported to the Service. Potential Mouse Protection Areas are areas that have a high potential to support the Preble's based on habitat conditions. Together these areas include more than 1,000 linear miles of streams and constitute the known locations and potential Preble's habitat in Colorado and Wyoming.

We believe that these areas include sufficient habitat to achieve recovery of the Preble's and that incidental take outside of these areas will be unlikely and would not compromise Preble's conservation efforts. These areas may be amended or adjusted based on new information.

2. Rangewide Exemptions

We are proposing to exempt four types of existing activities from the take prohibitions anywhere within the Preble's range (including within Mouse Protection Areas and Potential Mouse Protection Areas).

a. *Rodent control within 10 feet of or inside any structure.* The Preble's is generally not found in association with structures such as barns, houses, and other buildings. We believe that any Preble's mortality associated with

trapping near these structures would be insignificant and that this exemption will promote public support for Preble's conservation efforts.

b. *Ongoing agricultural activities.* This exemption provides for a continuation of existing agricultural practices but does not allow an increase of impacts to, or further encroachment upon, Preble's habitat. For example, it does not allow for an increase in grazing intensity in Preble's habitat or mowing closer to a stream supporting the Preble's. Situations where Preble's populations coexist with ongoing agriculture may provide valuable insight into habitat conditions required by the Preble's and the specific types of grazing and farming practices that are compatible with the Preble's.

We believe that the exemption for agricultural practices will provide a positive incentive for agricultural interests to engage in voluntary conservation activities and will remove much of the existing reluctance by private landowners to allow Preble's surveys to be conducted on their lands. These surveys may lead to a more complete understanding of the status and distribution of the species. With this knowledge, our ability to develop an effective long-term recovery program will be enhanced.

c. *Maintenance and replacement of existing landscaping and related structures and improvements, with no increase in impervious surfaces.* Some existing landscaping activities, such as lawn mowing and gardening associated with residential or commercial development, golf courses, and parks have disrupted Preble's habitat in certain areas. However, allowing these activities to continue in ways that do not lead to any increases in impervious surfaces within Mouse Protection Areas and Potential Mouse Protection Areas is not expected to adversely affect Preble's conservation and recovery efforts.

d. *Existing uses of water associated with the exercise of perfected water rights under State law, and interstate compacts and decrees.* The cumulative effect of the development and exercise of water rights has impacted riparian communities and the Preble's in some areas. However, the exercise of certain water rights and water development may have beneficial effects in riparian communities and to the Preble's. Persons with perfected water rights are encouraged to engage in conservation planning efforts to provide voluntarily the flows that may be determined to be important to protect Preble's habitat. Take associated with new water development would be prohibited.

The Service considered a possible rangewide exemption pertaining to periodic maintenance of existing water supply ditches. Periodic maintenance of ditches includes activities such as burning or clearing vegetation that may impact Preble's habitat. We have concluded, however, that because some water supply ditches may, in fact, provide suitable habitat and dispersal routes for the Preble's, take relating to periodic maintenance of these ditches should be prohibited. We intend to assess the value of water supply ditches to the conservation and recovery of the Preble's, both in specific areas where use of these ditches by Preble's has been documented, and in areas that may contain suitable habitat to determine if these areas should be classified as Mouse Protection Areas or Potential Mouse Protection Areas. The conclusions from this assessment will be used in conservation and recovery planning for the Preble's. Coordination with the Service is required when activities are planned in areas potentially significant for the Preble's.

3. New Development in Mouse Protection Areas and Potential Mouse Protection Areas

Under this proposed rule, States, counties, and/or municipalities which manage land use at the local level may, at their option and upon concurrence by the Service, adopt and enforce necessary protective standards for the Preble's, as follows:

1. State or local authorities will identify to us their legal authorities to protect Preble's habitat. They will also commit to use those authorities to enforce the Preble's protection standards described below;

2. We will review these authorities and provide concurrence that the authorities are adequate to protect Preble's habitat; and

3. Upon receiving our concurrence, State/local authorities may approve development or actions that are consistent with the mouse protection standards and mitigation guidelines described below.

The Service will closely monitor implementation of this rule by State and local governments and provide assistance as required. We will meet quarterly with each governmental entity which has received written concurrence from us recognizing its present authority and ability to protect the Preble's.

Projects or actions within the jurisdiction of local governmental entities that elect not to enforce these standards would be subject to all the prohibitions on take in this proposed rule, unless the activity is otherwise exempt in this proposed rule. However, if you are undertaking an action that may take the Preble's, including significantly modifying its habitat within an area where the local government has chosen not to use the provisions in this rule, we will work directly with you to develop a habitat conservation plan and an incidental take permit under section 10. If there is Federal approval or funding involved, we will review the action under section 7 of the Act (16 U.S.C. section 1536).

In cases where an individual habitat conservation plan is required for a specific property, the applicant will be responsible for the costs of developing and implementing the habitat conservation plan. Habitat conservation plans will be consistent with provisions of this rule, including the mouse protection standards and associated mitigation guidelines. However, it may be necessary and desirable to modify these standards and guidelines to address site specific conditions of a project.

Mouse Protection Standards

We have developed standards for the Preble's to ensure adequate protection of important habitats known as Mouse Protection Areas and Potential Mouse Protection Areas. For the purposes of this rule, a Mouse Protection Area is the reach of any stream that is located within 1 linear mile upstream and 1 linear mile downstream of any known location of the Preble's that has been reported to the Service since 1992. Major Preble's surveying efforts began in this year and surveys since 1992 represent the known occupied habitat of the Preble's. In instances where two designated Mouse Protection Areas on the same stream are separated by one linear mile or less, one continuous Mouse Protection Area will be established. Biological research shows that there is a high likelihood that these areas will be used by the Preble's on a year-round basis or as a movement corridor.

A Mouse Protection Area (MPA) also extends 300 feet on each side of the stream measured from the centerline, or 300 feet from the exterior boundary of any contiguous wetlands, whichever is further. The basis for the 300-foot standard is that mice have been documented to regularly move up to 150 feet from streams and wetlands. The remaining 150-foot zone serves as a buffer zone to avoid disturbance of Preble's habitat associated with human activities. We believe that this zone will encompass the normal home range of the Preble's and will provide an

adequate buffer from adjoining development.

The Service recognizes that it may be desirable to modify the boundaries of a Mouse Protection Area to reflect the actual extent of Preble's habitat along a stream or a wetland. The Service may make these changes when biologically justified. In addition, local entities that have agreed to enforce the mouse protection standards may also propose changes to a Mouse Protection Area based on new biological information. We would need to approve any changes.

There are many areas within the historic range of the Preble's that contain suitable Preble's habitat that have not been surveyed, or if previously surveyed, in which no mice have been captured. These areas, known as Potential Mouse Protection Areas, have high potential of supporting a Preble's population based on the presence of suitable riparian habitat such as willow or shrub vegetation, and/or the proximity to known locations of the Preble's or other suitable habitat. These areas require careful scrutiny because the Preble's may actually live in these locations and they may be important for the recovery and eventual delisting of the Preble's.

The Service evaluated the potential for new impacts to Mouse Protection Areas from trails, road and utility line crossings, and other development, and determined that Preble's persists along some streams despite the presence of trails, road crossings, limited residential and commercial development, and other habitat disruption. Based on this, we have concluded that new projects or actions will be allowed to modify a cumulative total of up to four percent of the habitat within a Mouse Protection Area under the following conditions:

1. A State or local government has received Service approval and is willing to adopt and enforce protection standards for the Preble's;

2. All habitat losses will be fully compensated through mitigation; and

3. The action will not impede movement of mice up or down riparian corridors.

A Mouse Protection Area 2 miles long and 600 feet wide encompasses about 145 acres of habitat. This rule would allow less than 6 acres of that habitat in a Mouse Protection Area to be modified without further advance review by us. We believe that exempting this amount of habitat loss, in conjunction with the mitigation, is biologically sound and consistent with the conservation of the Preble's. We are soliciting comment on this point and will conduct a Section 7 consultation.

Existing roads, structures, and other impervious surfaces would not be considered Preble's habitat for the purposes of computing the four percent.

Each jurisdiction that elects to implement the mouse protection standards must ensure that the four percent habitat modification limit is not exceeded. Where a Mouse Protection Area crosses jurisdictional boundaries, each jurisdiction would be allowed to modify up to four percent of the habitat in the portion of the Mouse Protection Area that occurs in their jurisdiction.

Some projects outside (i.e., upstream) of a Mouse Protection Area may adversely impact a Mouse Protection Area or Potential Mouse Protection Area. This may occur when stream flows are altered (for example by an increase in stormwater runoff) or when there is an increase in sedimentation. Projects outside of a Mouse Protection Area or Potential Mouse Protection Area which do not appreciably alter stream flows or sedimentation or otherwise impact a Mouse Protection Area or Potential Mouse Protection Area would be exempted from section 9 incidental take prohibitions. New projects which do result in a significant modification of stream flow or sedimentation or otherwise impact a Mouse Protection Area or Potential Mouse Protection Area would be subject to the section 9 incidental take prohibitions of the Act, unless the activity is otherwise exempt in this proposed rule.

State and local authorities have the option to implement Preble's protection standards for Mouse Protection Areas, or for both Mouse Protection Areas and Potential Mouse Protection Areas. Where the respective governmental entity elects to accept responsibility for enforcing Preble's protection standards for Potential Mouse Protection Areas, these areas will be treated the same as Mouse Protection Areas until and unless a Service-approved Preble's survey of the area occurs. Where the governmental entity does not elect to accept responsibility for enforcing Preble's protection standards for Potential Mouse Protection Areas, the Service nonetheless strongly encourages the performance of surveys in accordance with Service protocol before habitat modification occurs to avoid potential liability for an action that does result in a prohibited take of a Preble's.

If a Preble's is trapped during a survey in any Potential Mouse Protection Area, it will be reclassified as a Mouse Protection Area and treated accordingly. If a new survey is conducted and no Preble's are trapped, the area surveyed will no longer be considered a potential mouse protection area. Projects may commence if they do not appreciably alter stream flows or sedimentation or otherwise impact a Mouse Protection Area or Potential Mouse Protection Area. The project proponent must receive Service concurrence with the results of the survey.

The Service recognizes that the Preble's protection standards may be adjusted based on new information. We will work cooperatively with local governmental entities to apply these standards in a reasonable manner.

Mitigation Guidelines

Mouse Protection Areas encompass both the specific habitats that the Preble's is known to frequent, and adjacent habitats that have both direct value to the Preble's and provide an essential buffer from adjacent development and human activity. Armstrong et al. (1997, p. 77) described typical Preble's meadow jumping mouse habitat as ''well-developed plains riparian vegetation with relatively undisturbed grassland and a water source in close proximity.'' Also noted is a preference for ''dense herbaceous vegetation consisting of a variety of grasses, forbs and thick shrubs.'' Moving outward from streams and riparian corridors there generally exists a transition from habitat regularly used by the Preble's to habitat of value largely as a buffer. The goal of all mitigation is to offset impacts to the diverse habitat types required by the Preble's, including essential buffer areas. Mitigation must be accomplished in a manner that does not adversely impact important biological resources, other federally-threatened or endangered species, proposed species, or candidate species. This includes *Spiranthes diluvialis* (the Ute ladies'-tresses orchid) and *Gaura neomexicana* ssp. *coloradensis* (the Colorado butterflyplant).

Identification of practicable alternatives to a proposed project or action which avoids or minimizes impacts to Preble's habitat is a first step in assessing proposed project impacts. Avoidance and minimization of impacts is preferable to compensatory mitigation. Compensatory mitigation is required to offset unavoidable impacts that remain after all appropriate and practicable avoidance and minimization measures are applied. The goal of compensatory mitigation is to assure that no net loss of habitat value to the Preble's occurs. Thus, while up to four percent of land within any one Mouse Protection Area may be impacted within the tenure of this rule, overall loss of habitat value to the Preble's is not anticipated.

Compensatory mitigation may include restoration, enhancement, or creation of habitat. Restoration entails returning the functions of a disturbed, degraded, or totally altered site to its original status before it was damaged by a permitted project or action. For example, installation of an underground pipeline through Preble's habitat may entail removal of vegetation and soil disruption. Regrading and planting of appropriate vegetation could restore habitat value of the area for the Preble's. In general, restoration yields the greatest amount of benefit with the least amount of risk and is the preferable form of mitigation. Restoration will generally require a mitigation ratio of 1.5 to 1 (i.e., 1.5 acre restored for every 1 acre lost).

We have evaluated restoration and other mitigation techniques. This includes review of the habitat types likely to be mitigated, the potential for failure to meet compensatory mitigation goals, and the temporary loss of habitat that occurs until the full value of mitigation conducted concurrently with impacts is achieved. Ratios that are cited are based on this evaluation and are intended to assure that, at minimum, Preble's habitat values are maintained over the long term.

Enhancement is the process of improving one or more functions of existing habitat to meet certain goals. For example, altering grazing practices to allow recovery of riparian vegetation could yield substantial benefit to the Preble's. In some cases, supplemental planting of preferred plant species may be appropriate. While this type of mitigation is usually successful, its actual value to the Preble's may be difficult to assess. Depending on the techniques used, enhancement may require a mitigation ratio of 1.5 to 1, or up to 3 to 1.

Creation entails converting unsuitable habitat types to Preble's habitat. For example, a dry upland could be graded down or subirrigated to provide hydrology that would support establishment of preferred Preble's habitat. This form of mitigation may have a higher chance of failure and should be used only when restoration opportunities are absent. Creation of habitat will generally require a mitigation ratio of 3 to 1.

A component of mitigation through restoration, enhancement, or creation is the preservation in perpetuity of these habitat areas. However, for the purposes of this rule, preservation of habitat alone will generally not be credited as compensatory mitigation. Preservation may be effectively used in cases where Preble's habitat would certainly be lost without such measures. We will evaluate the acceptability of preservation as compensatory mitigation on a case by case basis.

In general, acceptable compensatory mitigation will entail in-kind mitigation (the restoration, creation, or enhancement of similar habitat to that being impacted) within the same protection area where impacts occur. Loss of habitat within a Mouse Protection Area will be mitigated by restoring, enhancing, or creating similar habitat nearby. Proposed exceptions, such as mitigating losses to buffer areas by restoring Preble's habitat (out-of-kind mitigation), will be reviewed and approved by the Service as we deem appropriate.

Local governmental entities will assure development of mitigation that is consistent with these mitigation guidelines and that sufficient funds are available to accomplish the proposed mitigation. Review of the proposed mitigation activities will be a significant aspect of quarterly meetings held with local governmental entities. We anticipate that within the State of Colorado the development of mitigation plans consistent with these guidelines will be accomplished by project proponents in coordination with the local governmental entity and the Colorado Division of Wildlife, with technical assistance provided by the Service.

Preble's Surveys

Potential Preble's habitat on private lands has not been thoroughly surveyed. Surveys for the Preble's on private lands will occur only with landowner permission. The conditions contained in this rule should remove some of the existing barriers to conducting Preble's surveys on these lands. Surveys of the Potential Mouse Protection Areas conducted on private lands will provide a conservation benefit to the species. This is particularly true if the survey results are used for developing management plans or habitat conservation plans for the Preble's and prioritizing conservation areas for the mouse.

Summary of Conservation Benefits

The proposed prohibitions and exemptions in this rule provide both for short-term conservation of the Preble's and an avenue for the development of meaningful long-term conservation efforts for the Preble's by State and local governments, agricultural interests, developers, and the general public.

Certain provisions of the rule define protection areas and provide for a significant role by State and local governments as partners in implementing the Act. This is designed to guide development activities during the interim period while comprehensive conservation plans are being developed. These comprehensive plans will provide a basis for habitat conservation plans for the Preble's. By employing existing local development review and land use controls, these provisions greatly increase participation by stakeholders and the level of review that proposed development activities receive. Standards set forth in the proposed rule limit impacts to Mouse Protection Areas and require mitigation that will prevent loss of Preble's habitat value. This level of local development review far surpasses that which we can directly provide. Projects or actions within the jurisdiction of local governmental entities that elect not to enforce these standards are subject to all the prohibitions of section 9 of the Act, unless the activity is otherwise exempt in this proposed rule.

Future Section 7 Consultations

This special rule does not change the obligation of Federal agencies to consult with the Service concerning actions they authorize, fund, or carry out which may affect listed species, including the Preble's. This rule is intended to supplement and not replace the Section 7 form of incidental take authorization. Therefore, Federal actions requiring incidental take authorization will receive that authorization through Section 7 and not this special rule. Only habitat loss authorized through this special rule will be counted against the four percent maximum. Habitat impacts authorized through Section 7 (or Section 10) will not be counted as part of the four percent authorized by this rule and will instead be tracked separately. All Section 7 consultations initiated after promulgation of this special rule will assume, as part of the environmental baseline against which projects are measured, that the maximum potential impact under this rule will occur (i.e., that there will be disruption of four percent of the habitat within each Mouse Protection Area, with appropriate mitigation).

Before the publication of a final rule for the Preble's, we must carry out an internal or intra-service consultation on the action of adopting this rule. A biological opinion will be prepared by the Service analyzing the proposed rule and any adverse, as well as beneficial effects, for the Preble's. This biological opinion will also discuss and analyze the effects of the implementation of this rule on listed species other than the Preble's.

The Service anticipates that the ongoing planning process in both Colorado and Wyoming will lead to habitat conservation plans and section 10 permits that will be the subject of future section 7 intra-service consultations.

Comments Solicited

The Service invites comments on the proposed rule. In particular, we are seeking comments on:

1. The desirability and practicality of establishing partnerships with local governmental entities to use their land use planning and regulatory powers to enforce the Mouse Protection Standards for Mouse Protection Areas, or for both Mouse Protection Areas and Potential Mouse Protection Areas;
2. The adequacy of the proposed mitigation guidelines including any options that may be available for mitigating impacts of development activities on Preble's habitat;
3. The adequacy of the Mouse Protection Standards and/or information that would lead to the development of more appropriate standards;
4. The types of agricultural practices, including grazing practices, that are compatible with maintenance of Preble's habitat within riparian zones; and
5. Any additional information on the locations and boundaries of designated Mouse Protection Areas and Potential Mouse Protection Areas.

To facilitate public comment, the Service will conduct public meetings in various locations in Colorado and Wyoming to explain the rule in more detail and address questions.

Clarity of This Regulation

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping or order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of Interior, Room 7229, 1849 C Street NW, DC 20240. You may also e-mail the comments to this address: Exsec@ios.doi.gov

Literature Cited

Armstrong, D.M., M.E. Bakeman, A. Deans, C.A. Meaney, and T.R. Ryan. 1997. Report on habitat findings of the Preble's meadow jumping mouse. Boulder (CO); Report to the U.S. Fish and Wildlife Service and Colorado Division of Wildlife. 91 pp.

Required Determinations

The Service invites comments on the anticipated direct and indirect costs and benefits or cost savings associated with the special rule for the Preble's. In particular, the Service is interested in obtaining information on any significant economic impacts of the proposed rule on small public and private entities. Once we have reviewed the available information, we will determine whether we need to prepare an initial regulatory flexibility analysis for the special rule. We will make any such analysis or determination available for public review. Then, we will revise, as appropriate, and incorporate the information in the final rule preamble and in the record of compliance (ROC) certifying that the special rule complies with the various applicable statutory, Executive Order, and Departmental Manual requirements. Under the criteria in Executive Order 12866, the special rule does not need to be reviewed by the Office of Management and Budget.

Paperwork Reduction Act

The Service has examined this proposed rule under the Paperwork Reduction Act of 1995 and found it to contain no requests for additional information or increase in the collection requirements associated with the Preble's meadow jumping mouse (*Zapus hudsonius preblei*) other than those already approved for Federal Fish and Wildlife license permits with OMB approval 1018-0094, which has an expiration date of February 28, 2001. For more information concerning these permits, see 50 CFR 17.32.

National Environmental Policy Act

The Service will review this proposed rule under the requirements of the National Environmental Policy Act before finalization.

Section 7 Consultation

The Service will review this proposed rule under the requirements of section 7 of the Act before finalization.

Government-to-Government Relationship With Tribes

This proposed rule does not directly affect Tribal resources.

List of Subjects in 50 CFR Part 17

Endangered and threatened species. Export, Import, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, the Service proposes to amend 50 CFR part 17, as set forth below:

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 § 17.40 by adding a new paragraph (k) to read as follows:

17.40 Special rules-mammals.

* * * * *

(k) Preble's meadow jumping mouse (*Zapus hudsonius preblei*). (1) All of the prohibitions of 50 CFR 17.31 (a) and (b) and exemptions of 50 CFR 17.32 are applicable to the Preble's except where identified below. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take any federally-listed wildlife species. Prohibitions for threatened wildlife under section 17.31 include take (harass, harm, pursue, hunt, shoot, wound, trap, kill, or collect; or attempt any of these), 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 listed wildlife species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally.

(2) This rule is effective until (18 months from the effective date of the final rule).

(3) We will likely adjust Mouse Protection Areas and Potential Mouse Protection Areas based on new information as provided in paragraph (k)(12) of this section. We will maintain updated geographic locations of these areas. Direct inquiries concerning whether specific lands fall within a Mouse Protection Area or Potential Mouse Protection Area to the Service offices listed in paragraph (k)(12)(ii) of this section and/or to a participating local governmental entity. Priority areas for conservation of the Preble's are:

(i) Mouse Protection Areas, the reach of any stream that is located within 1 linear mile upstream and 1 linear mile

downstream of any known location of Preble's that has been reported to the Service since 1992. In instances where two Mouse Protection Areas on the same stream are separated by 1 linear mile or less, one continuous Mouse Protection Area will be established. A Mouse Protection Area extends 300 feet on each side of the stream measured from the centerline, or 300 feet from the exterior boundary of any wetland contiguous with the stream, whichever is further.

(ii) Potential Mouse Protection Areas, the reach of a stream that the Service has determined contains suitable habitat conditions for the Preble's. Potential Mouse Protection Areas extend 300 feet on each side of the stream measured from the centerline, or 300 feet from the exterior boundary of any wetland contiguous with the stream, whichever is further.

(4) Except as provided in paragraph (k)(8) of this section, the take prohibitions of § 17.31 will not apply to incidental take outside of a Mouse Protection Area or Potential Mouse Protection Area. Any actions that significantly modify Preble's habitat within a Mouse Protection Area or Potential Mouse Protection Area must comply with § 17.31, except as otherwise exempted in this proposed rule. In addition, we require permits for trapping surveys to determine the presence or absence of the Preble's in Mouse Protection Areas or Potential Mouse Protection Areas, for education purposes, scientific purposes, the enhancement or propagation for survival of the Preble's, zoological exhibition, and other conservation purposes in accordance with 50 CFR 17.32 and under a section 6 (16 U.S.C. section 1535) cooperation agreement with a State, if applicable.

(5) The following activities, which may result in incidental take of the Preble's, are exempted by this rule from the § 17.31 take prohibitions, within the entire range of the Preble's:

(i) Rodent control within 10 feet of or inside any structure (''rodent control'' includes control of mice and rats by trapping, capturing, or otherwise physically capturing or killing rodents, or poisoning by any substance registered with the Environmental Protection Agency as required by the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Section 136) and applied consistent with its labeling. ''Structure'' means any manmade or other artificially constructed object which includes but is not limited to any building, stable, grain silo, corral, barn, shed, water or sewage treatment equipment or facility, enclosed parking structure, shelter, gazebo, bandshell, or restroom complex;

(ii) Ongoing agricultural activities including grazing, plowing, seeding, cultivating, minor drainage, burning, mowing and harvesting, as long as these activities are currently conducted and do not increase impacts to or further encroach upon Preble's habitat;

(iii) Maintenance and replacement of existing landscaping and related structures and improvements, with no increase in impervious surfaces; and

(iv) Existing uses of water associated with the exercise of perfected water rights under State law and interstate compacts and decrees. (A ''perfected water right'' is a right that has been put to beneficial use and has been permitted, decreed, or adjudicated under State law.)

(6) Actions within a Mouse Protection Area which may result in up to four percent cumulative modification of Preble's habitat within the Mouse Protection Area will be exempted from the § 17.31 take prohibitions provided that:

(i) The governmental entity (State, county, or municipality) where the action is to take place has elected to enforce the Preble's protection standards listed in paragraph (k)(7) of this section;

(ii) The governmental entity has provided the Service with written assurances that they have the legal authority and ability to enforce the standards (This means a written affirmation of the present authority and ability of the local governmental entity to implement and enforce its existing local regulations, incentives, and programs to enforce the Preble's protection standards in paragraph (k)(7) of this section. Existing regulations may include, but need not be limited to: floodplain regulations, subdivision regulations, zoning regulations, site planning requirements, standards for identifying and protecting ecologically sensitive lands, wildlife habitat protection regulations, drainage design standards, road and bridge construction standards, and grading standards. This may also mean an agreement of any State agency or instrumentality to implement its existing regulations and programs, and to exercise its legal authorities in furtherance of the purpose of this rule and the protection and recovery of the Preble's);

(iii) The Service has concurred in writing with the written assurances from the State or local entity; and

(iv) The governmental entity has reviewed and approved the action consistent with the Mouse Protection Standards in paragraph (k)(7) of this section.

(7) State, local, or municipal entities which elect to adopt the procedures in paragraph (k)(6) of this section and have received concurrence from the Service can approve new actions that significantly modify a cumulative total of four percent or less of each Mouse Protection Area. The applicant must ensure that the Preble's can move freely up or down the stream corridor. The applicant must also fully restore or replace the Preble's habitat values with restoration activities to be completed in a timely manner. Any replacement or restoration of habitat outside a Mouse Protection Area requires the concurrence of the Service.

(8) New actions proposed to take place outside of a Mouse Protection Area or Potential Mouse Protection Area which will significantly modify stream flows or sedimentation, or otherwise significantly modify the Preble's habitat inside a Mouse Protection Area or Potential Mouse Protection Area, will be subject to the § 17.31 take prohibitions unless otherwise exempted in this proposed rule.

(9) Local governmental entities may elect to accept responsibility for protecting a Potential Mouse Protection Area within its jurisdiction or may accept responsibility for protecting all or part of a Potential Mouse Protection Area in response to a request by a project proponent/landowner. The local governmental entity can only accept this responsibility under paragraph (k)(6) of this section. In these cases, the local governmental entity will treat the Potential Mouse Protection Area as a Mouse Protection Area under paragraph (k)(7) of this section.

(10) If a local governmental entity has not assumed responsibility for protection of any Potential Mouse Protection Area, the take prohibitions of § 17.31 apply to any actions, unless the activity is otherwise exempt in this proposed rule, that would result in a direct or indirect taking of the Preble's. However, a project proponent will be exempt from the take provisions of § 17.31 if:

(i) A presence/absence survey for the Preble's has been conducted in accordance with current Service survey guidelines;

(ii) The survey report concludes that the Preble's is not present on the site to be impacted and the Service concurs with the survey report's conclusion. (If a presence/absence survey documents the existence of the Preble's, the area surveyed will be designated as a Mouse Protection Area and will be treated

accordingly by the provisions of this rule).

(11) Each government entity which has received written concurrence from the Service concerning its present authority and ability to protect the Preble's under paragraph (k)(6) of this section will meet quarterly with the Service to evaluate implementation of this special rule. At least 2 weeks before the meetings, public notice of the meetings will be provided. As more site-specific information about Mouse Protection Areas and Potential Mouse Protection Areas becomes available, governmental entities authorized under the provisions of paragraph (k)(6) of this section must provide all new information to the Service so that necessary changes can be made with respect to the delineation of Mouse Protection Areas and Potential Mouse Protection Areas. If we determine that the governmental entity is not adequately enforcing the Preble's habitat protection standards contained in this special rule, we will provide written notice describing the deficiencies to that governmental entity with suggested corrective action. If corrective actions are not implemented, we may then withdraw our concurrence with the governmental entity's program. If we withdraw our concurrence, all of the § 17.31 take prohibitions will apply to lands within the jurisdiction of that governmental entity unless the activity is otherwise exempted in this rule.

(12)(i) Geographic locations of Mouse Protection Areas and Potential Mouse Protection Areas based on the best scientific information that is currently available are maintained by the Service at addresses provided below. Lists of these areas have also been provided to State and county offices and to selected municipalities within the Preble's range. We recognize that more site-specific information about each of the stream reaches may result in changes to delineated Mouse Protection Areas and Potential Mouse Protection Areas. The most current refinements to Mouse Protection Areas and Potential Mouse Protection Areas are available from the Service offices listed below and from counties, and selected municipalities. Lists of these areas are also available on our home page on the internet (www.r6.fws.gov/preble). Inquiries concerning whether or not specific lands fall within protection areas should be directed to the Service offices listed below or to a participating local governmental entity.

(ii) These geographic locations can be viewed at the U.S. Fish and Wildlife Service, Colorado Field Office, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225–0207, telephone (303) 275–2370 or at the U.S. Fish and Wildlife Service, Wyoming Field Office, 4000 Morrie Avenue, Cheyenne, Wyoming 82001, telephone (307) 722–2374.

Dated: November 25, 1998.

Donald J. Barry,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 98–32145 Filed 12–2–98; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 63, No. 232

Thursday, December 3, 1998

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.

UNITED STATES COMMISSION ON CIVIL RIGHTS

Sunshine Act Meeting

AGENCY: U.S. Commission on Civil Rights.

DATE AND TIME: Friday, December 11, 1998, 9:30 a.m.

PLACE: U.S. Commission on Civil Rights, 624 Ninth Street, N.W., Room 540, Washington, DC 20425.

STATUS:

Agenda

I. Approval of Agenda
II. Approval of Minutes of November 13, 1998 Meeting
III. Announcements
IV. Staff Director's Report
V. State Advisory Committee Appointments for Michigan
IV. Future Agenda Items.

CONTACT PERSON FOR FURTHER INFORMATION: Barbara Brooks, Press and Communications (202) 376–8312.

Stephanie Y. Moore,

General Counsel.

[FR Doc. 98–32331 Filed 12–1–98; 2:14 pm]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–830]

Notice of Amended Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils From Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Amended preliminary determination of antidumping duty investigation.

SUMMARY: On November 4, 1998, the Department of Commerce (''the Department'') published the preliminary determination of its antidumping duty investigation of stainless steel plate in coils (''SSPC'') from Taiwan. This investigation covers two respondents, Yieh United Steel Corporation (''YUSCO'') and Ta Chen Stainless Steel Pipe, Ltd. (''Ta Chen'').

YUSCO submitted a ministerial error allegation on November 6, 1998 with respect to the preliminary determination published on November 4, 1998. On November 10, 1998, petitioners (Armco, Inc.; J&L Specialty Steel, Inc.; Lukens, Inc.; North American Stainless; the United Steelworkers of America, AFL–CIO/CLC; the Butler Armco Independent Union; and Zanesville Armco Independent Organization, Inc.) submitted ministerial error allegations with respect to the middleman dumping portion of the preliminary determination. Based on the correction of certain ministerial errors made in the preliminary determination, we are amending our preliminary determination. (*See* 19 CFR 351.224(e).)

EFFECTIVE DATE: December 3, 1998.

FOR FURTHER INFORMATION CONTACT: Joanna Gabryszewski, Rebecca Trainor, or Maureen Flannery, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–0780, (202) 482–0666 or (202) 482–3020, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all references to the Department's regulations are to the regulations set forth at 19 CFR part 351.

Significant Ministerial Errors

We are amending the preliminary determination of sales at less than fair value for SSPC from Taiwan to reflect the correction of significant ministerial errors made in the margin calculations regarding both YUSCO and Ta Chen in that determination, pursuant to 19 CFR 224(g)(1) and (2). A significant ministerial error is defined as a correction which, singly or in combination with other errors, (1) would result in a change of at least 5 absolute percentage points in, but not less than 25 percent of, the weighted average dumping margin calculated in the original (erroneous) preliminary determination; or (2) would result in a difference between a weighted-average dumping margin of zero or *de minimis* and a weighted-average dumping margin of greater than *de minimis* or vice versa. We are publishing this amendment to the preliminary determination pursuant to 19 CFR 351.224(e).

Scope of the Investigation

For purposes of these investigations, the product covered is certain stainless steel plate in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject plate products are flat-rolled products, 254 mm or over in width and 4.75 mm or more in thickness, in coils, and annealed or otherwise heat treated and pickled or otherwise descaled. The subject plate may also be further processed (e.g., cold-rolled, polished, etc.) provided that it maintains the specified dimensions of plate following such processing. Excluded from the scope of this investigation are the following: (1) plate not in coils, (2) plate that is not annealed or otherwise heat treated and pickled or otherwise descaled, (3) sheet and strip, and (4) flat bars.

The merchandise subject to this investigation is currently classifiable in the Harmonized Tariff Schedule of the United States (HTS) at subheadings: 7219.11.00.30, 7219.11.00.60, 7219.12.00.05, 7219.12.00.20, 7219.12.00.25, 7219.12.00.50, 7219.12.00.55, 7219.12.00.65, 7219.12.00.70, 7219.12.00.80, 7219.31.00.10, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.11.00.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTS subheadings are provided for convenience and Customs purposes, the written description of the

merchandise under investigation is dispositive.

Period of Investigation

The period of investigation (''POI'') is January 1, 1997 through December 31, 1997.

Background

On November 4, 1998, the Department published in the **Federal Register** its notice of preliminary determination of the antidumping duty investigation of SSPC from Taiwan (*Notice of Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils from Taiwan* (63 FR 59524 (November 4, 1998)). We preliminarily calculated a dumping margin of 67.68 percent based on YUSCO's sales. In addition, after initiating a middleman dumping investigation, we preliminarily determined that Ta Chen had not engaged in middleman dumping. (See *Memorandum to the File: Analysis for the Preliminary Determination of SSPC from Taiwan: Middleman Dumping Investigation: Ta Chen* (October 27, 1998).)

YUSCO

On November 6, 1998, YUSCO submitted timely written allegations that the Department made a ministerial error which resulted in a change of at least 5 absolute percentage points in, but not less than 25 percent of, the weighted average margin calculated in the preliminary determination. YUSCO alleged that the Department erred by failing to convert U.S. movement expenses reported in New Taiwan Dollars (NTD) into U.S. dollars.

We agree with YUSCO that we inadvertently failed to convert U.S. movement expenses, reported by YUSCO in NTD, into U.S. dollars. Because the ministerial error is significant, as defined in 19 CFR 351.224(g), we are amending our preliminary determination. YUSCO's amended rate is *de minimis.* We have set YUSCO's cash deposit rate at zero. (*See* ''Suspension of Liquidation'' section, below.)

Ta Chen

On August 11, 1998, petitioners alleged that Ta Chen Stainless Steel Pipe, Ltd. and/or its affiliated U.S. importer, Ta Chen International (collectively Ta Chen), were reselling subject merchandise in the United States at prices less than Ta Chen's cost of acquisition and related selling and movement expenses. In our preliminary determination, we preliminarily found that Ta Chen had not engaged in middleman dumping because the portion of below-acquisition-cost sales was not substantial. (63 FR at 59526)(November 4, 1998).)

On November 10, 1998, petitioners alleged that the Department's computer program, upon which it based its preliminary determination that Ta Chen was not engaging in middleman dumping during the POI, contained a number of clerical errors. On November 17, 1998, Ta Chen filed a response to the petitioners' comments. In accordance with section 351.224(c)(3) of the Department's regulations, we do not consider replies to ministerial error comments submitted in connection with a preliminary determination. Therefore, we have returned Ta Chen's rebuttal comments and have not considered them for this amended preliminary determination. (See 19 CFR 351.224(c).)

First, petitioners claim that the Department omitted the following U.S. selling expenses from the analysis: bank fees incurred in Taiwan and the United States; imputed credit expenses; and certain indirect selling expenses. Petitioners argue that these expenses should be deducted from Ta Chen's U.S. price in accordance with *Fuel Ethanol from Brazil; Final Determination of Sales at Less Than Fair Value,* 51 FR 5572, 5573 (February 14, 1986) (*Fuel Ethanol*). Because these were actual costs incurred, we intended to deduct these costs. Thus, we agree that we committed a ministerial error in not deducting bank fees and indirect selling expenses from U.S. price. We have deducted these expenses for this amended preliminary determination. There was no ministerial error in not deducting imputed credit, however, because only *actual* selling expenses should be deducted in the middleman dumping analysis. See *Mitsui & Co., Ltd.* v. *the United States,* Slip Op. 97–49 (April 22, 1997) (*Mitsui Remand Determination*). We stated that:

> ''[imputed credit expenses and inventory carrying costs] represent opportunity costs, not actual expenses to the company. In analyzing whether prices are above or below the cost of production, it is the Department's practice to base its calculation on actual costs rather than imputed expenses.'' (*Mitsui Remand Determination* at 10.)

Second, petitioners argue that the Department inadvertently based the middleman dumping analysis on only a portion of Ta Chen's resales by deleting from the database any resale where the quantity was reported on a theoretical basis, *i.e.,* for sheet. Petitioners claim that all reported resales are of subject merchandise regardless of whether it was resold as a coil or as sheet, because the product imported was stainless steel sheet in coil, *i.e.,* subject merchandise. Petitioners argue that, since Ta Chen provided the data for these sales, converting them from theoretical to actual, it is not necessary to eliminate any sales from the database.

We agree with petitioners in part. YUSCO reported its sales on an actual gauge basis, while Ta Chen reported its sales on a nominal (theoretical) gauge basis. Ta Chen included a variable in its database that provided the actual gauge of the merchandise it purchased from its supplier, YUSCO. Ta Chen reported some sales of merchandise for which no corresponding YUSCO sale was reported, because the actual gauge was less than 4.75 mm. In the preliminary determination, we intended to remove only these sales. In doing so, we inadvertently identified these sales by weight rather than by gauge—that is, we removed from the database sales that Ta Chen made on a nominal weight basis. For this amended preliminary determination, we identified these sales by gauge, and have only removed those sales that have an actual gauge of less than 4.75 mm.[1]

Third, petitioners claim that the Department made a ministerial error by converting Ta Chen's acquisition price to U.S. dollars based on the date of Ta Chen's sale to the first unaffiliated U.S. customer, instead of the date of YUSCO's invoice to Ta Chen. We disagree that this was a ministerial error. In accordance with our longstanding practice, we intentionally based currency conversions on the date of sale. *See* 19 CFR 351.415(a) (Currency Conversion).

Fourth, petitioners claim that the Department incorrectly calculated the percentage of Ta Chen's U.S. sales that are below the acquisition cost, because we miscalculated the total U.S. sales value and the total value of sales below acquisition cost.

We agree with petitioners, and have corrected this ministerial error. In our preliminary calculations, we intended to calculate total below-acquisition-cost value and total U.S. sales value by multiplying per unit prices by their corresponding quantities, and then summing these values. Instead, for both calculations, we first summed per unit

[1] We note that we requested that YUSCO report all sales of merchandise that nominally fit the gauge included in the scope of the investigation, *i.e.,* with gauge greater than or equal to 4.75 mm. However, YUSCO had reported sales only on an actual basis as of the time of the preliminary determination, *i.e.,* it reported sales of merchandise with an *actual* gauge of greater than or equal to 4.75 mm. We intended to include in our preliminary analysis only Ta Chen's resales corresponding to merchandise reported by YUSCO. By letter to YUSCO of November 6, 1998, we have reiterated our request for data based on the nominal gauge.

values and their corresponding quantities, and then we multiplied the total value by the total quantity. After making the appropriate correction, we divided the total value of below-acquisition-cost sales by the total value of all sales, as we did in the *Preliminary Determination,* to arrive at the ratio of the below-acquisition-cost-sales value to the value of all sales to the United States. *See* the *Analysis Memorandum for the Amended Preliminary Determination* (*Amended Preliminary Memo*) on file in room B–099 of the Commerce Department.

As a result of the correction of these ministerial errors, we have determined that Ta Chen sold subject merchandise at a loss because Ta Chen's prices were, after the deduction of all costs incurred in selling the merchandise in the United States, lower than its costs of acquisition from YUSCO, an unaffiliated producer during the POI. *See Amended Preliminary Memo.*

In accordance with the methodology we used in *Mitsui Remand Determination,* we determined whether a substantial portion of Ta Chen's U.S. sales were below acquisition costs by comparing the total value of stainless steel plate sold below acquisition cost to the total value of all stainless steel plate sales made by Ta Chen during the POI. We first identified sales below acquisition cost by comparing Ta Chen's resale price for stainless steel plate sold during the POI to its acquisition cost for this merchandise. We used YUSCO's invoice price to Ta Chen as the acquisition cost. We based the U.S. resale prices on Ta Chen's sales to unaffiliated customers in the United States. From that starting price we deducted discounts, movement expenses (freight, insurance, U.S. duties, and brokerage and handling fees), and the actual selling expenses incurred by Ta Chen (commissions, warehousing charges, bank charges, and indirect selling expenses), where applicable. We then compared that price, after deductions, to the acquisition cost.

Based on these amended findings, we preliminarily determine that Ta Chen made a substantial portion of its sales below acquisition cost, because 34.7 percent of Ta Chen's resales to the United States were at prices below its acquisition cost. As a result of this finding, we have examined whether Ta Chen's U.S. prices were substantially below its acquisition costs from YUSCO to determine whether Ta Chen engaged in middleman dumping during the POI.

As we stated in the *Preliminary Determination,* Congress has left to the Department the discretion to devise a methodology which would accurately capture middleman dumping. *See* S. Rep. No. 249, 96th Cong., 1st Sess. at 94 (1979). We have considered the methodology used in *Fuel Ethanol,* and have concluded that, given the facts before us for this amended preliminary determination, the methodology described below is the appropriate one for purposes of this amended preliminary determination. To determine the magnitude of the losses incurred by Ta Chen in selling YUSCO's subject merchandise to the United States during the POI, we divided the amount of losses by the total sales value of all sales. By ''amount of losses'' we mean the sum of the cost less the adjusted sales price of each below-acquisition-cost sale, multiplied by the respective quantity of each sale. By ''total sales value'' we mean the sum of the sales price of each sale (whether or not below acquisition cost) multiplied by its respective quantity. Based upon this calculation, we have determined that Ta Chen's losses on U.S. sales of subject merchandise during the POI are 3.00 percent, which we deem to be substantial. Therefore, we preliminarily find that Ta Chen engaged in middleman dumping during the POI.

Where a producer sells through an unaffiliated trading company and has knowledge of the ultimate destination of its merchandise, we normally focus only on the producer's sales to determine the margin of dumping. However, as we stated in our *Preliminary Determination,* very infrequently, a producer may sell to an unaffiliated trading company which, in turn, sells the producer's merchandise at prices below the trading company's acquisition costs, thereby engaging in middleman dumping. Where we find middleman dumping in an investigation, as here, we must calculate a cash deposit rate that reflects that middleman dumping. Additionally, any dumping which occurs from the producer to the trading company must be included in the margin calculation to capture the full amount of the dumping. Therefore, we have assigned a cash deposit rate of 3.08 percent to sales produced by YUSCO and sold to the United States through Ta Chen. This reflects YUSCO's margin on U.S. sales to Ta Chen as well as Ta Chen's losses on sales to the United States.

Amended Preliminary Determination

As a result of our corrections of ministerial errors, we have determined the following amended weighted-average dumping margins apply.

Manufacturer/exporter	Margin percentage
YUSCO/Ta Chen	3.08
All Others	3.08

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to suspend liquidation of all imports of subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the normal value exceeds the U.S. price, as indicated in the chart above. These suspension-of-liquidation instructions will remain in effect until further notice.

This amended preliminary determination and notice are in accordance with section 703(d)(2) of the Act (19 CFR 351.224).

Dated: November 27, 1998.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 98–32212 Filed 12–2–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent to Grant Exclusive Patent License; Photonics Components International L.L.C.

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of a prospective license to Photonics Components International L.L.C. to the Government owned invention described in U.S. Patent 4,763,272 entitled ''AUTOMATED AND COMPUTER CONTROLLED PRECISION METHOD OF FUSED ELONGATED OPTICAL FIBER COUPLER FABRICATION'', U.S. Patent 5,121,453 entitled ''POLARIZATION INDEPENDENT NARROW CHANNEL WAVELENGTH DIVISION MULTIPLEXING FIBER COUPLER AND METHOD FOR PRODUCING SAME'', and U.S. Patent 5,652,819 entitled ''METHOD FOR TUNING FIBER OPTIC COUPLERS AND MULTIPLEXERS.''

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than February 1, 1999.

ADDRESSES: Written objections are to be filed with the Office of Patent Counsel, Space and Naval Warfare Systems Center, D0012, 53510 Silvergate Ave., Rm 103, San Diego, CA 92152–5765.

FOR FURTHER INFORMATION CONTACT: Mr. Harvey Fendelman, Patent Counsel, Space and Naval Warfare Systems Center, Code D0012, 53510 Silvergate Ave., Rm 103, San Diego, CA 92152–5765, telephone (619) 553–3001.

Authority: 35 U.S.C. 207, 37 CFR Part 404.

Dated: November 24, 1998.

Ralph W. Corey,

Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 98–32201 Filed 12–2–98; 8:45 am]

BILLING CODE 3810–FF–U

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 1, 1999.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651, or should be electronically mailed to the internet address *Pat Sherrill@ed.gov*, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: November 30, 1998.

Kent H. Hannaman,

Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: Reinstatement.

Title: Reporting Requirements for the Education Flexibility Partnership Demonstration Program.

Frequency: Annually.

Affected Public: State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 12.

Burden Hours: 20.

Abstract: Section 311(e)(6) of the Goals 2000: Educate America Act requires states participating in the Education Flexibility Partnership Demonstration Program to annually report to the Secretary on the monitoring of waivers it grants through this program.

Office of Educational Research and Improvement

Type of Review: Reinstatement.

Title: National Postsecondary Student Aid Study: 2000 (NPSAS: 2000).

Frequency: On occasion.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 1,650.

Burden Hours: 1,100.

Abstract: The NPSAS is a comprehensive study that examines how students and their families pay for postsecondary education. It includes nationally representative samples of undergraduates, graduates, and first-professional students; students attending public and private less-than-2-year institutions, community colleges, 4-year colleges, and major universities. Students who receive financial aid as well as those who do not receive financial aid participate in NPSAS. Comprehensive student interviews and administrative records, with exceptional detail concerning student financial aid, are available for academic years 1986–87, 1989–90, 1992–93, and 1995–96.

Office of Educational Research and Improvement

Type of Review: Reinstatement.

Title: National Education. Longitudinal Study: 1988–2000.

Frequency: On occasion.

Affected Public: Individuals or households.

Reporting and Recordkeeping Hour Burden:

Responses: 457.

Burden Hours: 214.

Abstract: The National Education Longitudinal Study: 1988–2000 (NELS: 88/2000) is designed to provide data about critical transitions experienced by students as they progress through high school and into postsecondary institutions or the work force. NELS:88/2000, the fourth follow-up to this longitudinal data collection initiated with the 8th grade class of 1988, will provide important information about young adults' experiences after high school, including postsecondary education and training, labor force participation, and family formation.

[FR Doc. 98–32191 Filed 12–2–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. TM99–1–22–000 and TM99–1–22–001]

CNG Transmission Corporation; Notice of Technical Conference

November 27, 1998.

In the Commission's order issued on October 29, 1998, the Commission directed that a technical conference be held to address issues raised by the filing.

Take notice that the technical conference will be held on Wednesday, December 9, 1998, at 10:00 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

All interested parties and Staff are permitted to attend.

David P. Boergers,

Secretary.

[FR Doc. 98–32171 Filed 12–2–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–1–22–000]

CNG Transmission Corporation; Notice Granting Late Intervention

November 27, 1998.

Motions to intervene in the above-captioned proceeding were due on October 13, 1998. Virginia Electric and Power Company and Doswell Limited Partnership filed a motion to intervene out of time on October 14, 1998. No party filed an answer in opposition to the motion.

The petitioner appears to have a legitimate interest under the law that is not adequately represented by other parties. Granting the intervention will not cause a delay or prejudice any other party. It is in the public interest to allow the petitioner to appear in this proceeding. Accordingly, good cause exists for granting the late intervention.

Pursuant to Section 375.302 of the Commission's Regulations (18 CFR 375.202), the petitioner is permitted to intervene in this proceeding subject to the Commission's rules and regulations under the Natural Gas Act, 15 U.S.C. §§ 717–717(W). Participation of the late intervenor shall be limited to matters set out in its motion to intervene. The admission of the late intervenor shall not be construed as recognition by the Commission that the intervenor might be aggrieved by any order entered in this proceeding.

David P. Boergers,

Secretary.

[FR Doc. 98–32172 Filed 12–2–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP98–405–002]

Colorado Interstate Gas Company; Notice of Tariff Compliance Filing

November 27, 1998.

Take notice that on November 23, 1998, Colorado Interstate Gas Company (CIG), tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed in Appendix A to the filing, to be effective November 2, 1998.

CIG states that the purpose of this filing is to cause CIG to be in full compliance with the order that issued October 30, 1998 in Docket No. RP98–405–000 and Order No. 587–H. CIG is also proposing certain minor changes to better conform its Order No. 587–H changes to those required for Young Gas Storage Company, Ltd., and Wyoming Interstate Company, Ltd., CIG is operator of these companies.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–32167 Filed 12–2–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–157–000]

Destin Pipeline Company, L.L.C.; Notice of Petition for Waiver of Tariff Provisions

November 27, 1998.

Take notice that on November 24, 1998, Destin Pipeline Company, L.L.C. (Destin), tendered for filing a petition for a limited waiver of its FERC Gas Tariff, Original Volume No. 1, in accordance with Section 161.3(b) of the Commission's Regulations, 18 CFR 161.3(b). Destin requests a limited waiver of its tariff to the extent necessary to make an adjustment to its shippers' transportation accounts for the month of October, 1998, as more particularly described in Destin's November 24, 1998 filing.

Destin's system operations experienced interruptions during the month of October, 1998, due to weather events, start-up equipment problems, and the shut-down of the temporary liquids handling facilities at the Pascagoula Processing Plant which straddles Destin's system. As a result of these interruptions, Destin was unable to flow gas for eight days in the month of October, including six of the last eight days of the month. This caused or significantly contributed to its shippers' accruing imbalance quantities in their transportation accounts, which they had no opportunity to correct at month-end.

Destin requests authority to waive its Tariff to the extent necessary to make an adjustment to its shippers' transportation accounts for the month of October, 1998, to eliminate utilization of the cashout tiers.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before December 4, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–32170 Filed 12–2–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–2–23–000]

Eastern Shore Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

November 27, 1998.

Take notice that on November 23, 1998, Eastern Shore Natural Gas Company (ESNG), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, certain revised tariff sheets in the above captioned docket, with a proposed effective date of November 1, 1998.

ESNG states that the purpose of this instant filing is to track rate changes attributable to storage service purchased from Columbia Gas Transmission Corporation (Columbia) under its Rate Schedules SST and FSS, the costs of which comprise the rates and charges payable under ESNG's Rate Schedule CFSS. This tracking filing is being made pursuant to Section 3 of ESNG's Rate Schedule CFSS.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. 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.

David P. Boergers,

Secretary.

[FR Doc. 98–32173 Filed 12–2–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–79–000]

El Paso Natural Gas Company; Notice of Request Under Blanket Authorization

November 27, 1998.

Take notice that on November 16, 1998, El Paso Natural Gas Company, (El Paso), Post Office Box 1492, El Paso, Texas, 79978, filed in Docket No. CP99–79–000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon, by conveyance to PNM Gas Services, a Division of Public Service Company of New Mexico, a portion of Line No. 213 or T or C Line, all as more fully set forth in the request for authorization on file with the Commission and open to public inspection.

El Paso proposes to convey approximately 12.5 miles of the T or C Line and to retain approximately 0.19 miles of T or C Line with the T or C Meter Station in order to continue deliveries of natural gas to PNM Gas Services. PNM Gas Services concludes that the integration of this segment would permit PNM Gas Services to resolve certain existing operational problems in the affected service area. Specifically, integration of the segment as part of PNM Gas Services' distribution system would permit PNM Gas Services to receive its volumes of gas directly off the California pipelines. Thus, PNM Gas Services would be better able to regulate pressure on its entire distribution system.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Secretary.

[FR Doc. 98–32161 Filed 12–2–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2385–002–NY]

Finch, Pruyn & Company, Inc.; Notice of Site Visit to Project Area

November 27, 1998.

Take notice that Commission staff will hold a site visit with Finch, Pruyn & Company (FPC), the licensee for the Glens Falls Hydroelectric Project, FERC No. 2385. The project is located on the Hudson River near the city of Glens Falls, New York. The site visit will be held on Wednesday, December 9, 1998, from 10:30 a.m. to 3:00 p.m.

The purpose of the visit is to enable staff participating in the preparation of the Environmental Assessment of the proposed relicensing of the Glens Falls project to view the project facilities and project area. All interested individuals, organizations, and agencies are invited to attend the site visit.

Participants will meet at 10:30 a.m. in the parking lot at the Finch, Pruyn & Company headquarters in Glens Falls, at 1 Glen Road. Participants should provide their own transportation and lunches for the site visit.

If you have any questions concerning this matter, please contact John McEachern at (202) 219–3056 or David Manny of Finch, Pruyn & Company, Inc., at (518) 793–2541.

David P. Boergers,

Secretary.

[FR Doc. 98–32165 Filed 12–2–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–2–34–000]

Florida Gas Transmission Company; Notice of Proposed Change in FERC Gas Tariff

November 27, 1998.

Take notice that on November 24, 1998, Florida Gas Transmission Company (FGT), tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following

tariff sheets, with an effective date of January 1, 1999:

Thirtieth Revised Sheet No. 8A
Twenty-First Revised Sheet No. 8A.01
Twenty-Second Revised Sheet No. 8A.02
Twenty-Sixth Revised Sheet No. 8B
Nineteenth Revised Sheet No. 8B.01

FGT states that it is filing the referenced tariff sheets pursuant to the January 21, 1998, Stipulation and Agreement concerning GRI Funding (GRI Settlement) as approved by the Commission Order issued April 29, 1998 in Docket No. RP97–199–003. The funding mechanism includes the approved GRI demand charges of 23 cents per MMBtu per month (.76¢ per MMBtu stated on a daily basis underlying FGT's reservation charges) to be applicable to firm shippers with load factors exceeding 50%, 14.2 cents per MMBtu per month (.47¢ per MMBtu stated on a daily basis underlying FGT's reservation charges) to be applicable to firm shippers with load factors of 50¢ or less and a volumetric charge of 0.75 cents per MMBtu to be applicable to all non-discounted interruptible rates and to the usage portion of two-part rates. In addition, the 1999 funding mechanism includes a volumetric charge of 1.80 cents per MMBtu to be applicable to all one-part small customer rates. This funding mechanism provides for a decrease in GRI charges as compared to the currently effective 1998 GRI charges.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings.

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.

David P. Boergers,

Secretary.

[FR Doc. 98–32174 Filed 12–2–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–75–001]

MIGC, Inc.; Notice of Tariff Filing

November 27, 1998.

Take notice that on November 24, 1998, MIGC, Inc. (MIGC), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Substitute Second Revised Sheet No. 52A, Substitute Original Sheet No. 56A, Original Sheet No. 56C, and Substitute Fourth Revised Sheet No. 65, with a proposed effective date of November 2, 1998.

MIGC states that the purpose of the filing is to comply with Order No. 587–H issued in Docket no. RM96–1–008.

MIGC states that copies of its filing are being mailed to its jurisdictional customers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–32169 Filed 12–2–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP96–159–006]

Mississippi Canyon Gas Pipeline, LLC; Notice of Proposed Changes in FERC Gas Tariff

November 27, 1998.

Take notice that on November 20, 1998, Mississippi Canyon Gas Pipeline, LLC (Mississippi Canyon), 1301 McKinney, Suite 700, Houston, Texas 77010 filed a copy of its proposed FERC Gas Tariff, First Revised Volume No. 1 (Original Sheet Nos. 1–320), proposed to become effective December 20, 1998, pursuant to the letter order issued in Docket Nos. CP96–159–000 *et al.* and CP97–172–000.

Mississippi Canyon submits the proposed tariff to reflect the new name of the pipeline as authorized in the October 28, 1998, letter other which authorized a corporate name change for Mississippi Canyon to replace Shell Gas Pipeline Company as the corporate entity. The letter order required Mississippi Canyon to file a revised Volume No. 1, with the new corporate name. It is stated that Mississippi Canyon has also filed the tariff electronically.

It is stated that the tariff sheets submitted substitute Mississippi Canyon for Shell on the tariff sheet headings and in the text of the tariff. It is explained that Mississippi Canyon has also proposed other minor changes, such as updating telephone numbers and addresses, changing upper and lower case letters, clarification of the signing party and associated title on Agreement forms, correcting Sheet Nos. 299 and 315 as approved in Docket No. RP98–47–000; deleting the Index of Customers; and incorporating changes pending in Docket Nos. RP99–5–001 and RP99–145–000.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 18, 1998, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

David P. Boergers,

Secretary.

[FR Doc. 98–32160 Filed 12–2–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–80–000]

Natural Gas Pipeline Company of America; Notice of Application

November 27, 1998.

Take notice that on November 17, 1998, Natural Gas Pipeline Company of America (Natural), 747 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP99–80–000 an application pursuant to Section 7(b) of the Natural Gas Act, for permission and approval to abandon, by sale to Stingray Pipeline Company (Stingray), a dual 6-inch platform measuring facility located in Vermilion Block 214A, offshore Louisiana (VR 214A), all as more fully set forth in the application on file with the Commission and open to public inspection.

Natural states the facilities were originally constructed to allow Natural to measure system supply gas that it had purchased in VR 214A, which gas Stingray received for Natural's account and transported and redelivered to Natural onshore at Holly Beach in Cameron Parish, Louisiana. Natural states that its gas purchase and transportation agreements related to these facilities have been terminated and that currently the facilities are used to measure gas that Stingray receives and transports onshore for the accounts of Stingray's shippers. Natural further states that said facilities no longer hold sufficient value to natural to warrant the expenditures required to maintain them and as a result, Natural intends to sell said facilities to Stingray.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 18, 1998, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Natural to appear or be represented at the hearing.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–32162 Filed 12–2–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–86–000]

Questar Pipeline Company; Notice of Request Under Blanket Authorization

November 27, 1998.

Take notice that on November 23, 1998, Questar Pipeline Company (Questar), 180 East 100 South, Salt Lake City, Utah 84145–0360, filed a prior notice request with the Commission in Docket No. CP99–86–000 pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to construct and operate a new delivery point for service to Amoco Energy Group-North America (Amoco) in Summit County, Utah, under Questar's blanket certification issued in Docket No. CP82–491–000 pursuant to Section 7 of the NGA, all as more fully set forth in the request that is open to the public for inspection.

Questar proposes to construct and operate a new delivery point to serve Amoco's nonjurisdictional Anschutz Ranch East Gas Processing Plant. Questar proposes to install a 4-inch diameter hot tap to connect its 8-inch diameter Jurisdictional Lateral No. 49 to Amoco's buried 8-inch diameter Plant lateral at the point of intersection. Quester states that it would deliver on an interruptible basis up to 12,000 dekatherm equivalent of natural gas per day under its FERC Gas Tariff Rate Schedule T–2. Questar declares that the proposed service would have minimal impact on Questar's existing customers' peak day and annual deliveries; that Questar's FERC Gas Tariff does not prohibit the addition of new delivery points on its system; and that the proposed facility would serve the public interest by providing a new delivery point at the request of Questar's customer. Questar also states that Amoco would reimburse Questar approximately $16,500 for the construction cost of the proposed Amoco Anschutz Ranch delivery point.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

David P. Boergers,

Secretary.

[FR Doc. 98–32164 Filed 12–2–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–83–000]

Texas Eastern Transmission Corporation; Notice of Request Under Blanket Authorization

November 27, 1998.

Take notice that on November 19, 1998, Texas Eastern Transmission Corporation (Texas Eastern), 5400 Westheimer Court, Houston, Texas 77056–5310, filed in Docket No. CP99–83–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct a delivery point in Stoddard County, Missouri, to provide natural gas deliveries to Associated Electric Cooperative, Inc. (AECI), for its Essex Power Plant under construction, under Texas Eastern's blanket certificate issued in Docket No. CP82–535–000, pursuant to Section 7 of the Natural Gas

Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Texas Eastern proposes to construct, install, own, operate and maintain a 10-inch tap valve, a 10-inch check valve and related piping (Tap) on Texas Eastern's existing 24-inch Line No. 1, at approximate Mile Post 414.07 in Stoddard County, Missouri. In addition, Texas Eastern states it will install, own, operate and maintain an 8-inch orifice and 6-inch turbine meter runs, with associated piping and valves (Meter Station), approximately 3,200 feet of 10-month pipeline which will extend from the Meter Station to the proposed Essex Power Plant (Connecting Pipe), and electronic gas measurement equipment (EGM). Texas Eastern states that AECI will reimburse Texas Eastern 100% of the costs and expenses incurred to install the Tap, Meter Station, Connecting Pipe and EGM, which are estimated to be approximately $1,650,000.

Texas Eastern states that it will deliver up to 58 MMcf/day of natural gas to AECI at the proposed delivery point, and that the transportation service will be rendered pursuant to Texas Eastern's Rate Schedule IT–1 included in its FERC Gas Tariff, Sixth Revised Volume No. 1. Texas Eastern states that its existing tariff does not prohibit the addition of this facility. Texas Eastern also states that the installation of the delivery point will have not effect on its peak day or annual deliveries, and that its proposal will be accomplished without detriment or disadvantage to Texas Eastern's other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Secretary.

[FR Doc. 98–32163 Filed 12–2–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP98–408–001 and RP98–412–001]

Wyoming Interstate Company, Ltd.; Notice of Tariff Compliance Filing

November 27, 1998.

Take notice that on November 23, 1998, Wyoming Interstate Company, Ltd. (WIC), tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1 and Second Revised Volume No. 2, the Tariff sheets listed in Appendix A to the filing, to be effective November 2, 1998.

WIC states that the purpose of this filing is to cause WIC to be in full compliance with the order that issued October 30, 1998 in Docket Nos. RP98–408–000 and RP98–412–000, and Order No. 587–H.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in § 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–32168 Filed 12–2–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–403–001]

Young Gas Storage Company, Ltd.; Notice of Tariff Compliance Filing

November 27, 1998.

Take notice that on November 23, 1998, Young Gas Storage Company, Ltd. (Young), tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, the tariff sheets listed in Appendix A to the filing, to be effective November 2, 1998.

Young states that the purpose of this filing is to cause Young to be in full compliance with the order that issued October 30, 1998 in Docket No. RP98–403–000 and Order No. 587–H. Colorado Interstate Gas Company (CIG) is operator of Young and Wyoming Interstate Company, Ltd. (WIC). Young is also proposing certain minor changes to better conform its Order No. 587–H changes to those resulting from Order No. 587–H for CIG and WIC.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–32166 Filed 12–2–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG99–23–000, et al.]

CMS Generation Michigan Power L.L.C., et al. Electric Rate and Corporate Regulation Filings

November 25, 1998.

Take notice that the following filings have been made with the Commission:

1. CMS Generation Michigan Power L.L.C.

[Docket No. EG99–23–000]

Take notice that on November 18, 1998, CMS Generation Michigan Power L.L.C., 330 Town Center Drive, Suite 1000, Dearborn, Michigan 48126, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

CMS Generation Michigan Power L.L.C., is a wholly-owned indirect subsidiary of CMS Generation Co., a Michigan corporation, which is a wholly-owned indirect subsidiary of CMS Energy Corporation, also a Michigan corporation. CMS Generation Michigan Power L.L.C., is constructing a simple cycle combustion turbine, natural gas-fired peaking facility located in Gaylord, Michigan with a net

electrical generating capacity of approximately 148 MW.

Comment date: December 10, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. CMS Generation Michigan Power L.L.C.

[Docket No. EG99–24–000]

Take notice that on November 18, 1998, CMS Generation Michigan Power L.L.C., 330 Town Center Drive, Suite 1000, Dearborn, Michigan 48126, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

CMS Generation Michigan Power L.L.C., is a wholly-owned indirect subsidiary of CMS Generation Co., a Michigan corporation, which is a wholly-owned indirect subsidiary of CMS Energy Corporation, also a Michigan corporation. CMS Generation Michigan Power L.L.C. is constructing a simple cycle combustion turbine, natural gas-fired peaking facility located in Comstock, Michigan with a net electrical generating capacity of approximately 68 MW.

Comment date: December 10, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. CMS Generation Operating Company

[Docket No. EG99–25–000]

Take notice that on November 18, 1998, CMS Generation Operating Company, 330 Town Center Drive, Suite 1000, Dearborn, Michigan 48126, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

CMS Generation Operating Company is a wholly-owned indirect subsidiary of CMS Generation Co., a Michigan corporation, which is a wholly-owned indirect subsidiary of CMS Energy Corporation, also a Michigan corporation. CMS Generation Operating Company will operate, under an operations and maintenance agreement with the owner, a facility under construction located in Comstock, Michigan with a net electrical generating capacity of approximately 68 MW.

Comment date: December 10, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. CMS Generation Operating Company

[Docket No. EG99–26–000]

Take notice that on November 18, 1998, CMS Generation Operating Company, 330 Town Center Drive, Suite 1000, Dearborn, Michigan 48126, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

CMS Generation Operating Company is a wholly-owned indirect subsidiary of CMS Generation Co., a Michigan corporation, which is a wholly-owned indirect subsidiary of CMS Energy Corporation, also a Michigan corporation. CMS Generation Operating Company will operate, under an operations and maintenance agreement with the owner, a facility under construction located in Gaylord, Michigan with a net electrical generating capacity of approximately 148 MW.

Comment date: December 10, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

5. Koch Power Louisiana, L.L.C.

[Docket No. EG99–27–000]

Take notice that on November 18, 1998, Koch Power Louisiana, L.L.C. (KPL), 20 Greenway Plaza, Houston, Texas 77046, filed with the Federal Energy Regulatory Commission an application for a determination that KPL is an exempt wholesale generator pursuant to Part 365 of the Commission's Regulations.

KPL states that it owns and operates certain eligible facilities consisting of eight 25-megawatt gas-fired simple cycle combustion turbines, with a total project capacity of approximately 200 megawatts (along with certain appurtenant interconnecting transmission facilities), located in Sterlington, Louisiana.

Comment date: December 10, 1998, in accordance with Standard Paragraph E at the end of this notice. The commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

6. Vastar Power Marketing, Inc.

[Docket No. EL99–11–000]

Take notice that on November 20, 1998, Vastar Power Marketing, Inc. (Vastar Power), tendered for filing pursuant to Rule 207 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission), 18 CFR 385.207, a Petition for Waiver of Requirement to File Quarterly Transaction Reports And Annual Reports Under Reporting Requirement 582. Vastar Power seeks such a waiver because, due to the Commission approved transfer of Vastar Power's wholesale power contracts to a joint venture, Vastar Power has not engaged in any power purchases or sales since the first quarter of 1998 and it has suspended indefinitely its involvement in the power marketing business for the foreseeable future.

Comment date: December 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Southern Energy Canal, L.L.C., Southern Energy Kendall, L.L.C. and Southern Energy New England, L.L.C.

[Docket Nos. ER98–4115–001, ER98–4116–001 and ER98–4118–001]

Take notice that on November 20, 1998, Southern Energy Canal, L.L.C., Southern Energy Kendall, L.L.C., and Southern Energy New England, L.L.C., (collectively the Southern Parties) tendered for filing revised codes of conduct in compliance with the order issued by the Federal Energy Regulatory Commission on November 12, 1998, in the above-captioned dockets. Cambridge Electric Light Co., et al., 85 FERC ¶ 61,217 (1998).

Copies of this filing were served on all parties designated on the official service list.

Comment date: December 10, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Commonwealth Edison Company, Commonwealth Edison Company of Indiana, Inc., Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc.

[Docket Nos. ER98–2279–000 and ER98–3689–000

Take notice that on November 20, 1998, Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc. (collectively, the ComEd), tendered for filing an Interim Report on Non-Firm Redispatch.

The ComEd states that a copy of the filing has been served on all parties in this proceeding.

Comment date: December 10, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. South Carolina Electric & Gas Company

[Docket No. ER99–651–000]

Take notice that on November 20, 1998, South Carolina Electric & Gas Company (SCE&G), tendered for filing service agreements establishing Illinois Power Company (IPC), Northeast Utilities Service Company (NUSC), PS Energy Group, Inc. (PSEG), and Potomac Electric Power Company (PEPCO) as customers under the terms of SCE&G's Negotiated Market Sales Tariff.

SCE&G requests an effective date of one day subsequent to the date of filing. Accordingly, SCE&G requests waiver of the Commission's notice requirements.

Copies of this filing were served upon Illinois Power Company (IPC), Northeast Utilities Service Company (NUSC), PS Energy Group, Inc. (PSEG), Potomac Electric Power (PEPC), and the South Carolina Public Service Commission.

Comment date: December 10, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Washington Water Power Company

[Docket No. ER99–652–000]

Take notice that on November 20, 1998, Washington Water Power Company, tendered for filing, with the Federal Energy Regulatory Commission pursuant to 18 CFR Section 35.13, an executed Mutual Netting Agreement and Certificate of Concurrence allowing for arrangements of amounts which become due and owing to one Party to be set off against amounts which are due and owing to the other Party with Idaho Power Company.

WWP requests waiver of the prior notice requirement and requests an effective date of November 1, 1998.

Comment date: December 10, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Public Service Company of New Mexico

[Docket No. ER99–653–000]

Take notice that on November 20, 1998, Public Service Company of New Mexico (PNM), tendered for filing executed service agreements, for point-to-point transmission service under the terms of PNM's Open Access Transmission Service Tariff, with Statoil Energy Trading, Inc. (2 agreements, dated November 9, 1998, for Non-Firm and Firm Service). PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

Comment date: December 10, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Wisconsin Public Service Company

[Docket No. ER99–654–000]

Take notice that on November 20, 1998, Wisconsin Public Service Corporation tendered for filing an executed service agreement with Engage Energy US, L.P., under its Market-Based Rate Tariff.

Comment date: December 10, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. FirstEnergy System

[Docket No. ER99–655–000]

Take notice that on November 20, 1998, FirstEnergy System tendered for filing Service Agreements to provide Non-Firm Point-to-Point Transmission Service for: Sempra Energy Trading Corporation, FirstEnergy Trading and Power Marketing, Incorporated and Potomac Electric Power Company, the Transmission Customers. Services are being provided under the FirstEnergy System Open Access Transmission Tariff submitted for filing by the Federal Energy Regulatory Commission in Docket No. ER97–412–000].

The proposed effective dates under the Service Agreements are October 30, 1998 and November 1, 1998, respectively.

Comment date: December 10, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. FirstEnergy System

[Docket No. ER99–656–000]

Take notice that on November 20, 1998, FirstEnergy System tendered for filing Service Agreements to provide Firm Point-to-Point Transmission Service for Sempra Energy Trading Corporation, FirstEnergy Trading and Power Marketing, and Potomac Electric Power Company, the Transmission Customers. Services are being provided under the FirstEnergy System Open Access Transmission Tariff submitted for filing by the Federal Energy Regulatory Commission in Docket No. ER97–412–000.

The proposed effective dates under the Service Agreements is October 30, 1998 and November 1, 1998, respectively, for the above mentioned Service Agreements in this filing.

Comment date: December 10, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. PJM Interconnection, L.L.C.

[Docket No. ER99–657–000]

Take notice that on November 20, 1998, PJM Interconnection, L.L.C. (PJM), tendered for filing three signature pages of parties to the Reliability Assurance Agreement among Load Serving Entities in the PJM Control Area (RAA), and an amended Schedule 17, listing the parties to the RAA.

PJM states that it served a copy of its filing on all parties to the RAA, including each of the parties for which a signature page is being tendered with this filing, and each of the state regulatory commissions within the PJM Control Area.

Comment date: December 10, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Alliant Services Company

[Docket No. ER99–658–000]

Take notice that on November 20, 1998, Alliant Services Company tendered for filing an executed Service Agreement for short-term firm point-to-point transmission service, establishing Constellation Power Source, Inc., as a point-to-point Transmission Customer under the terms of the Alliant Services Company transmission tariff.

Alliant Services Company requests an effective date of October 23, 1998, and accordingly, seeks waiver of the Commission's notice requirements.

A copy of this filing has been served upon the Illinois Commerce Commission, the Minnesota Public Utilities Commission, the Iowa Department of Commerce, and the Public Service Commission of Wisconsin.

Comment Date: December 10, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Valley Electric Association, Inc.

[Docket No. ES99–11–000]

Take notice that on November 17, 1998, Valley Electric Association, Inc. (Valley), tendered for filing an application seeking authorization under Section 204(a) of the Federal Power Act to issue debt (I) in the amount of up to $42.8 million, in the form of a series of loans from the National Rural Utilities Cooperative Finance Corporation (CFC), and (ii) in the amount of $15 million under an existing line of credit with CFC. Proceeds of the loans and line of credit will be used for construction and improvement of electrical facilities, refinancing, and other lawful corporate purposes. Valley also seeks a waiver of the Commission's competitive placement requirements.

Comment Date: December 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. 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,

888 First Street, N.E., Washington, D.C. 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 the comment date. 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 these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Secretary.

[FR Doc. 98–32154 Filed 12–2–98; 8:45 am]

BILLING CODE 6717–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–650–000, et al.]

New Century Services, Inc., et al.; Electric Rate and Corporate Regulation Filings

November 24, 1998.

Take notice that the following filings have been made with the Commission:

1. New Century Services, Inc.

[Docket No. ER99–650–000]

Take notice that on November 19, 1998, New Century Services, Inc., on behalf of Cheyenne Light, Fuel and Power Company, Public Service Company of Colorado, and Southwestern Public Service Company (collectively Companies), tendered for filing a Service Agreement under their Joint Open Access Transmission Service Tariff for Non-Firm Point-to-Point Transmission Service between the Companies and Cargill-Alliant, LLC.

Comment date: December 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Pennsylvania Electric Company; New York State Electric & Gas Corporation, et al.

[Docket Nos. EC98–64–000 and ER98–4600–000]

Take notice that on November 19, 1998, Pennsylvania Electric Company, New York State Electric & Gas Corporation, NGE Generation, Inc., Mission Energy Westside, Inc., and EME Homer City Generation, L.P. tendered for filing a supplement to their application under Section 203 of the Federal Power Act for approval to transfer certain jurisdictional facilities associated with the sale of the Homer City Electric Generating Station. The supplement addresses ministerial/clerical changes only.

Comment date: December 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. PJM Interconnection, L.L.C.

[Docket No. ER98–1384–001]

Take notice that on November 20, 1998, PJM Interconnection, L.L.C. (PJM), tendered for filing a compliance report.

Copies of this filing were served upon all parties to this proceeding and the Pennsylvania Public Utility Commission.

Comment date: December 10, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. PJM Interconnection, L.L.C.

[Docket No. ER99–196–000]

Take notice that on November 19, 1998, PJM Interconnection, L.L.C. (PJM), tendered for filing an amendment to its October 14, 1998, filing which includes amendments to Schedule 11 of the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C.

PJM requests an effective date of October 15, 1998, for the amendments and requests the Commission to act on the filing by December 31, 1998.

Copies of this filing were served upon all PJM Members and the state electric regulatory commissions in the PJM Control Area.

Comment date: December 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. Northeast Utilities Service Company

[Docket No. ER99–593–000]

Take notice that on November 19, 1998, Northeast Utilities Service Company (NUSCO), tendered for filing an amendment to the filing of a Service Agreement with Constellation Power Source under the NU System Companies' Sale for Resale, Tariff No. 7.

NUSCO states that a copy of this filing has been mailed to the Constellation Power Source.

NUSCO requests that the amendment and Service Agreement become effective October 30, 1998.

Comment date: December 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Jersey Central Power & Light Company, et al.

[Docket No. ER99–639–000]

Take notice that on November 19, 1998, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (d/b/a GPU Energy), filed an executed Service Agreement between GPU Energy and FirstEnergy Trading & Power Marketing Inc. (FirstEnergy), dated November 11, 1998. This Service Agreement specifies that FirstEnergy has agreed to the rates, terms and conditions of GPU Energy's Capacity, Energy and Capacity Credit Sales Tariff (Sales Tariff) designated as FERC Electric Tariff, Second Revised Volume No. 1. The Sales Tariff allows GPU Energy and FirstEnergy to enter into separately scheduled transactions under which GPU Energy will make available for sale, capacity, energy and capacity credits.

GPU Energy requests a waiver of the Commission's notice requirements for good cause shown and an effective date of November 11, 1998, for the Service Agreement.

GPU Energy has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: December 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Jersey Central Power & Light Company, et al.

[Docket No. ER99–640–000]

Take notice that on November 19, 1998, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (d/b/a GPU Energy), filed an executed Service Agreement between GPU Energy and Delmarva Power & Light Company (DPL), dated November 11, 1998. This Service Agreement specifies that DPL has agreed to the rates, terms and conditions of GPU Energy's Market-Based Sales Tariff (Sales Tariff) designated as FERC Electric Rate Schedule, First Revised Volume No. 5. The Sales Tariff allows GPU Energy and DPL to enter into separately scheduled transactions under which GPU Energy will make available for sale, surplus capacity and/or energy.

GPU Energy requests a waiver of the Commission's notice requirements for good cause shown and an effective date of November 11, 1998, for the Service Agreement.

GPU Energy has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: December 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. New Century Services, Inc.

[Docket No. ER99–641–000]

Take notice that on November 19, 1998, New Century Services, Inc., on

behalf of Cheyenne Light, Fuel and Power Company, Public Service Company of Colorado, and Southwestern Public Service Company (collectively Companies), tendered for filing a Service Agreement under their Joint Open Access Transmission Service Tariff for Firm Point-to-Point Transmission Service between the Companies and Cargill-Alliant, LLC.

Comment date: December 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. GPU Generation Corporation

[Docket No. ER99–642–000]

Take notice that on November 19, 1998, GPU Generation Corporation tendered for filing pursuant to Rule 205 of the Commission's Rules of Practice and Procedure (18 CFR 385.205) a proposed rate schedule change to amend to the Operating Agreements for the Keystone and Conemaugh electric generating stations (1) to change the voting requirements to resolve disputes between the Owners and the Station Operator and (2) to change the due date for notification of termination of the Operating Agreements.

Copies of the filing have been furnished to the Pennsylvania Public Utility Commission and the New Jersey Board of Public Utilities.

Comment date: December 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Baltimore Gas and Electric Company

[Docket No. ER99–643–000]

Take notice that on November 19, 1998, Baltimore Gas and Electric Company (BGE), filed a Service Agreement with Rainbow Energy Marketing Corporation, October 19, 1998 under BGE's FERC Electric Tariff Original Volume No. 3 (Tariff). Under the tendered Service Agreement, BGE agrees to provide services to Rainbow Energy Marketing Corporation under the provisions of the Tariff.

BGE requests an effective date of November 1, 1998, for the Service Agreement.

BGE states that a copy of the filing was served upon the Public Service Commission of Maryland.

Comment date: December 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. PP&L, Inc.

[Docket No. ER99–644–000]

Take notice that on November 19, 1998, PP&L, Inc. (PP&L), filed with the Federal Energy Regulatory Commission a Power Purchase and Sale Agreement between PP&L and Connecticut Municipal Electric Energy Cooperative under PP&L's Market-Based Rate and Resale of Transmission Rights Tariff, FERC Electric Tariff, Revised Volume No. 5.

PP&L requests an effective date of November 1, 1998, for the Power Purchase and Sale Agreement.

PP&L states that a copy of this filing has been provided to the Connecticut Municipal Electric Energy Cooperative and to the Pennsylvania Public Utility Commission.

Comment date: December 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Cinergy Services, Inc.

[Docket No. ER99–645–000]

Take notice that on November 19, 1998, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and Southwestern Public Service Company (Southwestern).

Cinergy and Southwestern are requesting an effective date of November 15, 1998.

Comment date: December 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Cinergy Services, Inc.

[Docket No. ER99–646–000]

Take notice that on November 19, 1998, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and Southwestern Public Service Company (Southwestern).

Cinergy and Southwestern are requesting an effective date of November 15, 1998.

Comment date: December 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. PJM Interconnection, L.L.C.

[Docket No. ER99–647–000]

Take notice that on November 19, 1998, PJM Interconnection, L.L.C. (PJM), tendered for filing several changes to the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C., the PJM Open Access Transmission Tariff, and the Reliability Assurance Agreement. The changes (1) revise attendance requirements for Members Committee quorums, (2) clarify working capital financing, (3) eliminate penalties in the PJM spot markets, (4) add a new alternative to PJM's implementation of NERC TLR procedures, (5) add procedures to opt-out of spot market backup, and (6) make other minor revisions.

Copies of this filing were served upon all PJM Members and the state electric regulatory commissions in the PJM Control Area.

Comment date: December 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Puget Sound Energy, Inc.

[Docket No. ER99–648–000]

Take notice that on November 19, 1998, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing a Service Agreement for Firm Point-To-Point Transmission Service (Firm Point-To-Point Service Agreement) and a Service Agreement for Non-Firm Point-To-Point Transmission Service (Non-Firm Point-To-Point Service Agreement) with Merchant Energy Group of the Americas, Inc. (MEGA), as Transmission Customer.

A copy of the filing was served upon MEGA.

Comment date: December 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Puget Sound Energy, Inc.

[Docket No. ER99–649–000]

Take notice that on November 19, 1998, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing a Service Agreement for Firm Point-To-Point Transmission Service (Firm Point-To-Point Service Agreement) and a Service Agreement for Non-Firm Point-To-Point Transmission Service (Non-Firm Point-To-Point Service Agreement) with Electric Clearinghouse, Inc. (ECI), as Transmission Customer.

A copy of the filing was served upon ECI.

Comment date: December 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. 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, 888 First Street, NE, 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 the comment date. 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 these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Secretary.

[FR Doc. 98–32153 Filed 12–2–98; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6196–5]

Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses; Certification of Equipment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Agency certification of equipment.

SUMMARY: EPA received an application dated March 6, 1998 from Johnson Matthey, Incorporated (JM), for certification of urban bus retrofit/rebuild equipment pursuant to 40 CFR 85.1401—85.1415. The kit is identified as the Cam Converter Technology (CCT™) Upgrade Kit and applies to Detroit Diesel Corporation's (DDC) 6V92TA model engines of model years 1985 through 1993 with power ratings of 253 and 277 horsepower and having electronically-controlled fuel injection (DDEC). Applicable engines include those certified to meet federal and California emissions standards.

On May 14, 1998, EPA published a notice in the **Federal Register** (63 FR 26795) that the notification had been received and made the notification available for public review and comment for a period of 45 days. EPA has completed its review and the Director of the Vehicle Programs and Compliance Division has determined that it meets the requirements for certification, conditioned on the terms discussed below in section IV. The effective date of certification is discussed below under **DATES**.

The certified equipment complies with the particulate matter (PM) standard of 0.10 gram per brake horsepower-hour (g/bhp-hr).

In addition, two methods of marketing the CCT kit, discussed below as supply options, are approved by EPA.

Certification of the CCT kit, as it applies to all applicable engines of model years 1985 through 1990 and all applicable engines of model years 1991 through 1993 that are not equipped with ECM programs #259 through #264 for kit operation on diesel fuel #1, is conditioned upon JM complying with the terms discussed below in section IV. Certification is unconditional for 1991 through 1993 model year engines that are equipped with ECM programs #259, #260, #261, #262, #263, or #264 and operate on diesel fuel #1 after kit installation.

The certification of this equipment does not trigger any new requirements for transit operators. However, EPA certification makes the CCT kit available as an option to those operators that are required to use equipment certified to the 0.10 g/bhp-hr standard.

ADDRESSES: The JM application, as well as other materials specifically relevant to it, are contained in Public Docket A–93–42, Category XXI–A, entitled ''Certification of Urban Bus Retrofit/Rebuild Equipment''. Docket items may be inspected from 8:00 a.m. until 5:30 p.m., Monday through Friday. As provided in 40 CFR Part 2, a reasonable fee may be charged by the Agency for copying docket materials.

DATES: Today's **Federal Register** notice announces the Agency's decision to certify the CCT equipment, as described below.

The effective date of certification was established in a letter dated October 21, 1998, from the Director of the Vehicle Programs and Compliance Division to Johnson Matthey. (A copy of the letter is in the public docket, which is located at the address noted above.)

This certified equipment may be used immediately by urban bus operators, subject to the condition in Section IV.

FOR FURTHER INFORMATION CONTACT: William Rutledge, Engine Programs and Compliance Division (6403J), U.S. Environmental Protection Agency, 401 M St. SW, Washington, D.C. 20460. Telephone: (202) 564–9297.

SUPPLEMENTARY INFORMATION:

I. Background and Equipment Identification

In a notification of intent to certify signed March 6, 1998, Johnson Matthey, with principal place of business at 434 Devon Park Drive, Wayne, Pennsylvania 19087–1889, applied for certification of equipment under the urban bus program. The notification and equipment are further clarified in letters provided subsequently from JM to EPA, and are available from the public docket at the address above.

JM states that the equipment, referred to as the Cam Converter Technology (CCT™) upgrade kit, consists of patented engine cam shafts, a CEM II™ catalytic exhaust muffler, specified engine rebuild parts, and a set of instructions. The instructions specify fuel injector height, 0.015 offset key size, and electronic control module (ECM) software program. The kit composition and supply options are described below in this section.

JM provides emissions data from testing two baseline engines, one certification engine, and one test engine in an uncertified configuration. The results of the engine testing are summarized below in Table 1. The emissions data were developed using engine dynamometer testing conducted in accordance with the Federal Test Procedure (FTP) for heavy-duty diesel engines (40 CFR Part 86), and conducted using test engines rated at 277 horsepower.

One of the baseline engines was rebuilt to a 1988 model year configuration and the other rebuilt to a 1991 configuration. Certification testing, using both diesel fuel #1 and #2, was performed on an engine rebuilt with the appropriate CCT Upgrade Kits. The parts used to rebuild the engines are provided in the March 6, 1998 notification and letters dated September 28 and October 7, 1998. Documents can be found in the public docket at the address listed above.

The data of Table 1 indicate that, when an engine is rebuilt with the CCT™ kit having the 0.015 offset key, PM emissions are less than 0.10 g/bhp-hr, and emissions of hydrocarbon (HC), carbon monoxide (CO), oxides of nitrogen (NO_X), and smoke opacity are less than or equal to the federal and California standards applicable to the 1993 model year. The certification test data were provided to EPA in the March 6, 1998 notification and in a letter from JM dated September 28, 1998. One certification test was conducted using diesel fuel #1, and all of the other tests were conducted using diesel fuel #2.

The ''uncertified kit'' of Table 1, using an 0.010 offset key, does not comply with the 5.0 g/bhp-hr NO_X standard and is not the certified configuration of today's **Federal Register** notice. That ''uncertified kit'' consisted of all of the parts of the CCT kit except for use of an 0.010 offset key. The data is provided as support data demonstrating compliance with the 0.10 g/bhp-hr PM standard.

EPA believes that CCT-equipped engines using the 0.015 offset key will meet the 0.10 g/bhp-hr PM standard because installation of the kit upon engine rebuild results in the replacement of all emissions-related parts with a specific set of parts. JM has provided testing which demonstrates compliance of this set of parts with the 0.10 g/bhp-hr PM standard. The fuel consumption impact of the CCT kit is discussed in section II below.

TABLE 1.—SUMMARY OF JOHNSON MATTHEY TESTING

Gaseous and particulate test:	1991 HDDE standards	Transient emission engine test (g/bhp-hr) of 6V92TA DDEC II				
		1988 baseline [1]	1991 baseline [2]	CCT kit [3]	CCT kit [4]	Uncertified kit [5]
HC	1.3	0.4	0.46	0.2	0.3	0.2
CO	15.5	1.2	1.2	0.6	0.77	0.8
NO_X	5.0	8.4	4.9	5.0	4.19	5.8
PM	0.25	0.15	0.19	0.091	0.090	0.097
BSFC [5]	.....	0.459	0.483	0.489	0.497	0.483
Smoke test:	Standards percent	Percent opacity				
ACCEL	20	2.9	2.7	2.3	4.0	2.3
LUG	15	0.8	1.2	1.2	2.1	0.3
PEAK	50	4.3	3.7	3.7	5.6	4.7

[1] Engine id number 6VF160626 using 2D fuel.
[2] Engine id number 6VF186640 using 2D fuel.
[3] Engine id number 6VF186640 using 2D fuel and 0.015 offset key.
[4] Engine id number 6VF186640 using 1D fuel and 0.015 offset key.
[5] Engine id number 6VF160626 using 2D fuel and 0.010 offset key (not certified).
[6] Brake Specific Fuel Consumption (BSFC) is measured in units of lb/bhp-hr.

The CCT kit is applicable to all Detroit Diesel Corporation (DDC) 6V92TA DDEC two-stroke/cycle urban bus engines from model years 1985 through 1993 with power ratings of 253 and 277 horsepower (hp), including those certified to federal and California standards.

The CCT kit is intended to be installed at the time of a standard engine rebuild using standard DDC rebuild practices, except where amended by JM. The contents of the CCT kit, shown in Table 2, will vary depending upon the supply option and the particular engine to be rebuilt. If the first supply option is selected by the installer, then Johnson Matthey will provide all of the following parts: CEM II catalytic muffler, patented engine camshafts, CCT cylinder kits, 0.015 offset key, fuel injectors, 40T blower gear, turbo charger, blower assembly, blower bypass valve, and if necessary, ECM program. In addition, the kit for 1985 through 1987 DDEC 1 engines, regardless of supply option, will include the DDEC I to DDEC II conversion parts listed in the letter dated September 28, 1998 from JM to EPA. If the second supply option is selected by the installer, then JM will provide only the ''unique'' parts (including, if necessary, the ECM program) for the particular engine to be rebuilt. The balance of the CCT kit parts, that is, the ''non-unique'' parts, must be acquired by the installer through other channels. The non-unique parts are parts that would be replaced during the standard rebuild of particular engines, and must be the particular DDC components specified in the CCT kit.

TABLE 2.—CCT KIT PARTS [1] PROVIDED UNDER SUPPLY OPTION 2

Part provided in kit?	1985–87 DDEC 1	1988–90 DDEC II	1991–93 DDEC II	
	Diesel 1 & 2	Diesel 1 & 2	Diesel 1	Diesel 2
CEM II	Yes	Yes	Yes	Yes
Patented Cams	Yes	Yes	Yes	Yes
CCT Cylinder kits	Yes	Yes	Yes	Yes
0.015 Offset Key	Yes	Yes	Yes	Yes
Fuel Injectors	Yes	Yes	No	No
ECM Program	Yes	Yes	[3] No	Yes
40T Blower Gear	Yes	No	No	No
Turbo Charger	Yes	No	No	No
Blower Assembly	Yes	No	No	No
Blower Bypass Valve	Yes	No	No	No
DDEC 1 to DDEC 2	[2] Yes	not applicable		

[1] The balance of the CCT kit parts must be acquired by the installer and must be the DDC components specified in the CCT kit.
[2] The kit for 1985 through 1987 DDEC I engines, regardless of supply option, will include the DDEC I to DDEC II conversion parts.
[3] 1991–93 engines having ECM program 259 through 264 for CCT kit operation on diesel fuel #1 do not require a new ECM program.

The CEM II is a direct, bolt-on replacement for the original equipment muffler, and is designed to fit the specific bus/engine combination. The 0.015 offset key replaces the standard Woodruff key between the pulse wheel and camshaft, and functions to offset the electronic pulse wheel to retard fuel injection timing. The list of specific engine parts is provided in the notification of intent to certify dated March 6, 1998.

All CCT kits will include a CEM II catalytic muffler, patented engine camshafts, CCT cylinder kits, and 0.015 offset key, regardless of supply option. For 1985 through 1987 model year engines, all of the parts of Table 2 are unique parts and therefore, required to be provided in the certified CCT kit. For 1988 to 1990 model year engines, the CCT kit includes fuel injectors and an upgrade of the ECM program. For the 1991–1993 model year engines, the fuel injectors, turbocharger, blower assembly, blower bypass valve, and 40 teeth blower drive gear are non-unique,

standard rebuild components and therefore, not required to be in the certified CCT kit. To complete a rebuild using supply option 2, an operator must acquire on its own, the other required (specified) standard engine rebuild parts. The parts not provided with the kit are required to be the DDC-supplied parts specified with the kit instructions, because DDC components were used for JM's certification testing. JM is required to provide a 100,000 mile defect warranty and 150,000 mile emissions performance warranty for the components supplied to the transit operator in each kit.

All 1985 through 1990 model year engines will require a change of ECM program. A change of ECM program is required for any 1991–1993 model year engine that is not equipped with ECM program 259 through 264 for kit operation on diesel fuel #1. When a change in ECM program is necessary, it will be included in the purchase price of the kit. In summary, if a transit operator has an engine that does not have the CCT-identified ECM program for its particular parameters (hp, rotation, fuel type, peak torque), then it must change the existing ECM program to the appropriate CCT-identified program. The ECM programs, often referred to by DDC as certification word codes (CWC), are listed in letters from JM dated August 19 and September 28, 1998, from Johnson Matthey to EPA.

The CCT kit is certified to a PM emission level of 0.10 g/bhp-hr for all 1985 through 1993 DDC 6V92TA DDEC I and II urban bus engines using either diesel fuel #1 or #2 (including engines originally certified, or rebuilt, to meet California emissions standards). Table 3 lists the applicable engine models and certification levels associated with the certification announced in today's **Federal Register**.

TABLE 3.—CERTIFICATION LEVELS

Applicable models [1]	Engine code	Certified PM Level
1985–1993 Detroit Diesel 6V92TA DDEC I and II rated at 253 or 277 hp.	ALL (including those certified or rebuilt to meet California or 50-state emissions standards).	0.10 g/bhp-hr

[1] Conditional certification applies to most engines. See discussion in sections I and IV.

II. Summary and Analysis of Comments

Comments were received from three parties in response to the **Federal Register** notice of May 14, 1998 (63 FR 26795): Detroit Diesel Corporation (DDC), Engelhard Corporation (Engelhard), and Chicago Transit Authority (CTA). DDC is the original manufacturer of the engines to which the CCT kit applies, and also supplies equipment certified to meet the 0.10 g/bhp-hr PM standard under the urban bus program for these engines. Engelhard has certified several kits under the Urban Bus Rebuild Program, including the ETX–2002™ Emissions Rebuild Kit applicable to 1988 through 1998 model year 6V92TA DDEC II engines. Certification of the ETX kit triggers the requirement on affected operators to use equipment certified to the 0.10 g/bhp-hr standard when 1988–1993 DDC DDEC II engines are rebuilt or replaced after March 22, 1999. (This is discussed further below in section V.) CTA is a transit operator of an urban bus fleet in an area to which the Urban Bus Rebuild Requirements apply.

DDC states that it is concerned with the equipment which is proposed to be certified because it not only involves the addition of an after-treatment device, but it modifies many of the critical internal engine components and creates combinations of internal components for which DDC has no experience. Engelhard states that it has significant concerns with the ability of the CCT to meet the 0.10 g/bhp-hr standard, and that the kit should not be certified until JM has provided sufficient data and valid responses to all questions and concerns. As discussed below in this section relative to prominent comments, EPA believes that JM has satisfied the requirements necessary for certification of the CCT kit for applicable DDEC engines.

Comments and issues generally fell into the following categories: (a) Equipment identification and specification; (b) engine rating; (c) emissions and testing; (d) durability and in-service concerns; (e) installation and maintenance instructions; (f) catalyst checking procedure; (g) components of the kit; and, (h) life cycle cost. These are discussed below. Copies of the complete comments and other documentation are available in the public docket, which is located at the address stated above.

a. Equipment Identification and Specification

DDC comments that it is their understanding that the purpose of the offset key is to advance fuel injection timing at all operating conditions compared to the standard DDC timing. However, based on the description in the JM installation guide, DDC believes that the timing offset will be in the retard direction. In response, JM states that the procedure as written will accomplish the intent to retard the injection timing.

DDC also notes several other clarifications relating to the JM. DDC notes that JM application erroneously states that the original coach engine cylinder liner had a 0.95 inch inlet port. Actually, the 0.95 inch liner was used only for the 1985 through 1989 model years. DDC also notes that DDC does not supply the special engine camshafts or 0.015 offset key as stated in the application.

In response, JM revises its statements to clarify these points consistent with DDC statements. Additionally, JM states that the positioning of the offset key is to retard, not advance, the fuel injection timing.

Engelhard comments that the JM certification engine was installed with DDC's ECM program number 483, which is a program that DDC developed for certain engines originally equipped with exhaust traps and subsequently converted to catalytic converter/mufflers under an agreement with EPA in 1994. Engelhard notes that some of the programs specified by JM for the CCT kit are not the same type of program as the one used for certification. All of the programs in the CCT kit parts list for use with diesel fuel #2 are ''trap replacement'' programs, but the programs for diesel fuel #1 are ''standard'' ECM programs. (EPA notes that the ''standard'' programs to which Engelhard refers are DDC programs with which the 1991 through 1993 model year 6V92TA urban bus engine families were certified under EPA's new engine certification program.) Engelhard states that additional information and data are need to justify the request for certification using ECM programs for diesel fuel #1. Engelhard states that the CCT kit, without additional information, should not be certified for diesel fuel #1. Also, since the certification engines used an ECM program for trap replacement, all versions of the CCT kit

must use that type of program to meet 0.10 g/bhp-hr.

In its letter dated September 28, JM presents emissions data from testing the CCT kit using diesel fuel #1 with an ECM program that DDC developed for use with 1991 through 1993 6V92TA DDEC II coach engines operating on diesel fuel #1. That data acceptably demonstrates compliance with the 0.10 g/bhp-hr PM standard. The data is listed in summary Table 1.

b. Engine Rating

DDC comments that the CCT kit appears to be incompletely specified, because JM did not specify ECM programs that are compatible with the original DDC 253 horsepower (hp) ''low-torque'' rating. DDC said that this could be a significant problem for some bus installations where the increase torque would exceed drive-line or cooling system capabilities.

In its letter to EPA dated August 19, 1998, JM noted that the original certification package was for the high-torque only, stated that its intent is to offer CCT kits for both high and low torque ratings, and provided an updated list of ECM programs for the kit which provides for both low and high torque versions of the 253 hp rating. EPA is certifying these because the certification test data provided by JM is determined, at least on torque rating, to be a worse-case test engine.

c. Emissions and Testing

DDC comments that the certification testing presented by JM does not represent worst case PM emissions because the test engine was not set to the worst-case idle speed. DDC states that the effects of turbocharger lag become more significant and FTP particulate emissions increase as idle speed is reduced, and that certification testing should be conducted with the minimum idle speed setting in order to demonstrate ''worst case'' PM emissions. The JM application shows that the certification testing was conducted with the engine idle speed set to 700 rpm, even though DDC originally certified and routinely supplied 6V92TA DDEC engines with a minimum idle speed of 600 rpm. DDC states that certification should be limited to engines with idle speed settings of 700 rpm and above unless JM provides FTP data demonstrating compliance with the 0.10 g/bhp-hr standard when tested with idle speed settings below 700 rpm.

In its letter dated September 2, 1998, responding to concerns about the idle speed, JM states that use of the 700 rpm idle setting for its certification testing was an oversight. When the ECM program was downloaded into the ECM module, the idle setting was not reset to 600 rpm, but rather it remained at 700 rpm. JM conducted additional testing, discussed further below, to determine whether the idle speed would affect the PM level.

The idle speed specified in DDC's application for new engine certification for the 1991 through 1993 model year 6V92TA DDEC II engines is listed as 600 rpm (minimum). Additionally, EPA notes that idle speed on DDEC engines can be programmed in the field with a DDEC basic code reader. No data has been provided to show how significant idle speed is with respect to particulate emissions, what fraction of new engines were supplied with the 600 rpm idle, or how prevalent the 600 rpm idle is in-service. It is not clear that there will not be a significant PM difference resulting from idle settings of 600 and 700 rpm, and EPA believes that the JM test condition with idle speed set to 700 rpm is reasonably close to 600 rpm. The idle speed of 700 rpm also complies with the DDC specification. In its September 2 letter, JM presents data from additional transient testing that it conducted to determine whether the PM level would be affected by the 600 versus 700 rpm idle setting. While there are concerns with details of this testing, it indicates minimal to no emissions impact resulting from a change from 600 to 700 idle rpm. For the above reasons, EPA is not limiting certification to idle settings of 700 rpm and above, and is not requiring JM to retest at a lower idle rpm.

Engelhard comments that the JM baseline engine, showing a PM level of 0.19 g/bhp-hr, is unrepresentative of the typical performance for a 1991 6V92TA DDEC engine, and provides emissions from one DDC test and several Engelhard tests with PM results between 0.22 and 0.28 g/bhp-hr. Engelhard questions whether the components utilized in the certification test engine provided superior emissions performance compared to typical parts. The low baseline emissions raises concerns about the CCT kit's ability to meet the 0.10 g/bhp-hr standard when used with typical engine parts. Engelhard states that JM needs to provide a complete explanation of the rebuild process, and submit test data on a baseline engine that has normal PM emissions.

In response, JM states that no exceptional steps were taken in rebuilding this baseline engine. No exceptional steps were taken in rebuilding the engine—it was rebuilt using standard DDC engine parts in accordance with recommended DDC rebuild procedures. Some of the parts used in the certification test engine were also used in the baseline test engine because the parts are common to both the CCT kit and typical 1992 DDEC engine. Further, JM notes that there can be tremendous variations in emissions from engine to engine. As JM states in its letter to EPA dated September 28, 1998, after the certification test the test engine had the cylinder kits, camshafts, ECM program and offset key changed to the baseline configuration for the baseline test. The baseline test engine shared fuel injectors, turbocharger, blower and bypass valve, and cylinder heads, with the certification test engine.

EPA has not determined that the JM baseline PM emission level is atypically low. Other data developed for use in certifying equipment under the urban bus program has shown PM emissions from DDEC II engines that compare with the JM baseline. The 6V92TA DDEC II engine tested at Southwest Research Institute (SwRI) for the National Biodiesel Board on August 24, 1994 (test BL–2D) showed baseline engine PM emissions of 0.20 g/bhp-hr. The 6V92TA DDEC II engine tested at SwRI for Engine Control Systems on October 25, 1995 (test E1025) showed baseline emissions of 0.18 g/bhp-hr. EPA also notes that the DDC data, cited by Engelhard having PM emissions of 0.218 g/bhp-hr (provided by DDC for certification of DDC's 25 percent DDEC II upgrade kit) was conducted using diesel #2 fuel having sulfur content between 0.08 and 0.12 weight percent. On the other hand, testing for the urban bus program is required pursuant to 85.1406 to use diesel fuel having a maximum of 0.05 weight percent sulfur. While we have not quantified the effect of sulfur reduction in diesel fuel on PM emissions from 6V92TA DDEC engines, in the final rule reducing the sulfur level of diesel fuel (55 FR 34121; August 21, 1990), EPA notes that reductions in fuel sulfur result in small reductions in engine-out particulate. Additionally, as shown in Table 1 above, the baseline 1988 model year 6V92TA DDEC II engine tested at SwRI for Johnson Matthey on March 5, 1997 showed PM emissions of 0.15 g/bhp-hr.

In addition, in its letter to EPA dated September 28, 1998 JM provides emission data in support of its demonstration that the CCT kit will comply with the 0.10 g/bhp-hr standard, albeit not the 5.0 g/bhp-hr NO_X standard. This data indicates compliance with the 0.10 g/bhp-hr PM standard on an engine equipped with offset key 0.010 inch (not the specification for the offset key of the

certified CCT kit of today's **Federal Register** notice) and emitting 5.8 g/bhp-hr NO_X.

The JM baseline data is lower than that produced by Engelhard. However, EPA does not conclude, from the available data, that the JM baseline is atypically low or unrepresentative. If it is atypically low, then it is not clear whether it is the result of test-to-test variability, and/or engine-to-engine variability. The available baseline test data are limited in number. If the JM baseline test is low, then the level might be attributable to the cylinder liners that were changed before the test conducted on the JM 1991 model year baseline engine. EPA is not denying certification because of the PM level of the JM baseline engine.

EPA notes that the JM baseline testing was conducted after the certification testing and, while the data is low compared with the Engelhard baseline tests, there is no regulatory requirement to provide baseline data to demonstrate compliance with the 0.10 g/bhp-hr standard when life cycle cost information is not provided. The availability of the baseline data conducted for JM and others, may benefit bus operators that are interested in the fuel consumption impact of the certified equipment. EPA appreciates that JM conducted and provided the baseline data, when it may not have been required in accordance with the regulations.

Engelhard notes that the CCT kit operates on the principle of camshaft induced EGR and injection timing advance, that EPA is currently investigating electronically controlled engines for increased ''off-cycle'' NO_X emissions, and asks whether the JM camshafts and injection timing advance will irritate this situation. In response, JM states that the CCT kit uses mechanical means to reduce NO_X and PM along with specific ECM programming, and the PM level is then further reduced by the CEM II catalytic muffler. JM points out that the offset key retards the injection timing for reducing NO_X emissions and, if there is an effect, it will be to reduce off-cycle NO_X emissions. EPA believes that, generally speaking, injection retard would tend to decrease NO_X emissions.

Engelhard comments that the converter muffler for the CCT kit had a reading of over 4 inches of mercury during a smoke test, and asks whether that level is typical for a JM converter muffler.

JM states that the CEM and CEM II catalytic exhaust mufflers are designed to function with the DDC specified back-pressure limits during normal transit operation. The exhaust back-pressure reading that Engelhard refers to during the smoke test is a function of the test itself, and has no relation to the back-pressure observed during normal transit bus operation.

EPA notes that the smoke test should be conducted in accordance with 40 CFR Part 86 Subpart I. Section 86.884–8(c) of that subpart states: ''The smoke exhaust system shall present an exhaust back-pressure within ± 0.2 inch Hg of the upper limit at maximum rated horsepower, as established by the engine manufacturer in his sales and service literature for vehicle application.'' EPA believes that the test data presented by JM for certification of the CCT kit was collected under a worst case test condition for smoke generation.

d. Durability and In-service Concerns

DDC comments that there is insufficient information in the JM notification to assess performance and durability impacts. DDC notes that the CCT kit includes proprietary camshafts that reduce engine airflow and cylinder scavenging, 15:1 compression ratio piston domes instead of the 17:1 domes used by DDC, and an offset key that modifies the injection timing compared with the DDC design. DDC has no experience with the kit's combination of components and that it represents a substantial departure from DDC's original design which could have significant effects on engine performance and durability. DDC refers to the possibility of reduced engine airflow and cylinder scavenging, raised cylinder temperatures, degraded cylinder component life, difficult cold starting, and increased cold smoke and noise emissions. DDC believes that EPA should consider performance and durability before certifying equipment.

Engelhard also comments that JM has specified a piston dome that provides 15:1 compression ratio, and asks whether JM has conducted testing to verify that a 2-point reduction in compression ratio will not cause starting and operational problems in cold weather.

In response, JM notes that it has had a CCT kit in trial on a 6V92 DDEC bus in New York state since June 1997 with no problems, including no cold weather starting problems. Also, JM points out that the same type of system (proprietary cams, specified engine parts, and CEM catalytic muffler) has already been certified by EPA for 6V92 MUI engines, and a significant number of the kits have been installed, are running well, and have operated during this past winter in cold weather with no cold start problems. Based on this record, JM states that performance and durability are not issues.

EPA notes that the urban bus retrofit/rebuild regulations do not require a durability demonstration as a condition of certification. Rather, equipment certifiers, including Engelhard, are required pursuant to 40 CFR Section 85.1409 to provide a 100,000 mile equipment defect warranty and a 150,000 mile emissions performance warranty. The available information does not indicate a performance or durability concern with the equipment certified in today's notice.

CTA comments that durability problems are a big concern to it, and states that this issue must be addressed prior to certification, because of ''excessive'' failures of certified catalytic converters on retrofit/rebuilt engines. This is especially important when internal engine components are replaced. CTA states that there are no requirements for durability, and notes EPA's authority to decertify equipment that fail to meet program requirements. However, CTA states that this does not address the concerns of transit operators that have spent substantial amounts of money on kits, and would not get reimbursed for the cost of ''decertified'' kits.

CTA also has a couple comments about warranties. First, the warranty does not cover the labor and consequential damage due to use of a kit. CTA believes that warranty repair is not part of normal maintenance and should not be the responsibility of the transit operator. Second, CTA has had ''negative'' experience with warranty on certified catalytic converters—failures are being replaced with brand new units that are warranted only for the balance of the warranty period for the original unit.

EPA notes that, while the program does not require a demonstration of durability, JM has provided information on its in-service experience with the CCT kit. As discussed in a previous paragraph, JM has had a DDEC CCT kit in trial on a bus in New York State and a significant number of MUI CCT kits have been installed. JM states that performance and durability are not issues.

Additionally, CTA is incorrect in presuming that the program has no durability requirements. The program regulations at 40 CFR 85.1409 require that certifiers provide both an emissions defect warranty for 100,000 miles, and an emissions performance warranty for 150,000 miles. Under the performance warranty, certifiers are responsible for the in-use performance of their

equipment for 150,000 miles. (Additional discussion on the emissions performance warranty can be found in the preamble to the final rule of April 21, 1993 at 58 FR 21359.) Under the defect warranty, certifiers are responsible for replacing defective parts of a certified kit, free of charge. CTA has not identified any problematic catalytic converters or any situations in which warranty claims were denied by an equipment certifier.

EPA appreciates that transit operators are concerned with the durability of retrofit/rebuild equipment. When internal engines components are supplied as part of a certified kit, those parts are covered by the defect warranty for 100,000 miles.

As noted previously, the urban bus rebuild regulations do not require an in-service durability demonstration as a condition of certification. Rather, the regulations require equipment certifiers, including Johnson Matthey, to warranty their equipment. EPA believes that equipment suppliers will evaluate the durability of their equipment in order to minimize their liability resulting from the emissions defect and performance warranties. The available information does not indicate a performance or durability concern with the equipment certified in today's notice, and therefore, does not provide sufficient basis to deny certification on these grounds. EPA will continue to monitor problems with this, and other certified equipment, and encourages transit operators to provide specific detailed information regarding excessive in-service problems with certified equipment.

CTA is correct that the defect warranty does not cover labor and consequential damage to use of a kit. As noted in the preamble to the final rule (April 21, 1993; 58 FR 21381), transit operators are responsible for proper installation and maintenance of certified equipment, and are responsible for the emissions performance of equipment operated beyond the 150,000 miles emissions warranty period. Additionally, as CTA has noted, the program warranty does not require coverage of ''secondary'' or ''consequential'' damage due to use of certified equipment.

With regard to CTA's concern with an extended warranty for equipment replaced under warranty, the program requires that coverage extend for the warranty period of the initially-purchased equipment. There is no program requirement that a warranty period be extended beyond the period of the initially-purchased kit, even when an original unit is replaced with a brand-new one under the warranty. In other words, only one warranty period accompanies each kit purchase, regardless of how many times parts may be replaced under that warranty.

JM responds that it takes its warranty obligations very seriously, and is their practice to work with any transit that has a warranty claim, to identify and correct any problems with Johnson Matthey-supplied equipment.

CTA notes that they have no way to determine whether a catalyst is continuing to function as designed and, in some cases involving warranty, CTA suspects the catalyst has lost ability to reduce emissions due to the physical deterioration of the catalyst.

EPA currently knows of no method that is readily available to transit operators for accurately testing PM performance of a catalyst in the field. However, to the extent a catalyst is mechanically clogging, use of the defect warranty may be an appropriate remedy.

e. Installation and Maintenance Instructions

Engelhard notes that JM requires that a DDEC data reader be used to determine the current ECM program, and asks several questions: (1) Do transits have the data reader; (2) how much will it cost; (3) is JM required to provide the ECM re-programming; (4) how will JM verify that the correct program is used; (5) is the cost of the re-programming included with the CCT kit price; and, (6) why does JM specify ''non-trap'' (that is, ''standard'') ECM programs for use with diesel fuel #1 when a ''trap-replacement'' program was used for certification?

JM responds that if a transit operator does not have a data reader, then JM authorized distributors have the capability to read the ECM program number. The proper ECM program will be downloaded by authorized DDC distributors. The proper ECM number will be confirmed by submittal of the warranty card for the CCT kit.

EPA notes that JM will include ECM reprogramming, if it is necessary, with the purchase price of the kit. As Engelhard notes, JM specifies the particular ECM programs to be used with diesel fuel #1. The specified programs are consistent with what JM tested to demonstrate compliance with the 0.10 g/bhp-hr standard when diesel fuel #1 is used.

Additionally, EPA has authority to conduct audits of transit operators to determine compliance with the Urban Bus Rebuild Requirements. During such audits, EPA has authority to review actual bus engines, documentation, and records to determine whether certified kits have been properly installed in bus engines. EPA may check ECMs to verify whether or not the correct ECM program is installed.

Engelhard comments that the JM application lists the kit as applicable to DDEC 1 engines. Engelhard understands that the DDEC I version differs significantly from the DDEC II and will require significant changes to the ECM and sensors for upgrading to a DDEC II configuration. JM must provide full explanation of the changes required to upgrade this engine, plus life cycle cost information.

EPA notes that life cycle cost information is required only when equipment is certified as a trigger of a particular emissions standard. Because JM does not intend to trigger the 0.10 g/bhp-hr standard, life cycle cost information is not required. A list of parts required for conversion of DDEC I engines to DDEC II is provided by JM in its letter to EPA dated September 28.

Engelhard provided multiple comments concerning JM's Installation Guidelines: First, Engelhard states several questions relating to identification marks that JM places on parts of the CCT kit. Engelhard asks where the marks on the parts are located, whether the marks will wear off, whether the warranty will be voided if the marks wear off, and, how JM will verify that parts have the mark.

In response, JM states that their identification mark is a non-intrusive, harmless mark that is placed on a non-critical surface. The intent of marking the parts is to ensure compliance with use of all the correct parts and to minimize warranty issues regarding use of the parts. Piston rings are marked with an indelible paint, while other parts are etched. The marks do not come off during normal operation. EPA notes that the program regulations are silent with regard to marking parts of a kit, but that the bus operator is responsible for the correct installation of certified kits.

Second, Engelhard comments that the JM Installation Guide states that piston gauge J–2539–A cannot be used with the CCT kit, and asks which gauge should be used.

In response, JM states that neither DDC nor Kent Moore supply a gauge to identify the 15:1 compression-ratio pistons of the CCT kit. The statement in the Installation Guide is intended as a caution to installers against use of piston gauge J–2539–A with the 15:1 pistons, because that gauge is limited to identifying 17:1 or 19:1 pistons. If for any reason the engine is being rebuilt, the 15:1 mark on the piston crown would be covered with soot, and use of the piston gauge J–2539–A would be misleading.

Finally, Engelhard questions why the Installation guide requires that an installer ''thoroughly inspect the camshaft for any contamination in the passage through the cam''. JM needs to provide guidance for this procedure and an estimation of how long it will take.

JM responds that, while it does not expect any contamination to be present, issues with handling or storage could result in contamination. The inspection will take a few minutes and, if cleaning is necessary, it can be done in a few minutes with standard cleaners.

f. Catalyst Checking Procedure

DDC opposes the procedure recommended by JM for determining whether the catalyst unit requires cleaning.

JM's instructions involve operating the engine at full load, wide open throttle or at full stall, and measuring the exhaust pressure at the pressure tap located on the manifold immediately after the engine. In the CEM II clean-out procedure it is noted that a pressure measurement gage should be installed ''in the pressure tap located on the inlet side of the CEM II''.

DDC, however, contends that back-pressure should be measured just downstream of the turbocharger outlet. DDC states that its back-pressure limits apply at all engine operating conditions and should be checked at the maximum exhaust flow condition (rated engine speed and full load). DDC states that neither of JM's alternative test conditions (full load, wide open throttle or, full stall) are adequate. ''Full load, wide open throttle'' is an ambiguous condition, and ''full stall'' is inadequate because it does not produce a maximum exhaust flow condition. An exhaust system which just meets DDC's specified back pressure limit at WOT, no load (which can be how the JM procedure is conducted) will likely exceed the DDC limit over a large portion of the engine speed/load operating map and thus would be in violation of DDC's guidelines. Excessive back pressure results in fuel economy and power losses, and raises cylinder temperatures and increases soot build-up in the lubricating oil. These effects can reduce engine life.

JM states that it stands by its CEM II back-pressure procedure, and notes that it is the same procedure that DDC recommends using in its own 0.10 DDEC kit.

EPA is not requiring JM to revise the screening procedure, for several reasons. First, and in general, the program regulations do not require any specific check procedures for any components of certified kits. Second, EPA notes that the maximum exhaust back pressure specification for several engine calibrations (codes) of the 6V92TA DDEC II engines is 4.0 inches of mercury (as specified in DDC's application for certification of 1991 and 1992 6V92TA DDEC engines under EPA's new engine certification program), and that the back pressure specification for the JM procedure is 3.0 inches of mercury. Third, the JM procedure is intended as a ''screen'' to determine whether a catalyst muffler needs cleaning, not to measure exhaust back pressure for comparison with DDC's maximum specifications. For additional discussion of the issue, refer to page 12177 of the **Federal Register** notice describing certification of Engelhard's ETX kit for 6V92TA MUI engines (62 FR 12166; March 14, 1997.

Any future information provided by interested parties regarding the impacts of certified equipment on exhaust back pressure would be taken under consideration. EPA appreciates that there may room for improvement in maintenance procedures of equipment certified under this program. Such concerns, in general, can also occur with procedures relating to new engines. EPA encourages all equipment certifiers to issue revised check procedures when appropriate. If JM determines that another check is appropriate, or if EPA becomes aware that back pressure is exceeding manufacturer limits on in-use buses, then JM should revise such procedures. Pursuant to 40 CFR Section 85.1413, EPA has authority to decertify equipment that does not comply with the requirements of the regulations.

g. Components of the Kit

CTA notes that the CCT kit replaces all ''emissions-related'' parts, many of which are standard DDC parts, and asks whether these parts are required to be purchased through JM, or whether the standard parts can be purchased elsewhere.

As described above, JM requested to supply the CCT kit to installers under different supply options. EPA approves two options of supply, in order to provide as much flexibility to transit operators as possible while assuring emissions reductions. At JM's option, either option can be made available, because this certification does not trigger program requirements. For the first supply option, transit operators purchase the entire CCT kit from JM or its distributors. For the second option, transit operators purchase all of the unique parts of the kit from JM, and acquire the non-unique DDC engine parts specified by JM through sources of its own choosing. Both supply options must provide all parts which are unique to a standard rebuild for the particular engine to be rebuilt. Parts which would typically be acquired by an installer for a standard rebuild of a particular model year engine are not required to be part of the CCT kit under supply option 2. The specified parts must be acquired by the transit operator.

Aftermarket parts are not permitted for the specified parts of the CCT kit under the certification described today. Because the certification testing was conducted on an engine equipped with DDC components, EPA has no assurance that an engine equipped with other parts can achieve the 0.10 g/bhp-hr PM standard. JM is required to provide the applicable 100,000 mile emissions defect warranty and the 150,000 mile emissions performance warranty for all parts of the kit which it supplies to the transit operator.

The CCT kit includes a list of the specific engine rebuild parts that are required to be used upon engine rebuild with the CCT kit. EPA notes that in accordance with 85.1404, operators are required to maintain records of all parts used in rebuilds. Using incorrect components with the CCT kit at the time of kit installation can be considered as failure to install a certified kit under the urban bus rebuild requirements, and subject the operator to the significant penalties provided by the regulation.

h. Life Cycle Cost

Engelhard comments that JM has not provided a life cycle cost analysis to justify their certification. EPA notes that life cycle cost information is not required for certification of equipment which would not trigger a standard.

Chicago Transit Authority (CTA) understands that certification of the CCT kit will not trigger program requirements, but comments that life cycle costs are very important. CTA asks what the kit will cost.

JM responds that it currently is not able to provide a list price for the DDEC CCT kit, but will provide CTA with a list price as soon as possible.

CTA asks whether data is available on the emissions, fuel economy, and exhaust back-pressure for the 253 Hp rating. Back-pressure, fuel economy, and oil life appear to be affected by some catalytic converter installations which can affect engine life and operating costs.

In response, JM states that its certification, based on testing the highest power rating (277 Hp) on diesel fuel #2, covers 253 Hp engines and both diesel fuels #1 and #2. EPA notes that JM provided data from testing using

diesel fuel #1, but has not provided any data on the 253 Hp rating.

Engelhard comments that JM does not include information on the fuel economy impact of installing the CCT kit, and that this type of information is essential for a transit operator to make a complete evaluation of the kit. In analysis that Engelhard performs, it notes that the CCT kit uses 0.489 pounds of fuel per brake-horsepower-hour (lb/bhp-hr), compared to 0.483 lb/bhp-hr for a 1991 model year baseline engine tested by JM. This is a 1.2 percent fuel economy penalty for 1991–1993 DDEC engines. Furthermore, JM's baseline data for a 1988 federal engine shows a fuel consumption of 0.459 lb/bhp-hr, which translates into a 6.5 percent fuel penalty if the CCT kit is installed on a 1988 to 1990 engine. Engelhard also asks about the fuel consumption impact of the CCT kit on DDEC 1 engines.

In response, JM states that it has not applied as a trigger technology for the 0.10 g/bhp-hr standard. JM notes that it has placed in the public docket, baseline data for 1991–1993 and 1988–1990 model year engines.

In general, EPA agrees that the impact of a kit on fuel consumption would be of interest to transit operators. However, fuel consumption data is not required for equipment which would not trigger a standard. The availability of the baseline data conducted for JM and others, as discussed in a section above, may benefit bus operators that are interested in the fuel consumption impact of the certified equipment. EPA appreciates that JM conducted and provided the baseline data.

III. California Engines

The NO_X emission standard for new engine certification applicable to 1988 through 1990 model year engines sold in the State of California is 6.0 g/bhp-hr. For 1991 through 1993, the standard is 5.0 g/bhp-hr. The emissions testing presented by Johnson Matthey demonstrate a NO_X emissions level that complies with the 5.0 g/bhp-hr standard. Therefore, today's description of the CCT kit for DDEC II engines applies to engines certified to meet California emissions standards, subject to the conditions discussed below.

The equipment certified today may require additional review by the California Air Resources Board (CARB) before use in the State of California. EPA recognizes that special situations may exist in California that are reflected in the unique emissions standards, engine calibrations, and fuel specifications of the State. While requirements of the federal urban bus program apply to several metropolitan areas in California, EPA understands the view of CARB that equipment certified under the urban bus program, to be used in California, must be provided with an executive order exempting it from the anti-tampering prohibitions of that State. Parties interested in additional information should contact the Aftermarket Part Section of CARB, at (626) 575–6848.

IV. Certification and Conditional Certification

EPA has reviewed this notification, along with comments received from interested parties, and finds the equipment described in this notification of intent to certify:

(1) Complies with a particulate matter emissions standard of 0.10 g/bhp-hr, without causing the applicable engine families to exceed other applicable emission requirements, subject to the conditions discussed below;

(2) Will not cause an unreasonable risk to the public health, welfare or safety;

(3) Will not result in any additional range of parameter adjustability; and

(4) Meets other requirements necessary for certification under the Urban Bus Rebuild Requirements (40 CFR Sections 85.1401 through 85.1415).

With the following conditions, EPA hereby certifies this equipment for use in the Urban Bus Retrofit/Rebuild Program. As noted above, the equipment being certified today includes for some engines, an upgraded control program for the electronic control module. EPA has recently become concerned that many electronically controlled engines may have been equipped by the original manufacturers with strategies designed to decrease fuel consumption during certain driving modes not substantially included in the federal test procedure, with the effect of substantially increasing NO_X during these modes. Such electronic control strategies have the potential to be ''defeat devices'' as defined at 40 CFR 86.094–22, and thus may violate 40 CFR 85.1406 and 85.1408 if included in an urban bus retrofit application. Most of the upgraded control programs used for the CCT kit must therefore be reviewed for such violations. As a result, certification of the CCT kit, as it applies to the following engines is conditioned upon Johnson Matthey demonstrating by January 1, 1999 that any replacement engine control module (ECM) or ECM program used in conjunction with the certified kit will not adversely impact the emissions of NO_X in comparison to the ECM or ECM program that is being replaced under conditions which may reasonably be expected to be encountered in normal vehicle operation and use unless such conditions are substantially included in the Federal emission test procedure. Certification is conditional as it applies to all applicable engines of model years 1985 through 1990, and all applicable engines of model years 1991 through 1993 that are not equipped with ECM programs #259 through #264 for kit operation on diesel fuel #1.

The equipment, the CCT™ Upgrade Kit, may be used immediately by transit operators in compliance with requirements of this program, subject to the above condition. Unconditional certification is provided for the CCT kit as it is applied to 1991 through 1993 model year engines that are equipped with ECM programs #259, 260, 261, 262, 263, or 264, for operation on diesel fuel #1 after kit installation.

V. Transit Operator Responsibilities

In a **Federal Register** notice dated September 21, 1998 (63 FR 50225), EPA announced certification of a retrofit/rebuild kit supplied by the Engelhard Corporation (the ETX™ kit for DDEC engines). That certification triggers the 0.10 g/bhp-hr PM standard for 1988 through 1993 model year DDC 6V92TA DDEC model engines, which means that urban bus operators using compliance program 1 must use equipment certified to the 0.10 g/bhp-hr standard when rebuilding or replacing these engines after March 21, 1999.

Today's **Federal Register** notice announces certification of the Johnson Matthey CCT Upgrade kit, when properly applied, as meeting the 0.10 g/bhp-hr particulate matter standard of the Urban Bus Rebuild Program. Affected urban bus operators who choose to comply with compliance program 1 are required to use this, or other equipment that is certified to meet the 0.10 g/bhp-hr particulate matter standard for 1988 through 1993 model year DDC 6V92TA DDEC model engines which are rebuilt or replaced on or after March 22, 1999, subject to the condition of Section IV.

Urban bus operators who choose to comply with compliance program 2 may use the CCT equipment, and those that use this equipment may claim the certification level from Table 3 when calculating their Fleet Level Attained (FLA), subject to the condition of Section IV. Under program 2, an operator must use sufficient certified equipment so that its actual fleet emission level complies with the target level for its fleet.

Urban bus operators must be aware of their responsibility for maintenance of

records pursuant to 40 CFR Sections 85.1403 through 85.1404. The CCT kit may not include, depending upon the supply option selected and the particular applicable engine, certain emissions-related parts that are required to complete the CCT kit. As stated in the program regulations (40 CFR 85.1401 through 85.1415), operators should maintain records for each engine in their fleet to demonstrate that they are in compliance with the Urban Bus Rebuild Requirements beginning on January 1, 1995. These records include purchase records, receipts, and part numbers for the parts and components used in the rebuilding of urban bus engines. Urban bus operators must be able to demonstrate that all parts used in the rebuilding of engines are in compliance with program requirements. In other words, urban bus operators must be able to demonstrate that all required components of the kit described in today's **Federal Register** notice are installed on applicable engines.

Dated: November 24, 1998.

Robert Perciasepe,

Assistant Administrator for Air and Radiation.

[FR Doc. 98–32071 Filed 12–2–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6197–2]

Common Sense Initiative Council, (CSIC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of Public Advisory CSI Council Meeting: open meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Pub. L. 92–463, notice is hereby given that the CSI Council will meet on the date and time described below. The meeting is open to the public. Seating at the meeting will be on a first-come basis and limited time will be provided for public comment. For further information concerning this meeting, please contact the individual listed with the announcement below.

Common Sense Initiative Council Meeting—December 17, 1998

The final meeting of the CSI Council will be held on December 17, 1998, at the Sheraton Crystal City, 1800 Jefferson Davis Highway, Arlington, VA 22202. The telephone numbers are 1–800–862–7666, or 703–486–1111.

The meeting will be held from 8:30 a.m. to approximately 5:30 p.m. EST. The agenda will include updates on the Sector-based Approach to Environmental Protection Action Plan, Stakeholder Involvement Action Plan, Data Quality Action Plan, and Data Gaps Strategy. The Council will also consider three recommendations from the Computers and Electronics Sector Subcommittee regarding Support for Constructive Engagement; Worker Health; and Zero Discharge. An independent contractor will present a preliminary review of CSI lessons learned.

For further information concerning this Common Sense Initiative Council meeting, contact Kathleen Bailey, Designated Federal Officer, on (202) 260–7417, or E-mail: bailey.kathleen@epa.gov.

Inspection of Subcommittee Documents

Documents relating to the above topics will be publicly available at the meeting. Thereafter, these documents and the minutes of the meeting will be available for public inspection in room 3802M of EPA Headquarters, 401 M Street, SW, Washington, DC 20460, telephone number 202–260–7417. Common Sense Initiative information can be accessed electronically on our web site at http.//www.epa.gov/commonsense.

Dated: November 24, 1998.

Kathleen Bailey,

Designated Federal Officer.

[FR Doc. 98–32203 Filed 12–2–98; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[FCC 98–295]

Preemption of State or Local Statutes; Suggested Guidelines for Petitions for Ruling Under Section 253 of the Communications Act

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Commission has released a Public Notice which suggests various procedural guidelines for filing petitions for Commission action pursuant to section 253 of the Communications Act. Section 253 requires the Commission, subject to enumerated exceptions, to preempt the enforcement of any state or local statute, regulation, or legal requirement that prohibits or has the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service. These suggested guidelines are designed to assist petitioners and commenters in preparing their submissions to the agency.

FOR FURTHER INFORMATION CONTACT: Jordan Goldstein, Common Carrier Bureau, (202) 418–1500.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

OMB Control Number: 3060–0859.

Expiration Date: 5/31/99.

Title: Suggested Guidelines for Petitions for Ruling under Section 253 of the Communications Act.

Respondents: Business or other for-profit; federal government; and state, local or tribal government.

Public reporting burden for the collection of information is estimated as follows:

Information collection	No. of respondents (approx.)	Annual hour burden per response	Total annual burden
Filing of petitions for preemption	20	125	2,500
Submission of written comments on petitions	60	63	3,780

Total Annual Burden: 6,280.

Frequency of Response: On occasion.

Estimated Costs per Respondent: $0.

Needs and Uses: The Commission released a Public Notice (FCC 98–295) which suggests various procedural guidelines relating to the Commission's processing of petitions for preemption pursuant to section 253 of the Communications Act of 1934, as amended. The Commission will use the information to discharge its statutory mandate relating to the preemption of state or local statutes or other state or local legal requirements.

Synopsis of Public Notice

This Public Notice suggests procedural guidelines for filing petitions for Commission action pursuant to section 253 of the Communications Act of 1934, as amended 47 U.S.C. 253 (Act). These suggested guidelines are designed to assist petitioners and commenters in preparing their submissions to the agency. Other than the mechanical filing requirements described below in Section D, however, these guidelines are not intended to limit the content or form of information that petitioners or commenters submit.

A. Background

Section 253 requires the Commission, subject to enumerated exceptions, to preempt the enforcement of any state or local statute, regulation, or legal requirement that prohibits or has the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service. To date, the Commission has received over 25 petitions seeking preemption under section 253.

These petitions involve not only competition issues but also the relationships among the federal, state and local levels of government. In order to ensure that, on the one hand, competition is not unduly delayed by requirements that retard vigorous market entry, while, on the other hand, the vital role of state and local authorities in advancing the interests of their citizens is acknowledged, the Commission must undertake full and expeditious examination of the issues raised in each petition.

Section 253 petitions necessarily involve state or local statutes, regulations, ordinances, or other legal requirements that likely are unfamiliar to the Commission. In order to render a timely and informed decision, petitioners and commenters should submit relevant information sufficient to describe the legal regime involved in the controversy and to establish the factual basis necessary for decision. Factual assertions should be supported by credible evidence, including affidavits, and, where appropriate, studies or other descriptions of the economic effects of the legal requirement that is the subject of the petition.

In preparing their submissions, parties should address as appropriate all parts of section 253. In particular, parties should first describe whether the challenged requirement falls within the proscription of section 253(a); if it does, parties should describe whether the requirement nevertheless is permissible under other sections of the statute, specifically sections 253(b) and (c). Lastly, parties should submit information on whether and how the Commission could tailor a decision to preempt the enforcement of an offending legal requirement only ''to the extent necessary to correct such violation or inconsistency'' as required by section 253(d).

B. Content of Petitions and Replies

The Commission realizes that it cannot anticipate every type of section 253 preemption request that may be filed. However, we identify below specific issues that we suggest petitioners should include when addressing whether a legal requirement violates the statute. While not all questions will be relevant to all petitions, the Commission suggests that section 253 petitions incorporate answers to the following questions, as applicable, in order to establish a complete factual record relating to section 253(a):

(1) What is the statute, regulation, ordinance, or legal requirement that is being challenged? Please provide a copy. Identify and describe any other pending court or state regulatory actions relating to the enforceability of the challenged statute, regulation, or legal requirement.

(2) What specific telecommunications service or services is the petitioner prohibited or effectively prohibited from providing?

(a) What other specific entities, if any, are prohibited or effectively prohibited from providing the service?

(b) What group or groups of actual or potential customers are being denied access to the service or services?

(3) What are the factual circumstances that cause the petitioner to be denied the ability to offer the relevant telecommunications service or services?

(a) Does the statute, regulation, ordinance, or legal requirement categorically ban provision of a telecommunications service?

(b) Does the statute, regulation, ordinance, or legal requirement have the effect of prohibiting the ability of an entity to provide a telecommunications service? Petitioner should describe with particularity how the challenged statute, regulation, ordinance, or legal requirement has such an effect. For example, if the petitioner alleges that a statute, regulation, ordinance, or legal requirement has the effect of prohibiting the petitioner's ability to provide a telecommunications service because the challenged statute, regulation, ordinance, or legal requirement raises petitioner's costs, the petition should explain: (1) how the statute, regulation, ordinance, or other legal requirement prohibits or has the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service, (2) whether the statute does so in a discriminatory manner; (3) whether price levels in the market preclude recovery of any such additional costs; and (4) any other factors that demonstrate that the challenged statute, regulation, ordinance, or legal requirement has the alleged effect.

(4) Have other governmental entities adopted similar requirements? If so, are there conflicting requirements imposed on service providers (either in law or practice)? Are there cumulative adverse effects of requirements flowing from multiple local regulatory regimes? If so, the petitioner should describe with particularity how the cumulative adverse effects prohibit the ability of an entity to provide a telecommunications service.

(5) Assuming the Commission determines that modification of the challenged statute, regulation, ordinance, or legal requirement is required, what is the least intrusive action necessary to correct the alleged violation of section 253?

Responding parties, in addition to addressing issues raised in the petition, may also rely on section 253 (b) or (c), which identify certain State and local government actions as permissible even though they may be the basis for the alleged violation of section 253(a). In order to help the Commission determine whether preemption of the challenged statute, regulation, ordinance, or legal requirement is within the scope of Commission jurisdiction, parties commenting on the applicability of sections 253 (b) or (c), and especially parties seeking to invoke these sections, should include answers to the following questions in their filings:

(1) If the requirement is imposed by a local government entity, what is the source of its authority (*e.g.*, state constitution, statute, delegation of state power)?

(2) Is the challenged statute, regulation, ordinance, or legal requirement:

(a) necessary to preserve and advance universal service consistent with section 254 of the Act and does it do so in a competitively neutral and nondiscriminatory manner;

(b) necessary to protect the public safety and welfare and does it do so in a competitively neutral and nondiscriminatory manner;

(c) necessary to ensure the continued quality of telecommunications services and does it do so in a competitively

neutral and nondiscriminatory manner; and

(d) necessary to safeguard the rights of consumers and does it do so in a competitively neutral and nondiscriminatory manner? Please explain.

(3) Does the challenged statute, regulation, ordinance, or legal requirement pertain to the management of, or compensation for access to, rights-of-way? If so, please explain the nature of any relationship to rights-of-way management or compensation. If compensation is involved, is it fair and reasonable and required on a competitively neutral and nondiscriminatory basis?

Parties asserting that a statute, regulation, ordinance, or legal requirement is necessary to achieve the objective at issue should describe and support this claim with particularity, including, but not limited to, a description of the objective sought to be achieved and of the inadequacies of less competitively restrictive means of achieving the objective.

Parties asserting that a statute, regulation, ordinance, or legal requirement is not necessary to achieve the objective at issue should describe and support this claim with particularity, including, but not limited to, a description of less competitively restrictive means of achieving the objective.

Parties asserting that a statute, regulation, ordinance, or legal requirement is discriminatory or not competitively neutral should describe and support such claim with particularity.

Because section 253(d) requires notice and an opportunity for public comment before Commission action under section 253, commenters wishing to challenge additional provisions, even though related to those identified in the petition, should initiate their own petitions to address those provisions they believe appropriate.

C. Time Frame for Proceedings

Once a petition has been filed (often styled as a request for declaratory ruling), the relevant Bureau will issue a public notice establishing the specific due dates for the various filings set forth below. We anticipate the affected government entity and interested third parties generally will have approximately 30 days to respond to the petition. If the matter presented in the petition is of an urgent nature, the Bureau may, where it determines good cause exists, require less than 30 days for responses. To file comments (or any other filing set forth below) in a section 253 proceeding, commenters should follow the applicable procedures outlined below.

All participants in the proceeding—the petitioner, interested third parties, the relevant State or local government entity—may file a reply to any comment made by any other participant. Such replies generally will be due approximately 15 days after comments are due. The specific due date for replies will be set forth in the Initial Public Notice; the time period for replies may be less than 15 days if the relevant Bureau has determined that expedited review is appropriate. Reply comments may not raise new arguments that are not directly responsive to arguments other participants have raised, nor may the replies be repetitive of arguments made by that party in the petition or initial comments.

D. Filing Requirements For Petitions, Responses and Comments

Petitioners should file an original and not less than six copies of each section 253 request. The name of the petitioner, the date the petition is filed, and the State and city (if applicable) to which it relates should appear in the upper right hand corner of each page of the petition. We encourage petitioners to also submit requests on a 3.5 inch computer diskette formatted in WordPerfect 5.1. All filings submitted on diskette will be posted on the internet for public inspection at http://www.fcc.gov.

If the petitioner wants each Commissioner to receive a copy of the section 253 request, the petitioner should file an original plus eleven copies. The original, all copies, and any diskette should be sent to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554. The petitions will be available for public inspection during regular business hours in the reference room of the bureau to which the petition has been assigned, Washington, DC 20554. The applicant should also submit a copy of the request simultaneously to the Commission's copy contractor, International Transcription Services, Inc., 1231 20th Street, NW, Washington, DC 20036. In addition, the petitioner should simultaneously provide a copy of the petition to each state or local government entity to which the petition applies and reference such service in the petition. If the petition involves a local statute, regulation, ordinance, or legal requirement, the petitioner should also serve the appropriate state entity and reflect this service in the petition. Thereafter, each party, including the petitioner and each respondent state or local government entity, should serve all other parties with a copy of its pleadings and any filing made pursuant to the Commissions *ex parte* rules.

E. Ex Parte Rules

Because of the broad policy issues involved, and because these proceedings are generally declaratory ruling proceedings, section 253 petition proceedings initially will be considered ''permit-but-disclose'' proceedings. Accordingly, *ex parte* presentations will be permitted (unless the Commission designates a particular proceeding ''restricted''), provided they are disclosed in conformance with Commission *ex parte* rules. In addition, parties should notify all parties of any *ex parte* communications.

The Commission expects to be kept informed, through *ex parte* presentations, of any discussions between the petitioner and the relevant state or local entity regarding resolution of the issues raised in the petition.

Notwithstanding the above, the Commission may, by subsequent public notice, prohibit all communication with Commission personnel regarding the petition during a defined period preceding the anticipated release date of the Commission's order regarding the petition.

FCC Notice to Individuals Required by the Paperwork Reduction Act

Pursuant to section 253 of the Communications Act of 1934, the Commission, subject to enumerated exceptions, must preempt the enforcement of any state or local statute, regulation, or legal requirement that prohibits or has the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service. Parties may file petitions seeking preemption under section 253. The Commission must provide an opportunity for public comment. All of the information collected would be used to determine whether the state or local government has imposed a legal requirement that violates section 253 of the Act. Obligation to respond to this collection of information is not mandatory.

The public reporting for this collection of information is estimated to average 78.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the required data, and completing and reviewing the collection of information. If you have any comments on this burden estimate, or how we can improve the collection, please write to the Federal Communications Commission, AMD–PERM, Paperwork

Reduction Project (3060–0859), Washington, DC 20554. We will also accept your comments on the burden estimate via the Internet if you send them to jboley@FCC.gov. Please do not send petitions to this address.

Remember—You are not required to respond to a collection of information sponsored by the Federal government, and the government may not conduct or sponsor this collection, unless it displays a currently valid OMB control number or if we fail to provide you with this notice. This collection has been assigned an OMB control number of 3060–0859. The foregoing notice is required by the Paperwork Reduction Act of 1995, Public Law 104–13, October 1, 1995, 44 U.S.C. Section 3507.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–32158 Filed 12–2–98; 8:45 am]

BILLING CODE 6712–01–p

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

DATE AND TIME: Tuesday, December 8, 1998 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, December 10, 1998 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C. (ninth floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Election of Officers.

Notice of Proposed Rulemaking on Treatment of Limited Liability Companies under the Federal Election Campaign Act.

Revised Notice of Proposed Rulemaking for Public Financing of Presidential Primary and General Election Campaigns.

Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, telephone: (202) 694–1220.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 98–32278 Filed 12–1–98; 12:16 pm]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Federal Maritime Commission.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 63 FR 65792.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m, December 2, 1998.

CHANGE IN THE MEETING: Addition to the CLOSED portion of the meeting, Item 2—Consideration of the Failure of Sea-Land Service, Inc. to Comply with Subpenas Issued in Fact Finding Investigation No. 23.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary, (202) 523–5725.

Joseph C. Polking,

Secretary.

[FR Doc. 98–32343 Filed 12–1–98; 3:06 pm]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 17, 1998.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. The Harvey Wilson Family (to be known as The Piedmont Family Limited Partnership), Eatonton, Georgia; to acquire voting shares of Peoples Bankshares, Inc., Eatonton, Georgia, and thereby indirectly acquire voting shares of Peoples Bank, Eatonton, Georgia.

Board of Governors of the Federal Reserve System, November 27, 1998.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 98–32150 Filed 12–2–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

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 December 28, 1998.

A. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. Osceola Bancorporation, Inc., Osceola, Wisconsin; to acquire 100 percent of the voting shares of Chisago Bancorporation, Inc., Chisago City, Minnesota, and thereby indirectly acquire Chisago State Bank, Chisago City, Minnesota.

Board of Governors of the Federal Reserve System, November 27, 1998.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 98–32151 Filed 12–2–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

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 December 28, 1998.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Synergy Bancshares, Inc., Houma, Louisiana; to become a bank holding company by acquiring 100 percent of the voting shares of Synergy Bank, Houma, Louisiana (in organization).

B. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Bancorp of Rantoul, Inc., Rantoul, Illinois; to merge with Rossville Bancorp, Inc., Rossville, Illinois, and thereby indirectly acquire The First National Bank of Rossville, Rossville, Illinois.

Board of Governors of the Federal Reserve System, November 30, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–32195 Filed 12–2–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of September 29, 1998.

In accordance with § 271.5 of its rules regarding availability of information (12 CFR part 271), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on September 29, 1998.[1] The directive was issued to the Federal Reserve Bank of New York as follows:

The information reviewed at this meeting suggests that the economy has been growing at a moderate rate, paced by brisk, albeit slowing, increases in spending by businesses and households, while expansion in overall economic activity has continued to be restrained by developments abroad. Nonfarm payroll employment grew somewhat more slowly over July and August, mostly reflecting job losses in the manufacturing sector; the civilian unemployment rate was unchanged at 4.5 percent in August. Industrial production has changed little on balance over recent months. Total retail sales over July and August were held down by a sharp contraction in spending for motor vehicles. Residential sales and construction have remained quite strong in recent months. Available indicators point to continued growth in business capital spending, but at a more moderate pace than in the first half of the year. Business inventory accumulation slowed further in July. The nominal deficit on U.S. trade in goods and services narrowed slightly in July from its second-quarter average. Trends in wages and prices have remained stable in recent months.

Most interest rates have fallen appreciably since the meeting on August 18, though yields on the bonds of lower-rated firms have increased and the number of large banks have tightened terms and standards for making business loans. Broadly similar developments have occurred in major foreign markets. Share prices in U.S. and global equity markets have remained volatile and major indexes have declined considerably further on balance over the intermeeting period. In foreign exchange markets, the trade-weighted value of the dollar declined substantially over the intermeeting period in relation to other major currencies; it was up slightly in terms of an index of the currencies of the developing countries of Latin America and Asia that are important trading partners of the United States.

Growth of M2 and M3 strengthened considerably in August and appeared to have picked up further in September, partly reflecting shifts of funds by households out of investments in equities and lower-rated corporate debt. For the year through September, both aggregates rose at rates well above the Committee's ranges for the year. Expansion of total domestic nonfinancial debt has moderated somewhat in recent months after a pickup earlier in the year.

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. In furtherance of these objectives, the Committee reaffirmed at its meeting on June 30-July 1 the ranges it had established in February for growth of M2 and M3 of 1 to 5 percent and 2 to 6 percent respectively, measured from the fourth quarter of 1997 to the fourth quarter of 1998. The range for growth of total domestic nonfinancial debt was maintained at 3 to 7 percent for the year. For 1999, the Committee agreed on a tentative basis to set the same ranges for growth of the monetary aggregates and debt, measured from the fourth quarter of 1998 to the fourth quarter of 1999. The behavior of the monetary aggregates will continue to be evaluated in the light of progress toward price level stability, movements in their velocities, and developments in the economy and financial markets.

In the implementation of policy for the immediate future, the Committee seeks conditions in reserve markets consistent with decreasing the federal funds rate to an average of around 5-1/4 percent. In the context of the Committee's long-run objectives for price stability and sustainable economic growth, and giving careful consideration to economic, financial, and monetary developments, a slightly higher federal funds rate might or a somewhat lower federal funds rate would be acceptable in the intermeeting period. The contemplated reserve conditions are expected to be consistent with some moderation in the growth in M2 and M3 over coming months.

By order of the Federal Open Market Committee, November 24, 1998.

Donald L. Kohn,

Secretary, Federal Open Market Committee.

[FR Doc. 98–32152 Filed 12–2–98; 8:45 am]

BILLING CODE 6210–01–F

[1] Copies of the Minutes of the Federal Open Market Committee meeting of September 29, 1998, which include the domestic policy directive issued at that meeting, are available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The minutes are published in the Federal Reserve Bulletin and in the Board's annual report.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: State Treatment and Needs Assessment Program Studies (OMB No. 0930–0186—Revision)

SAMHSA's Center for Substance Abuse Treatment (CSAT), as part of its State Treatment and Needs Assessment Program (STNAP), awards contracts to States to conduct studies for the purpose of determining the need and demand for substance abuse treatment within each State. In order to receive funds from the Substance Abuse Prevention and Treatment Block Grant, States must submit in their annual block grant applications an assessment of service needs Statewide, at the sub-state level, and for specified population groups (as required by Section 1929 of the Public Health Service Act). Most States plan to conduct an adult telephone household survey to collect information on needed treatment for substance abuse/dependence. In addition, many States plan to conduct a variety of more focused studies which will collect data on treatment need in special populations, including adolescents, pregnant women, American Indians, arrestees and other criminal justice populations.

This submission reflects changes to the previously approved annual burden for survey activities in two States previously funded (changes to their previously approved survey plans) and in the nine States receiving new contracts in FY 1998 that are engaging in primary data collection. The burden will be as presented below:

	Total No. of respondents	No. of responses/ respondent	Hours/ response	Annualized burden hours
Previous submission	75,521	1	0.54	41,093
Decrease: (Adolescent Survey not being done)	-3,000	1	0.55	−1,650
New Activities:				
Household Telephone Surveys	5,567	1	0.55	3,062
Criminal justice populations	1,590	1	.87	1,377
Medicaid recipients	1,556	1	0.55	856
Other population groups	1,733	1	.53	919
Treatment providers	360	1	.81	291
Treatment clients	600	2.7	0.45	729
Total	83,927	.....	.....	46,677

Send comments to Nancy Pearce, SAMHSA, Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: November 27, 1998

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 98–32194 Filed 12–2–98; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies, and Laboratories That Have Withdrawn From the Program

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (59 FR 29916, 29925). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be identified as such at the end of the current list of certified laboratories, and will be omitted from the monthly listing thereafter.

This Notice is now available on the internet at the following website: http://www.health.org

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh or Dr. Walter Vogl, Division of Workplace Programs, 5600 Fishers Lane, Rockwall 2 Building, Room 815, Rockville, Maryland 20857; Tel.: (301) 443–6014.

SPECIAL NOTE: Our office moved to a different building on May 18, 1998. Please use the above address for all regular mail and correspondence. For all overnight mail service use the following address: Division of Workplace Programs, 5515 Security Lane, Room 815, Rockville, Maryland 20852.

SUPPLEMENTARY INFORMATION:

Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71. Subpart C of the Guidelines, ''Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies,'' sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in a quarterly performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227, 414–328–7840 (formerly: Bayshore Clinical Laboratory)

Advanced Toxicology Network, 15201 East I–10 Freeway, Suite 125, Channelview, TX 77530, 713–457–3784 / 800–888–4063 (formerly: Drug Labs of Texas, Premier Analytical Laboratories)

Aegis Analytical Laboratories, Inc., 345 Hill Ave., Nashville, TN 37210, 615–255–2400

Alabama Reference Laboratories, Inc., 543 South Hull St., Montgomery, AL 36103, 800–541–4931 / 334–263–5745

Alliance Laboratory Services, 3200 Burnet Ave., Cincinnati, OH 45229, 513–585–9000 (formerly: Jewish Hospital of Cincinnati, Inc.)

American Medical Laboratories, Inc., 14225 Newbrook Dr., Chantilly, VA, 20151, 703–802–6900

Associated Pathologists Laboratories, Inc., 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119–5412, 702–733–7866 / 800–433–2750

Associated Regional and University Pathologists, Inc. (ARUP), 500 Chipeta Way, Salt Lake City, UT 84108, 801–583–2787 / 800–242–2787

Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–202–2783 (formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Cedars Medical Center, Department of Pathology, 1400 Northwest 12th Ave., Miami, FL 33136, 305–325–5784

Clinical Reference Lab, 8433 Quivira Rd., Lenexa, KS 66215–2802, 800–445–6917

Cox Health Systems, Department of Toxicology, 1423 North Jefferson Ave., Springfield, MO 65802, 800–876–3652 / 417–269–3093 (formerly: Cox Medical Centers)

Dept. of the Navy, Navy Drug Screening Laboratory, Great Lakes, IL, P.O. Box 88–6819, Great Lakes, IL 60088–6819, 847–688–2045 / 847–688–4171

Diagnostic Services Inc., dba DSI, 12700 Westlinks Drive, Fort Myers, FL 33913, 941–561–8200 / 800–735–5416

Doctors Laboratory, Inc., P.O. Box 2658, 2906 Julia Dr., Valdosta, GA 31604, 912–244–4468

DrugProof, Division of Dynacare/Laboratory of Pathology, LLC, 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 800–898–0180 / 206–386–2672 (formerly: Laboratory of Pathology of Seattle, Inc., DrugProof, Division of Laboratory of Pathology of Seattle, Inc.)

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Rd., Warminster, PA 18974, 215–674–9310

Dynacare Kasper Medical Laboratories,* 14940–123 Ave., Edmonton, Alberta, Canada T5V 1B4, 800–661–9876 / 403–451–3702

ElSohly Laboratories, Inc., 5 Industrial Park Dr., Oxford, MS 38655, 601–236–2609

Gamma-Dynacare Medical Laboratories,* A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall St., London, ON, Canada N6A 1P4, 519–679–1630

General Medical Laboratories, 36 South Brooks St., Madison, WI 53715, 608–267–6267

Hartford Hospital Toxicology Laboratory, 80 Seymour St., Hartford, CT 06102–5037, 860–545–6023

Info-Meth, 112 Crescent Ave., Peoria, IL 61636, 800–752–1835 / 309–671–5199 (formerly: Methodist Medical Center Toxicology Laboratory)

LabCorp Occupational Testing Services, Inc., 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–672–6900 / 800–833–3984 (formerly: CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group)

LabCorp Occupational Testing Services, Inc., 4022 Willow Lake Blvd., Memphis, TN 38118 901–795–1515/800–223–6339 (formerly: MedExpress/National Laboratory Center)

LabOne, Inc., 8915 Lenexa Dr., Overland Park, Kansas 66214, 913–888–3927 / 800–728–4064 (formerly: Center for Laboratory Services, a Division of LabOne, Inc.)

Laboratory Corporation of America, 888 Willow St., Reno, NV 89502, 702–334–3400 (formerly: Sierra Nevada Laboratories, Inc.)

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 800–437–4986 / 908–526–2400 (formerly: Roche Biomedical Laboratories, Inc.)

Laboratory Specialists, Inc., 1111 Newton St., Gretna, LA 70053, 504–361–8989 / 800–433–3823

Marshfield Laboratories, Forensic Toxicology Laboratory, 1000 North Oak Ave., Marshfield, WI 54449, 715–389–3734 / 800–331–3734

MAXXAM Analytics Inc.*, 5540 McAdam Rd., Mississauga, ON, Canada L4Z 1P1, 905–890–2555, (formerly: NOVAMANN (Ontario) Inc.)

Medical College Hospitals Toxicology Laboratory, Department of Pathology, 3000 Arlington Ave., Toledo, OH 43614, 419–383–5213

MedTox Laboratories, Inc., 402 W. County Rd. D, St. Paul, MN 55112, 800–832–3244 / 612–636–7466

Methodist Hospital Toxicology Services of Clarian Health Partners, Inc., Department of Pathology and Laboratory Medicine, 1701 N. Senate Blvd., Indianapolis, IN 46202, 317–929–3587

MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–4512, 800–950–5295

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, Minnesota 55417, 612–725–2088

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 805–322–4250

Northwest Toxicology, Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 800–322–3361 / 801–268–2431

Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Ave., Eugene, OR 97440–0972, 541–341–8092

Pacific Toxicology Laboratories, 1519 Pontius Ave., Los Angeles, CA 90025, 310–312–0056 (formerly: Centinela Hospital Airport Toxicology Laboratory

Pathology Associates Medical Laboratories, 11604 E. Indiana, Spokane, WA 99206, 509–926–2400 / 800–541–7891

PharmChem Laboratories, Inc., 1505–A O'Brien Dr., Menlo Park, CA 94025, 650–328–6200 / 800–446–5177

PharmChem Laboratories, Inc., Texas Division, 7610 Pebble Dr., Fort Worth, TX 76118, 817–595–0294 (formerly: Harris Medical Laboratory)

Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913–339–0372 / 800–821–3627

Poisonlab, Inc., 7272 Clairemont Mesa Blvd., San Diego, CA 92111, 619–279–2600 / 800–882–7272

Quest Diagnostics Incorporated, 4444 Giddings Road, Auburn Hills, MI 48326, 810–373–9120 / 800–444–0106 (formerly: HealthCare/Preferred Laboratories, HealthCare/MetPath, CORNING Clinical Laboratories)

Quest Diagnostics Incorporated, National Center for Forensic Science, 1901 Sulphur Spring Rd., Baltimore, MD 21227, 410–536–1485 (formerly: Maryland Medical Laboratory, Inc., National Center for Forensic Science, CORNING National Center for Forensic Science)

Quest Diagnostics Incorporated, 4770 Regent Blvd., Irving, TX 75063, 800–526–0947 /

972–916–3376 (formerly: Damon Clinical Laboratories, Damon/MetPath, CORNING Clinical Laboratories)
Quest Diagnostics Incorporated, 875 Greentree Rd., 4 Parkway Ctr., Pittsburgh, PA 15220–3610, 800–574–2474 / 412–920–7733 (formerly: Med-Chek Laboratories, Inc., Med-Chek/Damon, MetPath Laboratories, CORNING Clinical Laboratories)
Quest Diagnostics Incorporated, 2320 Schuetz Rd., St. Louis, MO 63146, 800–288–7293 / 314–991–1311 (formerly: Metropolitan Reference Laboratories, Inc., CORNING Clinical Laboratories, South Central Division)
Quest Diagnostics Incorporated, 7470 Mission Valley Rd., San Diego, CA 92108–4406, 800–446–4728 / 619–686–3200 (formerly: Nichols Institute, Nichols Institute Substance Abuse Testing (NISAT), CORNING Nichols Institute, CORNING Clinical Laboratories)
Quest Diagnostics Incorporated, One Malcolm Ave., Teterboro, NJ 07608, 201–393–5590 (formerly: MetPath, Inc., CORNING MetPath Clinical Laboratories, CORNING Clinical Laboratory)
Quest Diagnostics Incorporated, 1355 Mittel Blvd., Wood Dale, IL 60191, 630–595–3888 (formerly: MetPath, Inc., CORNING MetPath Clinical Laboratories, CORNING Clinical Laboratories Inc.)
Scientific Testing Laboratories, Inc., 463 Southlake Blvd., Richmond, VA 23236, 804–378–9130
Scott & White Drug Testing Laboratory, 600 S. 31st St., Temple, TX 76504, 800–749–3788 / 254–771–8379
S.E.D. Medical Laboratories, 5601 Office Blvd., Albuquerque, NM 87109, 505–727–6300 / 800–999–5227
SmithKline Beecham Clinical Laboratories, 3175 Presidential Dr., Atlanta, GA 30340, 770–452–1590 (formerly: SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 8000 Sovereign Row, Dallas, TX 75247, 214–637–7236 (formerly: SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 801 East Dixie Ave., Leesburg, FL 34748, 352–787–9006 (formerly: Doctors & Physicians Laboratory)
SmithKline Beecham Clinical Laboratories, 400 Egypt Rd., Norristown, PA 19403, 800–877–7484 / 610–631–4600 (formerly: SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 506 E. State Pkwy., Schaumburg, IL 60173, 847–447–4379/800–447–4379 (formerly: International Toxicology Laboratories)
SmithKline Beecham Clinical Laboratories, 7600 Tyrone Ave., Van Nuys, CA 91405, 818–989–2520 / 800–877–2520
South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 219–234–4176
Southwest Laboratories, 2727 W. Baseline Rd., Tempe, AZ 85283, 602–438–8507
Sparrow Health System, Toxicology Testing Center, St. Lawrence Campus, 1210 W. Saginaw, Lansing, MI 48915, 517–377–0520 (formerly: St. Lawrence Hospital & Healthcare System)
St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101, 405–272–7052
Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 2703 Clark Lane, Suite B, Lower Level, Columbia, MO 65202, 573–882–1273
Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260
UNILAB, 18408 Oxnard St., Tarzana, CA 91356, 800–492–0800 / 818–996–7300 (formerly: MetWest-BPL Toxicology Laboratory)
Universal Toxicology Laboratories, LLC, 10210 W. Highway 80, Midland, Texas 79706, 915–561–8851 / 888–953–8851
UTMB Pathology-Toxicology Laboratory, University of Texas Medical Branch, Clinical Chemistry Division, 301 University Boulevard, Room 5.158, Old John Sealy, Galveston, Texas 77555–0551, 409–772–3197

The following laboratory has voluntarily withdrawn from the National Laboratory Certification Program as of October 30, 1998:

Presbyterian Laboratory Services, 5040 Airport Center Parkway, Charlotte, NC 28208, 800–473–6640 / 704–943–3437

• The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. DHHS, with the DHHS' National Laboratory Certification Program (NLCP) contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do. Upon finding a Canadian laboratory to be qualified, the DHHS will recommend that DOT certify the laboratory (**Federal Register**, 16 July 1996) as meeting the minimum standards of the ''Mandatory Guidelines for Workplace Drug Testing'' (59 **Federal Register**, 9 June 1994, Pages 29908–29931). After receiving the DOT certification, the laboratory will be included in the monthly list of DHHS certified laboratories and participate in the NLCP certification maintenance program.

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 98–32206 Filed 12–2–98; 8:45 am]

BILLING CODE 4160–20–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–010–5700–10; IDI–32153]

Notice of Realty Action; Classification and Conveyance of Lands for Recreation and Public Purposes, Ada County, Idaho

SUMMARY: The following described public land in Ada County, Idaho, has been examined and found suitable, and is hereby classified for recreation and public purposes, and for conveyance to the City of Boise City under the provisions of the Recreation and Public Purposes (R&PP) Act of June 14, 1926, as amended (43 U.S.C. 869 et seq.):

Boise Meridian, Ada County, Idaho

T. 3 N., R. 3 E., section 32: Lot 3;
Containing 45.33 acres

DATES: On or before January 14, 1999, interested parties may submit comments to the Bruneau Area Manager at the address below regarding the proposed classification or conveyance of the lands.

FOR FURTHER INFORMATION CONTACT: John Sullivan, National Conservation Area Manager, at (208) 384–3338. Information relating to this application, including the environmental assessment, is available for review at the Bureau of Land Management, Lower Snake River District Office, 3948 Development Avenue, Boise, Idaho 83705.

SUPPLEMENTARY INFORMATION: The City of Boise City has filed application to obtain the above-described public lands under the R&PP Act for the purpose of including them within the Oregon Trail Historic Reserve. The lands will be developed and managed for educational, interpretive, and recreational purposes, as described in the City's Oregon Trail Resource Management Plan. Publication of this notice in the **Federal Register** segregates the above described public lands from operation of the public land laws and the mining laws, except for mineral leasing and conveyance under the R&PP Act. The segregative effect will automatically expire upon issuance of a deed to the City of Boise City or 18 months from the date of this notice, whichever occurs first.

Classification Comment

Interested parties may submit comments regarding whether the lands being classified are physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use

is consistent with State and Federal programs.

Application Comments

Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the conveyance decision,or any other factor not directly related to the suitability of the land for the stated purpose. Adverse comments will be reviewed by the District Manager. In the absence of any Adverse comments, the classification will become effective 60 days from the date of publication of this notice in the **Federal Register**. The conveyance of the lands will not occur until after the classification becomes effective, and will be subject to the following terms, covenants, conditions, and reservations:

Excepting and Reserving to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals together with the right to mine and remove the same under applicable laws and regulations.

Subject to:

3. An easement for telephone and telegraph purposes granted to the American Telephone and Telegraph Company, recorded October 1, 1941, in Book 17, Page 473, as Instrument No. 207728, Official Records of Ada County, Idaho.

4. An assignment of easement for telephone and telegraph purposes in favor of Mountain States Telephone and Telegraph Company, recorded April 29, 1974, as Instrument No. 883372, Official Records of Ada County, Idaho.

5. An easement to Idaho Power Company for transmission line No. 912 and a future transmission line, as described in Gift Deed recorded February 16, 1995, as Instrument No. 95010554, Official Records of Ada County, Idaho.

6. Reservations, easements, and restrictions for powerlines and right-of-way easements as reserved in Gift Deed recorded February 16, 1995, as Instrument No. 95010554, Official Records of Ada County, Idaho.

7. A right-of-way for railroad purposes granted to the Idaho Central Railroad on February 17, 1888, under the authority of the Act of March 3, 1875 (43 U.S.C. 934–939; 18 Stat. 482); Right-of-Way No. IDI–1074.

Dated: November 20, 1998.

Signe Sather-Blair,

Bruneau Area Manager.

[FR Doc. 98–32200 Filed 12–2–98; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service (MMS)

Revision of Form MMS–2005, Oil and Gas Lease of Submerged Lands Under the Outer Continental Shelf Lands Act

ACTION: Notice of public workshop and extension of comment period.

SUMMARY: This notice announces a public workshop that the MMS will conduct to acquire information pertinent to revision of Form–2005, Oil and Gas Lease of Submerged Lands Under the Outer Continental Shelf Lands Act. The purpose of the workshop is to discuss the plain language revisions to the form. This workshop is being held in conjunction with the MMS sponsored Information Transfer Meeting. We are also giving notice that we are extending the comment period on the Notice of Revision of Form–2005, which was published in the **Federal Register** on November 9. 1998 (63 FR 60380). The comment period is extended to January 8, 1999.

DATES: MMS will conduct the workshop from 1 to 3:30 p.m. on Thursday, December 10.

ADDRESSES: MMS will hold the workshop at the Airport Hilton in Kenner, Louisiana.

FOR FURTHER INFORMATION CONTACT: Terry Holman, 202–208–3822 or e-mail to Terry.Holman@mms.gov. Comments may be sent to Terry Holman, Minerals Management Service, Mail Stop 4230, 1849 C Street, NW., Washington, DC 20240.

SUPPLEMENTARY INFORMATION: MMS has determined that Form MMS–2005, the lease document, needs revision due to changes in regulations since it was last reviewed in 1986. MMS has revised the form to reflect plain English and has rewritten it for clarity and organization. To reduce the need for future revisions to the document due to changes in regulations, MMS refers the Lessee to applicable laws, and rules and regulations of the Department. Much of the wording of existing Form MMS 2005 that specifically cites, incorporates by reference, or restates statutory and regulatory requirements is therefore deleted from the proposed revision.

Dated: November 25, 1998.

Cynthia Quartermain,

Director, Minerals Management Service.

[FR Doc 98–32175 Filed 12–2–98; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF THE INTERIOR

[DES 98–54]

Groundwater Replenishment System, Orange County, California

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability of the draft program environmental impact report/ tier 1 environmental impact statement.

SUMMARY: Pursuant to the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA) of 1969 (as amended), the Orange County Water District and the Orange County Sanitation District and the Bureau of Reclamation (Reclamation) as lead agencies have prepared a joint draft program environmental impact report/tier 1 environmental impact statement (Program EIR/Tier 1 EIS) for a Groundwater Replenishment System in Orange County, California.

DATES: A 60-day public review period begins with the publication of this notice. Public hearings are anticipated to be held during January 1999 in Orange County, California.

ADDRESSES: Written comments on the Program EIR/Tier 1 EIS should be addressed to either Ms. Tama Snow, Senior Engineer, Orange County Water District, P.O. Box 8300, Fountain Valley, California 92728–8300, telephone: 714–378–3213; or Mr. Del Kidd, Environmental Protection Specialist, Bureau of Reclamation, Lower Colorado Region, P.O. Box 61470, Boulder City, Nevada 89006–1470, telephone: 714–293–8698. If requesting copies of the document, contact Tama Snow, telephone: 714–378–3213.

SUPPLEMENTARY INFORMATION: The Orange County Water District (OCWD) and the County Sanitation District of Orange County (CSDOC) propose to develop and advance water treatment plant, pipeline and related facilities within the Cities of Fountain Valley, Santa Ana, Orange, Garden Grove, and Anaheim. The Groundwater Replenishment System (Project) would further process water from the County Sanitation Districts of Orange County. The water from CSDOC, which is typically discharged into the ocean, would be treated through a sophisticated, advanced water treatment

process that would include microfiltration, reverse osmosis and disinfection. The microfiltration process uses a series of microscopically fine filters to remove fine particles, nitrogen, salts, and organic matter that might be in the water. The water from this advanced treatment process would be of better quality than the current water that is in-filtered into the groundwater basin from the Santa Ana River and would surpass (be cleaner and better than) the drinking water standards set by the U.S. Environmental Protection Agency, the California Department of Health Services and other health and regulatory agencies.

The water from this process would be piped to injection wells to create a barrier against saltwater intrusion and to a spreading basin for infiltration into the groundwater basin. The Project would provide a new, reliable water supply to meet increased demands for potable water within the OCWD service area and continue to protect the existing groundwater from further contamination from seawater intrusion. The Project water would also be used to supplement the existing Green Acres Project, which uses recycled water for landscape irrigation and industrial applications. The Project would help reduce the dependency on the uncertain water supplies currently received from northern California and the Colorado River.

Extensive evaluations have been conducted over the past seven years to define and determine the water supply alternatives to meet the future needs of Orange County Water District's customers. The Project was identified to be one of the most reliable and cost effective project alternatives for providing a new local water supply to Orange County. The Project would be implemented in three phases. Phase I would be implemented by the year 2003 and would supply 50,000 acre-feet per year (afy) (one afy is sufficient water to supply two families of four for an entire year). Phases II and III would supply an additional 25,000 afy by the years 2010 and 2020 respectively, or sooner if required.

Dated: November 20, 1998.

John A. Johnson,

Deputy Director, Resource Management Office.

[FR Doc. 98–32204 Filed 12–2–98; 8:45 am]

BILLING CODE 4310–94–P

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

SES Performance Review Board

AGENCY: Agency for International Development, IDCA.

ACTION: Notice of Membership Roster for the Agency's Senior Executive Service (SES) Performance Review Board (PRB).

SUMMARY: This notice lists approved SES executives and public members who will comprise a standing roster for service from 1998 to the year 2000 on the Agency's SES Performance Review Board.

The Agency will use this roster to select members for the Board each year. The standing roster is as follows:

Kathryn Cunningham
Corbett Flannery
David Hales
Richard Nygard
Elmer Owens
Duff Gillespie
Peter Kimm
Robert Lester
Elizabeth Maguire
Singleton McAllister
James Sullivan
Roxann Van Dusen

To serve as public members:

Lenora Alexander
Leon Hollins
Paul Logan
Maxine Leftwich
Judith Neill
Jay Schulman

FOR FURTHER INFORMATION CONTACT: Melissa McCoy (202) 712–1781.

Dated: November 24, 1998.

Sherrie Hailstroks,

Executive Secretary, Performance Review Board.

[FR Doc. 98–32196 Filed 12–2–98; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services; FY 1999 Community Policing Discretionary Grants

AGENCY: Office of Community Oriented Policing Services, Department of Justice.

ACTION: Notice of availability.

SUMMARY: The Department of Justice, Office of Community Oriented Policing Services (''COPS'') announces the availability of Universal Hiring Program (UHP) grants to pay up to 75 percent of the total salary and benefits for new officers over three years, and up to a maximum of $75,000 per officer, with the remainder to be paid by state or local funds. Funding will begin once the new officers have been hired or on the date of the award, whichever is later, and will be paid over the course of the grant. Funding may not be applied to officers hired pre-award without written authorization from the COPS Office. All policing agencies, as well as jurisdictions seeking to establish new policing agencies, are eligible to apply for this program.

DATES: Application deadlines for UHP and COPS in Schools are December 4, 1998, and February 5, April 2, June 4 and July 16, 1999. If your agency previously was awarded a FAST, AHEAD, or UHP grant, you may request additional officers at any time.

ADDRESSES: To obtain a copy of an application or for more information, call the U.S. Department of Justice Response Center at (202) 307–1480 or 1–800–421–6770.

FOR FURTHER INFORMATION CONTACT: The U.S. Department of Justice Response Center, (202) 307–1480 or 1–800–421–6770. The UHP application and information on the COPS Office also are available on the Internet via the COPS web site at: http://www.usdoj.gov/cops.

SUPPLEMENTARY INFORMATION:

Overview

The Violent Crime Control and law Enforcement Act of 1994 (Pub. L. 103–322) authorizes the Department of Justice to make grants to increase deployment of law enforcement officers devoted to community policing on the streets and rural routes in this nation. The Universal Hiring Program (UHP) enables interested agencies to supplement their current sworn forces, or interested jurisdictions to establish a new agency, through Federal grants for up to three years. All policing agencies, as well as jurisdictions seeking to establish new policing agencies, are eligible to apply for this program.

Grants will be made for up to 75 percent of the total salary and benefits for each new officer over three years, and up to a maximum of $75,000 per officer, with the remainder to be paid by state or local funds. Funding will begin once the new officers have been hired or on the date of the award, whichever is later, and will be paid over the course of the grant. Funding may not be applied to officers hired pre-award without written authorization from the COPS Office.

Waivers of the non-Federal matching requirement may be requested under UHP, but will be granted only upon a

showing of extraordinary fiscal hardship.

COPS grant funds must not be used to replace funds that eligible agencies otherwise would have devoted to future officer hiring. In other words, any hiring under UHP must be in addition to, and not in lieu of, officers that otherwise would have been hired. All grant recipients must develop a written plan to retain their COPS-funded officer positions after Federal funding has ender. This plan must be submitted to the COPS Office with your application.

In hiring additional officers under the UHP, agencies may not reduce the scope of their customary screening and training procedures, and must include community policing principles in their training curricula.

An award under the COPS Universal Hiring Program will not affect the consideration of any agency's eligibility for a grant under other COPS programs.

The Catalog of Federal Domestic Assistance (CFDA) reference for this program is 16.710.

Dated: November 20, 1998.

Joseph E. Brann,

Director.

[FR Doc. 98–32197 Filed 12–2–98; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services; FY 1999 Community Policing Discretionary Grants

AGENCY: Office of Community Oriented Policing Services, Department of Justice.

ACTION: Notice of availability.

SUMMARY: The Department of Justice, Office of Community Oriented Policing Services (''COPS'') announces a new grant program, COPS in Schools, designed to combat school violence by helping local law enforcement agencies hire community policing officers to work in schools. This program provides an incentive for law enforcement agencies to build working relationships with schools and to use community policing efforts to combat school violence. The COPS in Schools program will help reduce the local match requirement for local law enforcement agencies seeking to hire additional new officers to be used in or around schools.

DATES: Use the Universal Hiring Program application to apply for COPS in Schools grants. The application deadlines are December 4, 1998, February 5, April 2, June 4 and July 16, 1999. If your agency already was awarded a FAST, AHEAD or UHP grant, you may request additional officers at any time. Note on your application if you are requesting officers that will be assigned to primary or secondary schools.

ADDRESSES: To obtain a copy of an application or for more information, please call the U.S. Department of Justice Response Center at 1–800–421–6770 or (202) 307–1480, or visit the COPS web site at http://www.usdoj.gov/cops/.

Departments that have a pending application under the Universal Hiring Program that are interested in applying that request to the COPS in Schools initiative should contact their grant advisor at 1–800–421–6770.

FOR FURTHER INFORMATION CONTACT: The U.S. Department of Justice Response Center, (202) 307–1480 or 1–800–421–6770 or your grant advisor.

SUPPLEMENTARY INFORMATION:

Overview

The Violent Crime Control and Law Enforcement Act of 1994 (Pub. L. 103–322) authorizes the Department of Justice to make grants to increase deployment of law enforcement officers devoted to community policing on the streets and rural routes in this nation. The COPS in Schools program is specifically designed to combat school violence.

Many communities are discovering that trained, sworn Law enforcement officers assigned to schools make a difference. The presence of these officers provide schools with on-site security and a direct link to local law enforcement agencies.

Community policing officers typically perform a variety of functions within the school including, teaching crime prevention and substance-abuse classes, monitoring troubled students, and building respect for law enforcement among students. School Resource Officers combine the functions of law enforcement and education.

To help hire community policing officers to work in schools, the COPS Office is offering up to $60 million to local law enforcement agencies. The COPS in Schools initiative provides an incentive for law enforcement agencies to build working relationships with schools to use community policing efforts to combat school violence.

The COPS in Schools initiative reduces the local match requirement for law enforcement agencies seeking to hire additional officers in and around schools.

Grants will be awarded to provide for a designated portion of the salary and benefits of each new officer over three years. The maximum is $125,000 per officer; any remainder is paid with state or local funds. Funding begins when new officers are hired or on the award date (whichever is later). Funds are distributed over the course of the grant.

COPS grants must not replace funds that eligible agencies otherwise would have devoted to hire officers in the future. In other words, any hiring under the COPS in Schools program must be in addition to, not in lieu of, officers that otherwise would have been hired. Grant recipients must develop a written plan to retain their COPS-funded officer positions after Federal funding ends. This plan must be submitted with the application.

To be eligible to receive funding under this grant program, applicants must be eligible to receive funding under the current guidelines established for the Universal Hiring Program (UHP). UHP guidelines are available from the U.S. Department of Justice Response Center. Applicants must also provide assurance that the officers employed under this program will be assigned to work in primary or secondary schools and must enter into a partnership agreement with either a specific school official or with an official with general educational oversight authority in that jurisdiction.

In addition to these general program requirements, agencies seeking funding under this program will be asked to provide supporting documentation in the following areas: problem identification and justification, community policing strategies to be used by the officers, quality and level of commitment to the effort, and the link to community policing.

An award under the COPS in Schools grant program will not affect the eligibility of an agency to receive awards under any other COPS program.

The Catalog of Federal Domestic Assistance (CFDA) reference for this program is 16.710.

Dated: November 20, 1998.

Joseph E. Brann,

Director.

[FR Doc. 98–32198 Filed 12–2–98; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services; FY 1999 Community Policing Discretionary Grants

AGENCY: Office of Community Oriented Policing Services, Department of Justice.

ACTION: Notice of availability.

SUMMARY: The Department of Justice, Office of Community Oriented Policing

Services (''COPS'') announces the Visiting Fellowship Program (VFP) designed to support training, technical assistance, research, program development and policy analysis to contribute to the use and enhancement of community policing to address crime and related problems in communities across the country.

The VFP is intended to offer researchers, policing professionals, community leaders, and policy analysts an opportunity to undertake independent research, problem development activities, and policy analysis designed to advance community policing in a variety of ways.

Two types of fellowships are available: Community Policing Training and Technical Assistance Fellowships, and Program/Policy Support and Evaluation (PPSE) Fellowships.

Community Policing Training and Technical Assistance Fellowships will offer police practitioners and community leaders the opportunity to participate in a community policing training program that is national in scope. PPSE Fellowships will offer police practitioners, researchers, and policy analysts the opportunity to support innovative community policing programs, to engage in activities to assess the effectiveness of community policing approaches, and to apply policy analysis skills to support the advancement of community policing nationwide.

Visiting fellows will study a topic of mutual interest to the Fellow and the COPS Office for up to 12 months. Residency in Washington, DC, is not required, but visits to the COPS Office are encouraged.

DATES: The application deadline is March 1, 1999. Application kits will be available mid-December.

ADDRESSES: To obtain a copy of an application or for more information, call the U.S. Department of Justice Response Center at (202) 307–1480 or 1–800–421–6770. Application kits will be available mid-December and will also be posted on the COPS Office web site at http://www.usdoj.gov/cops.

FOR FURTHER INFORMATION CONTACT: The U.S. Department of Justice Response Center, (202) 307–1480 or 1–800–421–6770, or the COPS web site at: http://www.usdoj.gov/cops.

SUPPLEMENTARY INFORMATION:

Overview

The United States Department of Justice, Office of Community Oriented Policing Services (COPS) has been charged with the implementation of the Public Safety Partnerships and Community Policing Act of 1994 (42 U.S.C. 3796dd). Under this law, the COPS Office provides grants, cooperative agreements, and technical assistance to increase police presence, improve police and community partnerships designed to address crime and disorder, and enhance public safety. The VFP, which complements the COPS Office's efforts to add 100,000 officers to our nation's streets and support innovative community policing, is one of a wide variety of policing programs supported under this law.

The VFP is intended to offer researchers, policing professionals, community leaders, and policy analysts an opportunity to undertake independent research, problem development activities, and policy analysis designed to advance community policing in a variety of ways.

Two types of fellowships are available: Community Policing Training and Technical Assistance Fellowships and Program/Policy Support and Evaluation (PPSE) Fellowships.

Community Policing Training and Technical Assistance Fellowships will offer police practitioners and community leaders the opportunity to participate in a community policing training program that is national in scope. Fellows will work to broaden their knowledge of a training area that is directly related to community policing. The experience is intended to encourage the further development, enhancement, or renewed exploration of a particular training expertise that supports community policing. Fellows will deliver this expertise innovatively as well as provide technical assistance to others. Under Community Policing Training and Technical Assistance Fellowships, Fellows may pursue initiatives designed to: (1) improve police-citizen cooperation and communication; (2) enhance police relationships within the criminal justice system, as well as at all levels of local government; (3) increase police and citizens' ability to innovatively solve community problems; (4) facilitate the restructuring of agencies to allow the fullest use of departmental and community resources; (5) promote the effective flow and use of information both within and outside of an agency; and/or (6) improve law enforcement responsiveness to members of the community.

PPSE Fellowships will offer police practitioners, researchers, and policy analysts the opportunity to support innovative community policing programs, to engage in activities to assess the effectiveness of community policing approaches, and to apply policy analysis skills to support the advancement of community policing nationwide. The experience is intended to encourage the further development, enhancement, or renewed exploration of program, policy, and evaluation issues that support community policing. This work will be shared with policy makers and practitioners through a variety of forums. Under PPSE Fellowships, Fellows may pursue a wide variety of initiatives. Topic areas of particular interest to the PPSE Division include, but are not limited to, the following goals: (1) improve the ability of policing agencies and community organizations to collect different types of information that will aid in collaborative problem solving efforts; (2) enhance current knowledge of how policing agencies evolve while implementing community policing; (3) enhance current knowledge about how various policing agencies utilize information technology to support crime reduction and community policing efforts; and/or (4) enhance current knowledge of or improve the ability of policing agencies to implement community policing and problem solving in other ways.

Visiting Fellows will study a topic of mutual interest to the Fellow and the COPS Office for up to 12 months. Residency in Washington, DC, is not required, but visits to the COPS Office are encouraged.

Grants or cooperative agreements under the VFP may support salary, fringe benefits, travel essential to the project, and miscellaneous supplies or equipment in support of the project. Reasonable costs for research assistants or support staff will also be considered. Reasonable relocation expenses and the cost of temporary housing also may be permitted in cases of relocation from a Fellow's permanent address.

Under the VFP, the COPS Office may award grants or enter into cooperative agreements with individuals, public agencies, colleges or universities, nonprofit organizations, and profit-making organizations willing to waive their fees.

Receiving a grant or cooperative agreement under the VFP will not affect the eligibility of an agency to receive awards under other COPS programs.

The selection process is expected to be highly competitive.

The Catalog of Federal Domestic Assistance (CFDA) reference for this program is 16.710.

Dated: November 25, 1998.

Joseph E. Brann,

Director.

[FR Doc. 98–32213 Filed 12–2–98; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response Compensation and Liability Act

Notice is hereby given that a proposed consent decree in *United States* v. *ARCO*, Civil Action No. 89–039–BU–PGH (D. Mont.) and *Montana* v. *ARCO*, Civil Action No. 83–317–HLN–PGH (D. Mont.), was lodged on November 16, 1998 with the United States District Court for the District of Montana. The United States filed its action pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act to recover costs incurred and to be incurred in cleaning up three Superfund Sites in southwestern Montana. The State of Montana filed its action pursuant to CERCLA and State law to recover natural resource damages arising from the injury or destruction of natural resources within the same area. The Confederated Salish and Kootenai Tribes of the Flathead Reservation intervened in *Montana* v. *ARCO*, asserting claims for the recovery of natural resource damages as well.

The Consent Decree provides for the following: (1) ARCO's payment of $80 million toward the ongoing remediation of one operable unit (''the SST OU''), which represents 100% of the total projected costs of that work, with provisions for the payment of cost overruns by ARCO, the State of Montana, and EPA; (2) ARCO's payment of $3.9 million towards the United States' $14.7 million in past costs related to the SST OU; (3) ARCO's payment of $1.8 million civil penalty for its failure or refusal to comply with the Administrative Order requiring it to perform the remedy at the SST OU; (4) payment of $2 million to the Superfund to settle ARCO's counterclaims against the United States related to the SST OU; (5) ARCO's commitment to a schedule to settle the rest of the United States' cost recovery claims for the three Sites, together with an ''earnest money'' deposit of $15 million towards past cost if settlement is not reached on the remainder of the case; (6) ARCO's payment of $1.7 million in cash and ARCO's creation of 400 acres of replacement wetlands in settlement of the U.S. Fish and Wildlife Service's claims for natural resource damages (work valued at approximately $3.2 million); (7) the creation of an additional 1,200 acres of wetlands by the State of Montana and the Confederated Salish and Kootenai Tribes of the Flathead Reservation to further compensate the U.S. Fish and Wildlife Service; (8) commitments by the State and the Tribes to perform restoration work related to the creation of bull trout habitat within the Clark Fork River Basin; and (9) ARCO's payment of $18.3 million to the Tribes in compensation for their natural resource damages claims. This settlement is contingent upon entry of a State Consent Decree that was lodged on June 19, 1998 and settles the claims of the State of Montana for natural resource damages at certain locations within the Basin. The State Consent Decree provides for the recovery of $118 million in cash and $2 million in land. Together, therefore, the two settlements result in recovery of at least $100.9 million in response costs and $143.2 million in natural resource damages.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *ARCO*, DOJ Ref. #90–11–2–430.

The proposed consent decree may be examined at the office of the United States Attorney, Western Federal Savings and Loan Building, 2929 3rd Avenue, North, Suite 400, Billings, Montana 59101, the Montana Field Office, Environmental Protection Agency, Federal Building, 301 South Park, Drawer 10096, Helena, MT 59626–0096, and at the Consent Decree Library, 1120 G Street, NW., 3rd Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 3rd Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $31.00 for the consent decree and $47.50 for the attachments (25 cents per page reproduction costs) for each decree, payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–32149 Filed 12–2–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental policy, 28 C.F.R. 50.7, notice is hereby given that a consent decree in *United States* v. *Brickeys Stone, L.L.C.*, Civil Action No. 498–CV–01939 (FRB) (E.D. Mo.), was lodged with the United States District Court for the Eastern District of Missouri on November 20, 1998.

The proposed consent decree would resolve the United States' allegations in the above-referenced enforcement action that Defendant violated Sections 301 and 404 of the Clean Water Act, 33 U.S.C. 1311 and 1344, by unlawfully placing a 6,800 square foot barge into the Mississippi River and placing approximately 1,500 cubic yards of fill material into and along the banks of that same river.

The proposed consent decree would require Defendant to pay a $150,000 civil penalty and to either: (1) restore the site; or (2) apply for a permit to allow the fill to remain in place and (a) if such permit is granted, comply with the terms and conditions set forth therein; or (b) if such permit is denied, comply with the restoration requirements of the decree. The decree would also require Defendant to host two public workshops on compliance with the Clean Water Act and Rivers and Harbors Act.

The Department of Justice will accept written comments relating to the proposed consent decree for thirty (30) days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Attention: Wendy L. Blake, Environmental Defense Section, P.O. Box 23986, Washington, D.C. 20226–3986, and should refer to *United States* v. *Brickeys Stone, L.L.C.*, DJ Reference No. 90–5–1–1–05173.

The proposed consent decree may be examined at either the Clerk's Office of the United States District Court for the Eastern District of Missouri, 1114 Market Street, Room 260, St. Louis, Missouri, or the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. Requests for a copy of the consent decree may be mailed to the Consent Decree Library at

the above address and must include a check in the amount of $2.75.

Letitia J. Grishaw,

Chief, Environmental Defense Section, Environment and Natural Resources Division, United States Department of Justice.

[FR Doc. 98–32214 Filed 12–2–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARMTENT OF JUSTICE

Notice of Extension of Comment Period on Consent Decree Under the Clean Air Act

Under 28 C.F.R. 50.7, notice is hereby given that the comment period for the proposed Consent Decree lodged on October 22, 1998, with the United States District Court for the District of Columbia in *United States* v. *Caterpillar, Inc.*, Civil Action No. 98–2544 (HHK), is being extended through January 12, 1999. The original notice of this proposed settlement, which summarizes the settlement and identifies where copies of the Consent Decree may be obtained, was published in the **Federal Register** on November 3, 1998, Vol. 63, No. 212, Pg. 59330–59331. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, should refer to *United States* v. *Caterpillar, Inc.*, Civil Action No. 98–2544 (HHK), D.J. Ref. 90–5–2–1–2255, and should be received by January 12, 1999.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–32217 Filed 12–2–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Extension of Comment Period on Consent Decree Under the Clean Air Act

Under 28 CFR 50.7, notice is hereby given that the comment period for the proposed Consent Decree lodged on October 22, 1998, with the United States District Court for the District of Columbia in *United States* v. *Cummins Engine Co.* Civil Action No. 98–2546 (HHK), is being extended through January 12, 1999. The original notice of this proposed settlement, which summarizes the settlement and identifies where copies of the Consent Decree may be obtained, was published in the **Federal Register** on November 3, 1998, Vol. 63, No. 212, Pg., 59331. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, should refer to *United States* v. *Cummins Engine Co.*, Civil Action No. 98–2546 (HHK), D.J. Ref. 90–5–2–1–2136A, and should be received by January 12, 1999.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–32216 Filed 12–2–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Extension of Comment Period on Consent Decree Under the Clean Air Act

Under 28 CFR 50.7, notice is hereby given that the comment period for the proposed Consent Decree lodged on October 22, 1998, with the United States District Court for the District of Columbia in *United States* v. *Detroit Diesel Corporation*, Civil Action No. 98–2548 (HHK), is being extended through January 12, 1999. The original notice of this proposed settlement, which summarizes the settlement and identifies where copies of the Consent Decree may be obtained, was published in the **Federal Register** on November 3, 1998, Vol. 63, No. 212, Pg. 59331–59332. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, should refer to *United States* v. *Detroit Diesel Corporation*, Civil Action No. 98–2548 (HHK), D.J. Ref. 90–5–2–1–2253, and should be received by January 12, 1999.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–32219 Filed 12–2–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Stipulated Dismissal Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed joint stipulation of dismissal in *United States* v. *Exxon Company, U.S.A.*, Civil Action No. H–98–0392, was lodged on November 17, 1998, with the United States District Court for the Southern District of Texas. Exxon Company, U.S.A. operates a petroleum refinery at Baytown, Texas. On February 13, 1998, the United States commenced a civil action praying for civil penalties and injunctive relief for violations of the Clean Air Act. The injunctive relief prayed for was the testing of seven flares for compliance with the Act. Exxon has performed the injunctive relief and will pay a civil penalty in the amount of $250,000.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed joint stipulation of dismissal. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Exxon Company, U.S.A.*, DOJ Ref. #90–5–1–1–2164.

The proposed stipulated dismissal may be examined at the Office of the United States Attorney, 910 Travis Street, #1500, Houston, Texas 77208 and at the office of the Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas; and at the Consent Decree Library, 1120 G Street, NW., Washington, DC 20005, 202–347–2072. A copy of the proposed joint stipulation of dismissal may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 3rd floor, Washington, DC 20005. In requesting a copy, please refer to the reference case and enclose a check in the amount of $2.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–32215 Filed 12–2–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Extension of Comment Period on Consent Decree Under the Clean Air Act

Under 28 CFR § 50.7, notice is hereby given that the comment period for the proposed Consent Decree lodged on October 22, 1998, with the United States District Court for the District of Columbia in *United States* v. *Mack Trucks, Inc.*, Civil Action No. 98–1495 (HHK), and *United States* v. *Renault Vehicules Industriels*, Civil Action No. 98–2543 (HHK), is being extended through January 12, 1999. The original notice of this proposed settlement, which summarizes the settlement and identifies where copies of the Consent Decree may be obtained, was published in the **Federal Register** on November 3, 1998, Vol. 63, No. 212, Pg. 59332–59333. Comments should be addressed

to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, should refer to *United States* v. *Mack Trucks, Inc.*, Civil Action No. 98–1495 (HHK), D.J. Ref. 90–5–2–1–2251 and *United States* v. *Renault Vehicules Industriels*, Civil Action No. 98–2543 (HHK), D.J. Ref. 90–5–2–1–2251/1, and should be received by January 12, 1999.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–32220 Filed 12–2–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Extension of Comment Period on Consent Decree Under the Clean Air Act

Under 28 CFR 50.7, notice is hereby given that the comment period for the proposed Consent Decree lodged on October 22, 1998, with the United States District Court for the District of Columbia in *United States* v. *Navistar International Corp.*, Civil Action No. 98–2545 (HHK), is being extended through January 12, 1999. The original notice of this proposed settlement, which summarizes the settlement and identifies where copies of the Consent Decree may be obtained, was published in the **Federal Register** on November 3, 1998, Vol. 63, No. 212, Pg. 59333–59334. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, should refer to *United States* v. *Navistar International Corp.*, Civil Action No. 98–2545 (HHK), D.J. Ref. 90–5–2–1–2252, and should be received by January 12, 1999.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–32221 Filed 12–2–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Extension of Comment Period on Consent Decree Under the Clean Air Act

Under 28 CFR 50.7, notice is hereby given that the comment period for the proposed Consent Decree lodged on October 22, 1998, with the United States District Court for the District of Columbia in *United States* v. *Volvo Truck Corporation*, Civil Action No. 98–2547 (HHK), is being extended through January 12, 1999. The original notice of this proposed settlement, which summarizes the settlement and identifies where copies of the Consent Decree may be obtained, was published in the **Federal Register** on November 3, 1998, Vol. 63, No. 212, Pg. 59334. Comments shall be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, shall refer to *United States* v. *Volvo Truck Corporation*, Civil Action No. 98–2457 (HHK), D.J. Ref. 90–5–2–1–2256, and shall be received by January 12, 1999.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–32218 Filed 12–2–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

Proposed Final Judgment and Competitive Impact Statement; United States of America v. Chancellor Media Corp. and Kunz & Co.

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America* v. *Chancellor Media Corporation and Kunz & Company*, Case No. 1:98CV0273. The proposed Final Judgment is subject to approval by the Court after the expiration of the statutory 60-day public comment period and compliance with the Antitrust Procedures and Penalties Act. 15 U.S.C. 16(b)–(h).

The United States filed a civil antitrust Complaint on November 12, 1998, alleging that the proposed acquisition of Kunz & Company (''Kunz'') by Chancellor Media Corporation (''Chancellor'') would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The Complaint alleges that Chancellor and Kunz compete head-to-head to sell outdoor advertising in four counties: (1) Kern County, California; (2) Kings County, California; (3) Inyo County, California; and (4) Mojave County, Arizona (collectively ''the Four Counties''). Outdoor advertising companies sell advertising space, such as on billboards, to local and national customers. The outdoor advertising business in the Four Counties is highly concentrated. Chancellor and Kunz have a combined share of revenue ranging from about 60 percent to a virtual monopoly in the Four Counties. Unless the acquisition is blocked, competition would be substantially lessened in the Four Counties, and advertisers would pay higher prices.

The prayer for relief seeks: (a) an adjudication that the proposed transaction described in the Complaint would violate Section 7 of the Clayton Act; (b) preliminary and permanent injunctive relief preventing the consummation of the transaction; (c) an award to the United States of the costs of his action; and (d) such other relief as is proper.

Shortly before this suit was filed, a proposed settlement was reached that permits Chancellor to complete its acquisition of Kunz, yet preserves competition in the Four Counties where the transaction raises significant competitive concerns. A Stipulation and proposed Final Judgment embodying the settlement were filed at the same time the Complaint was filed.

The proposed settlement requires Chancellor to divest all of the outdoor advertising assets of:

(1) Kunz in Kern County and Inyo County, California; and in Mojave County, Arizona; and

(2) Chancellor in Kings County, California.

Unless the plaintiff grants a time extension, Chancellor must divest these outdoor advertising assets within four (4) months after the filing of the Complaint in this action. Finally, in the event that the Court does not, for any reason, enter the Final Judgment within that four-month period, the divestitures are to occur within five (5) business days after notice of entry of the Final Judgment.

If Chancellor does not divest the advertising assets in the specified counties within the divestiture period, the Court, upon plaintiff's application, is to appoint a trustee to sell the assets. The proposed Final Judgment also requires that, until the divestitures mandated by the Final Judgment have been accomplished, Chancellor shall take all steps necessary to maintain and operate the advertising assets as active competitors; maintain the management, staffing, sales and marketing of the advertising assets; and maintain the advertising assets in operable condition at current capacity configurations. Further, the proposed Final Judgment requires Chancellor to give the United States prior notice regarding certain future outdoor advertising acquisitions

or agreements pertaining to the sale of outdoor advertising in the Four Counties.

The plaintiff and the defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

A Competitive Impact Statement filed by the United States describes the Complaint, the proposed Final Judgment, and remedies available to private litigants.

Public comment is invited within the statutory 60-day comment period. Such comments, and the responses thereto, will be published in the **Federal Register** and filed with the Court. Written comments should be directed to Craig W. Conrath, Chief, Merger Task Force, Antitrust Division, 1401 H Street, NW., Suite 4000, Washington, DC 20530 (telephone: 202–307–0001). Copies of the Complaint, Stipulation, proposed Final Judgment and Competitive Impact Statement are available for inspection in Room 215 of the Antitrust Division, Department of Justice, 325 7th Street, NW., Washington, DC 20530 (telephone: 202–514–2481) and at the office of the Clerk of the United States District Court for the District of Columbia, Third Street and Constitution Avenue, NW., Washington, DC 20001.

Copies of any of these materials may be obtained upon request and payment of a copying fee.

Constance K. Robinson,

Director of Operations & Merger Enforcement, Antitrust Division.

United States District Court for the District of Columbia

United States of America, Plaintiff, v. Chancellor Media Corporation and Kunz & Company, Defendants.

[Civil Action No. 982763]

Stipulation and Order

It is stipulated by and between the undersigned parties, by their respective attorneys, as follows:

1. The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the United States District Court for the District of Columbia.

2. The parties stipulate that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

3. Defendants shall abide by and comply with the provisions of the proposed Final Judgment pending entry of the Final Judgment by the Court, or until expiration of time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Stipulation by the parties, comply with all the terms and provisions of the proposed Final Judgment as though the same were in full force and effect as an Order of the Court.

4. Defendants shall not consummate the transaction sought to be enjoined by the Complaint herein before the Court has signed this Stipulation and order.

5. This Stipulation shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

6. In the event (a) the plaintiff withdraws its consent (as provided in paragraph 2 above), or (b) the proposed Final Judgment is not entered pursuant to this Stipulation, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

7. Defendants represent that the divestitures ordered in the proposed Final Judgment can and will be made, and that defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained therein.

Dated: November 12, 1998.

For Plaintiff United States of America:

Barry L. Creech,

D.C. Bar No.—421070, U.S. Department of Justice, Antitrust Division, Merger Task Force, 1401 H Street, NW, Suite 4000, Washington, DC 20530, (202) 307–0001.

For Defendant Kunz & Company:

Riccarda Heising,

Powell, Goldstein, Frazer & Murphy LLP, 191 Peachtree Street, NE, 16th Floor, Atlanta, GA 30303, (404) 572–6730.

For Defendant Chancellor Media Corporation:

Steven H. Schulman,

Bruce J. Prager,

Latham & Watkins, 1001 Pennsylvania Ave., NW; Suite 1300, Washington, DC 20004, (202) 637–2184.

So Ordered:

United States District Judge

Certificate of Service

I, Barry L. Creech, hereby certify that, on November 12, 1998, I caused the foregoing document to be served on defendants Kunz & Company and Chancellor Media Corporation by having a copy mailed, first-class, postage prepaid, to:

Steven H. Schulman, Bruce J. Prager, Latham & Watkins, 1001 Pennsylvania Ave., NW, Suite 1300, Washington, DC 20004, Counsel for Chancellor Media Corporation

Riccarda Heising, Powell, Goldstein, Frazer & Murphy LLP, 191 Peachtree Street, NE, 16th Floor, Atlanta, GA 30603, Counsel for Kunz & Company

Barry L. Creech,

D.C. Bar No.—421070

Final Judgment

Whereas, plaintiff, the United States of America, filed its Complaint in this action on November 12, 1998, and plaintiff and defendants by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact herein;

And whereas, defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

And whereas, the essence of this Final Judgment is prompt and certain divestiture of the outdoor advertising assets in the four counties identified below to ensure that competition is substantially preserved;

And whereas, plaintiff requires Chancellor and Kunz to make the divestitures for the purpose of

maintaining the current level of competition in the sale of outdoor advertising;

And whereas, Chancellor and Kunz have represented to the plaintiff that the divestitures ordered herein can and will be made and that Chancellor and Kunz will not later raise claims of hardship or difficulty as grounds for asking the Court to modify any of the divestitures contained below;

Now, therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby *Ordered, adjudged, and decreed* as follows:

I. Jurisdiction

This Court has jurisdiction over each of the defendants hereto and over the subject matter of this action. The Complaint states a claim upon which relief may be granted against the defendants, as hereinafter defined, under Section 7 of the Clayton Act, as amended (15 U.S.C. 18).

II. Definitions

As used in this Final Judgment:

A. *DOJ* means the Antitrust Division of the United States Department of Justice.

B. *Chancellor* means defendant Chancellor Media Corporation, a Delaware corporation with its headquarters in Dallas, Texas, and its successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and directors, officers, managers, agents, and employees, including but not limited to Martin & MacFarlane, Inc. (''Martin''), a California corporation with its headquarters in Dallas, Texas.

C. *Kunz* means defendant Kunz & Company, a California corporation with its headquarters in Larkspur, California, and its successors, assigns, subsidiaries, divisions groups, affiliates, partnerships and joint ventures, and directors, officers, managers, agents, and employees.

D. *Defendants* means Chancellor and Kunz.

E. *Advertising Assets* means the outdoor advertising display faces owned by:

(1) Kunz in each of these three counties: Kern County, California; Inyo County, California; and Mojave County, Arizona; and

(2) Chancellor in Kings County, California (collectively ''the Four Counties'').

This includes all tangible and intangible assets relating to these display faces, including all real property (owned or leased); all licenses, permits and authorizations issued by any governmental organization relating to the operation of the bulletins; and all contracts, agreements, leases, licenses, commitments and understandings pertaining to the sale of outdoor advertising on display faces.

F. *Acquirer* (or ''Acquirers'') means the entity or entities to whom Chancellor and Kunz divest the Advertising Assets pursuant to this Final Judgment.

III. Applicability

A. The provisions of this Final Judgment apply to the defendants, their successors and assigns, their subsidiaries, directors, officers, managers, agents, and employees, and all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. The defendants shall require, as a condition of the sale or other disposition of all or substantially all of their outdoor advertising business in any of the Four Counties, that the acquirer or acquirers agree to be bound by the provisions of this Final Judgment.

IV. Divestiture

A. Chancellor and Kunz are hereby ordered and directed in accordance with the terms of this Final Judgment, within four (4) months after the filing of the Complaint in this matter or five (5) days after notice of the entry of this Final Judgment by the Court, whichever is later, to divest the Advertising Assets to an Acquirer (or Acquirers) acceptable to DOJ in its sole discretion.

B. Chancellor and Kunz shall use their best efforts to accomplish the divestitures as expeditiously and timely as possible. DOJ, in its sole discretion, may extend the time period for any divestiture for two (2) additional thirty (30) day periods of time, not to exceed sixty (60 calendar days in total.

C. In accomplishing the divestitures ordered by this Final Judgment, Chancellor and Kunz promptly shall make known, by usual and customary means, the availability of the Advertising Assets described in this Final Judgment. Chancellor and Kunz shall inform any person making an inquiry regarding a possible purchase that the sale is being made pursuant to this Final Judgment and provide such person with a copy of this Final Judgment. Chancellor and Kunz shall also offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information regarding the Advertising Assets customarily provided in a due diligence process except such information subject to attorney-client privilege or attorney work-product privilege. Chancellor and Kunz shall make available such information to DOJ at the same time that such information is made available to any other person.

D. Chancellor and Kunz shall permit prospective Acquirers of the Advertising Assets to have reasonable access to personnel and to make such inspection of the physical facilities of the Advertising Assets and any and all financial, operational, or other documents and information customarily provided as part of due diligence process.

E. The defendants shall not take any action that will impede in any way the divestiture of the Advertising Assets.

F. Divestiture of the Advertising Assets may be made to one or more Acquires, *so long as:*

(1) There is only one Acquirer for any particular county's assets in King and Inyo Counties, California and Mojave County, Arizona;

(2) There are no more than two Acquirers for the assets in Kern County California; and

(3) In each instance it is demonstrated to the sole satisfaction of DOJ that the Advertising Assets will remain viable and the divestiture of such Advertising Assets will remedy the competitive harm alleged in the Complaint.

The divestitures, whether pursuant to Section IV or Section V of this Final Judgment, shall be:

(1) Made to an Acquirer or Acquirers who it is demonstrated to DOJ's sole satisfaction has or have the intent and capability (including the necessary managerial, operational, and financial capability) of competing effectively in the sale of outdoor advertising; and

(2) Accomplished so as to satisfy DOJ, in its sole discretion, that none of the terms of any agreement between an Acquirer (or Acquirers) and Chancellor or Kunz give Chancellor or Kunz the ability unreasonably to raise the Acquirer's (or Acquirers') costs, to lower the Acquirer's (or Acquirers') efficiency, or otherwise to interfere with the ability of the Acquirer (or Acquirers) to compete effectively.

V. Appointment of Trustee

A. In the event that chancellor and Kunz have not divested the Advertising Assets within the time specified in Section IV(A) of this Final Judgment, the Court shall appoint, on application of the United States, a trustee selected by DOJ in its sole discretion to effect the divestiture of the Advertising Assets.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the Advertising Assets. The trustee shall have the power

and authority to accomplish the divestitures at the best price than obtainable upon a reasonable effort by the trustee, subject to the provisions of Sections IV and X of this Final Judgment, and shall have such other powers as the Court shall deem appropriate. Subject to Section V(C) of this Final Judgment, the trustee shall have the power and authority to hire at the cost and expense of Chancellor any investment bankers, attorneys, or other agents reasonably necessary in the judgment of the trustee to assist in the divestitures, and such professionals and agents shall be accountable solely to the trustee. The trustee shall have the power and authority to accomplish the divestitures of the Advertising Assets at the earliest possible time to an Acquirer or Acquirers acceptable to DOJ in its sole discretion, and shall have such other powers as this Court shall deem appropriate. Chancellor and Kunz shall not object to a sale by the trustee on any grounds other than the trustee's malfeasance. Any such objections by Chancellor and Kunz must be conveyed in writing to the plaintiff and trustee within ten (10) calendar days after the trustee has provided the notice required under Section VII of this Final Judgment.

C. The trustee shall serve at the cost and expense of Chancellor, on such terms and conditions as the Court may prescribe, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to Chancellor or Kunz, as appropriate, and the trust shall then be terminated. The compensation of such trustee and of any professionals and agents retained by the trustee shall be reasonable in light of the value of the divested business and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestitures and the speed with which they are accomplished.

D. Chancellor and Kunz shall use their best efforts to assist the trustee in accomplishing the required divestitures, including best efforts to effect all necessary consents and regulatory approvals. The trustee, and any consultants, accountants, attorneys and other persons retained by the trustee, shall have full and complete access to the personnel, books, records, and facilities of the businesses to be divested, and Chancellor and Kunz shall develop financial or other information relevant to the businesses to be divested customarily provided in a due diligence process as the trustee may reasonably request, subject to customary confidentiality assurances. Chancellor and Kunz shall permit prospective Acquirers of the Advertising Assets to have reasonable access to personnel and to make such inspection of physical facilities and any and all financial, operational or other documents and other information as may be relevant to the divestitures required by this Final Judgment.

E. After its appointment, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish the divestitures ordered pursuant to this Final Judgment; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the businesses to be divested, and shall describe in detail each contact with any such person during that period. The trustee shall maintain full records of all efforts made to divest the businesses to be divested.

F. If the trustee has not accomplished such divestitures within six (6) months after its appointment, the trustee thereupon shall file promptly with the Court a report setting forth: (1) the trustee's efforts to accomplish the required divestitures, (2) the reasons, in the trustee's judgment, why the required divestitures have not been accomplished, and (3) the trustee's recommendations; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the parties, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall enter thereafter such orders as it shall deem appropriate in order to carry out the purpose of the trust which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by DOJ.

VI. Notice

Unless such transaction is otherwise subject to the reporting and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. 18a (the ''HSR Act''), defendants, without providing advance notification to DOJ, shall not directly or indirectly acquire any assets of or any interest, including any financial security, loan, equity or management interest, in any outdoor advertising business:

(1) In Kern County, California that constitutes the greater of (a) four display faces or (b) $250,000 in assets over a twelve-month period (beginning when this Final Judgment is entered and continuing for the term of the Final Judgment); for the purposes of this limitation, acquisitions during each twelve-month period shall be aggregated;

(2) In Inyo County, California; Kings County, California; or Mojave County, Arizona that constitutes the greater of (a) four display faces or (b) $250,000 in assets in any one of these counties during a five-year period; for the purposes of this limitation, there shall be two consecutive five-year periods. Acquisitions during each of these five-year periods shall be aggregated, with the first period ending five years after the Final Judgment is ended, and the second period beginning immediately upon the expiration of the first-five year period.

Such notification shall be provided to the DOJ in the same format as, and per the instructions relating to the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended, except that the information requested in Items 5–9 of the instructions must be provided only about outdoor advertising operations in the Four Counties. Notification shall be provided at least thirty (30) days prior to acquiring any such interest, and shall include, beyond what may be required by the applicable instructions, the names of the principal representatives of the parties to the agreement who negotiated the agreement, and any management or strategic plans discussing the proposed transaction. If within the 30-day period after notification, representatives of DOJ make a written request for additional information, defendants shall not consummate the proposed transaction or agreement until twenty (20) days after submitting all such additional information. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted in the same manner as is applicable under the requirements and provisions of the HSR Act and rules promulgated thereunder. This Section shall be broadly construed, and any ambiguity or uncertainly regarding the filing of notice under this Section shall be resolved in favor of filing notice.

VII. Notification

Within two (2) business days following execution of a definitive agreement, contingent upon compliance with the terms of this Final Judgment, to effect, in whole or in part, any proposed divestitures pursuant to Sections IV or V of this Final Judgment, Chancellor and Kunz or the trustee, whichever is then responsible for effecting the divestitures, shall notify DOJ of the proposed divestitures. If the trustee is responsible, it shall similarly notify Chancellor and Kunz. The notice shall set forth the details of the proposed transaction and list the name, address, and telephone number of each person not previously identified who offered to, or expressed an interest in or a desire to, acquire any ownership interest in the businesses to be divested that are the subject of the binding contract, together with full details of same. Within fifteen (15) calendar days of receipt by DOJ of notice, DOJ may request from Chancellor or Kunz, the proposed Acquirer (or Acquirers), or any other third party Acquirer (or Acquirers) additional information concerning the proposed divestitures and the proposed Acquirer (or Acquirers). Chancellor and Kunz and the trustee shall furnish any additional information requested from them within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after DOJ has been provided the additional information requested from Chancellor and Kunz, the proposed Acquirer (or Acquirers), and any third party, whichever is later, DOJ shall provide written notice to Chancellor and Kunz and the trustee, if there is one, stating whether or not it objects to the proposed divestitures. If DOJ provides written notice to Chancellor and Kunz and the trustee that DOJ does not object, then the divestitures may be consummated, subject only to Chancellor and Kunz's limited right to object to the sale under Section V (B) of this Final Judgment. Absent written notice that DOJ does not object to the proposed Acquirer (or Acquirers) or upon objection by DOJ, a divestiture proposed under Section IV or Section V may not be consummated. Upon objection by Chancellor and Kunz under the provision in Section V(B), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VIII. Affidavits

A. Within twenty (20) calendar days of the filing of the Complaint in this matter and every thirty (30) calendar days thereafter until the divestitures have been completed whether pursuant to Section IV or Section V of this Final Judgment, Chancellor and Kunz shall deliver to DOJ and affidavit as to the fact and manner of compliance with this Final Judgment. Each such affidavit shall include, *inter alia*, the name, address, and telephone number of each person who, at any time after the period covered by the last such report, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the businesses to be divested, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts that Chancellor and Kunz have taken to solicit a buyer for the Advertising Assets and to provide required information to prospective Acquirers.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, Chancellor and Kunz shall deliver to DOJ an affidavit that describes in detail all actions they have taken and all steps they have implemented on an on-going basis to preserve the Advertising Assets pursuant to Section IX of this Final Judgment. The affidavit also shall describe, nut not be limited to, the efforts of Chancellor and Kunz to maintain and operate the Advertising Assets as active competitors, maintain the management, staffing, sales, and marketing of the Advertising Assets, and maintain the Advertising Assets in operable condition at current capacity configurations. Chancellor and Kunz shall deliver to DOJ an affidavit describing any changes to the efforts and actions outlined in their earlier affidavit(s) filed pursuant to this Section within fifteen (15) calendar days after the change is implemented.

C. Until one year after such divestiture has been completed, Chancellor and Kunz shall preserve all records of all efforts made to preserve the business to be divested and effect the divestitures.

IX. Preservation of Assets

Until the divestitures required by the Final Judgment have been accomplished, Chancellor and Kunz shall take all steps necessary to maintain and operate the Advertising Assets as active competitors; maintain the management, staffing, sales and marketing of the Advertising Assets; and maintain the Adverting Assets in operable condition at current capacity configurations. Defendants shall take no action that would jeopardize the divestitures described in this Final Judgment. Kunz agrees to abide by the above requirements only to the extent that its contractual rights and obligations pertaining to the Advertising Assets to be divested permit it to.

X. Financing

The defendants are ordered and directed not to finance all or any part of any purchase by an Acquirer (or Acquirers) made pursuant to Section IV or V of this Final Judgment.

XI. Compliance Inspection

For purposes of determining or securing compliance with the Final Judgment and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the plaintiff, upon the written request of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the defendants made to their principal offices, shall be permitted:

(1) Access during office hours of the defendants to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of the defendants, who may have counsel present, relating to the matters contained in this Final Judgment; and

(2) Subject to the reasonable convenience of the defendants and without restraint or interference from any of them, to interview, either informally or on the record, their officers, employees, and agents, who may have counsel present, regarding any such matters.

B. Upon the written request of the Assistant Attorney General in charge of the Antitrust Division, made to the defendants' principal offices, the defendants shall submit such written reports, under oath if requested, with respect to any matter contained in the Final Judgment.

C. No information or documents obtained by the means provided in Sections VII or XI of this Final Judgment shall be divulged by a representative of the plaintiff to any person other than a duly authorized representative of the Executive Branch of this United States, except in the course of legal proceedings to which the plaintiff is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by the defendants to the plaintiff, the defendants represent and identify in

writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and the defendants mark each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,'' then ten (10) calendar days notice shall be given by the plaintiff to the defendants prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which the defendants are not a party.

XII. Retention of Jurisdiction

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XIII. Termination

Unless this court grants an extension, this Final Judgment will expire upon the tenth anniversary of the date of its entry; however, all of Kunz's obligations under the terms of this Decree cease once Kunz irrevocably conveys the Advertising Assets (owned by Kunz) to be divested to Chancellor.

XIV. Public Interest

Entry of this Final Judgment is in the public interest.

Dated _____

_____

United States District Judge

[Civil Action No. 1:98CV02763 (Judge Kollar-Kotelly)]

Competitive Impact Statement

Plaintiff, the United States of America, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA''), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

Plaintiff filed a civil antitrust Complaint on November 12, 1998, alleging that a proposed acquisition of Kunz & Company (''Kunz'') by Chancellor media Corporation (''Chancellor'') would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The Complaint alleges that Chancellor and Kunz compete head-to-head to sell outdoor advertising in four counties: (1) Kern County, California; (2) Kings County, California; (3) Inyo County, California; and (4) Mojave County, Arizona (collectively ''the Four Counties''). Outdoor advertising companies sell advertising space, such as on billboards, to local and national customers. The outdoor advertising business in the four Counties is highly concentrated. Chancellor and Kunz have a combined share of revenue ranging from about 60 percent to a virtual monopoly in the Four Counties. Unless the acquisition is blocked, competition would be substantially lessened in the Four Counties, and advertisers would pay higher prices.

The prayer for relief seeks: (a) an adjudication that the proposed transaction described in the Complaint would violate Section 7 of the Clayton Act; (b) preliminary and permanent injunctive relief preventing the consummation of the transaction; (c) an award to the United States of the costs of this action; and (d) such other relief as is proper.

Shortly before this suit was filed, a proposed settlement was reached that permits Chancellor to complete its acquisition of Kunz, yet preserves competition in the Four Counties where the transaction raises significant competitive concerns. A Stipulation and proposed Final Judgment embodying the settlement were filed at the same time the Complaint was filed.

The proposed Final Judgment orders Chancellor to divest all of the outdoor advertising assets of:

(1) Kunz in Kern county and Inyo County, California; and in Mojave County, Arizona; and

(2) Chancellor in Kings County, California

Unless the plaintiff grants a time extension, Chancellor must divest these outdoor advertising assets within four (4) months after the filing of the Complaint in this action. Finally, in the event that the Court does not, for any reason, enter the Final Judgment within that four-month period, the divestitures are to occur within five (5) business days after notice of entry of the Final Judgment.

If Chancellor does not divest the advertising assets in the specified counties within the divestiture period, the Court, upon plaintiff's application, is to appoint a trustee to sell the assets. The proposed Final Judgment also requires that, until the divestitures mandated by the Final Judgment have been accomplished, Chancellor shall take all steps necessary to maintain and operate the advertising assets as active competitors; maintain the management, staffing, sales and marketing of the advertising assets; and maintain the advertising assets in operable condition at current capacity configurations. Further, the proposed Final Judgment requires Chancellor to give the United States prior notice regarding certain future outdoor advertising acquisitions or agreements pertaining to the sale of outdoor advertising in the Four Counties.

The plaintiff and the defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. The Alleged Violations

A. The Defendants

Chancellor, a large nationwide operator of media businesses, including outdoor advertising, is a Delaware corporation headquartered in Dallas, Texas. Chancellor conducts some outdoor advertising business through its subsidiary, Martin MacFarlane, Inc. (''Martin''), a California corporation also headquartered in Dallas, Texas. Martin sells outdoor advertising in many states throughout the United States, including in each of the Four Counties. In 1997 Chancellor's total revenues from outdoor advertising were approximately $78 million.

Kunz is a California corporation headquartered in Larkspur, California. Kunz sells outdoor advertising in Arizona and California, including in each of the Four Counties. In 1997, its revenues from outdoor advertising were approximately $6.9 million.

B. Description of the Events Giving Rise to the Alleged Violations

On September 30, 1998, Chancellor entered into an Asset Purchase Agreement with Kunz. Chancellor agreed to purchase certain assets of Kunz used or useful in the outdoor advertising business of Kunz in the United States. The transaction is valued at approximately $39.5 million.

Chancellor and Kunz compete for the business of advertisers seeking to obtain outdoor advertising space in the Four Counties. The proposed acquisition of Kunz by Chancellor would eliminate that competition in violation of Section 7 of the Clayton Act

C. Anticompetitive Consequences of the Proposed Transaction

The Complaint alleges that the sale of outdoor advertising in the Four Counties constitutes a relevant product market and a line of commerce, and that each county constitutes a relevant geographic market and section of the country for antitrust purposes. Advertisers select outdoor advertising based upon a number of factors including, *inter alia,* the size of the target audience (individuals most likely to purchase the advertiser's products or services), the traffic patterns of the audience, and other audience characteristics. Many advertisers seek to reach a large percentage of their target audience by selecting outdoor advertising on highways and roads where vehicle traffic is high, so that the advertising will be frequently viewed by the target audience, or where the vehicle traffic is close to the advertiser's location. If outdoor advertising spaces owned by different firms would efficiently reach that target audience, advertisers benefit from the competition among outdoor advertising providers to offer better prices or services. Many local and/or national advertisers purchase outdoor advertising because outdoor advertising space is less expensive and more cost-efficient than other media at reaching the advertiser's target audience with the type of advertising message that the advertiser prefers to deliver.

Outdoor advertising has prices and characteristics that are distinct from other advertising media. An advertiser's evaluation of the importance of these characteristics depends on the type of advertising message the advertiser wishes to convey and the price the advertiser is willing to pay to deliver that message. Many advertisers who use outdoor advertising also advertise in other media, including radio, television, newspapers and magazines, but use outdoor advertising when they want a large number of exposures to consumers at a low cost per exposure. Because each exposure is brief, outdoor advertising is most suitable for highly visual, limited information advertising.

For many advertising customers, outdoor advertising's particular combination of characteristics makes it an advertising medium for which there are no close substitutes. Such customers who want or need to use outdoor advertising would not switch to another advertising medium if outdoor advertising prices increased by a small but significant amount. Although some local and national advertisers may switch some of their advertising to other media, rather than absorb a price increase in outdoor advertising space, the existence of such advertisers would not prevent outdoor advertising companies in the Four Counties from profitably raising their prices a small but significant amount. At a minimum, outdoor advertising companies could profitably raise prices to those advertisers who view outdoor advertising as a necessary advertising medium for them, or as a necessary advertising complement to other media. Outdoor advertising companies negotiate prices individually with advertisers. During individual price negotiations between advertisers and outdoor advertising companies, advertisers provide the outdoor advertising companies with information about their advertising needs, including their target audience and the desired exposure. Outdoor advertising companies thus have the ability to charge advertisers differing rates based in part on the number and attractiveness of competitive outdoor advertising companies that can meet a particular advertiser's specific target needs. Because of this ability to price discriminate among customers, outdoor advertising companies may charge higher prices to advertisers that view outdoor advertising as particularly effective for their needs, while maintaining lower prices for other advertisers.

The Complaint alleges that Chancellor's proposed acquisition of Kunz would lessen competition substantially in the sale of outdoor advertising in each of the Four Counties. The proposed transaction would create further market concentration in already highly concentrated markets, and Chancellor would control a substantial share of the outdoor advertising revenues in these markets. Using a measure of market concentration called the Herfindahl-Hirschman Index (''HHI''), explained in Appendix A annexed hereto, post acquisition:

a. In Kern County, California, Chancellor's share of the outdoor advertising market, based on advertising revenues, would increase to about 83 percent. The approximate post-merger HHI would be 7046, representing an increase of about 1820.

b. In Kings County, California, Chancellor's share of the outdoor advertising market, based on advertising revenues, would increase to about 58 percent. The approximate post-merger HHI would be 4205, representing an increase of about 714.

c. In Inyo County, California, Chancellor's share of the outdoor advertising market, based on advertising revenues, would increase to about 96 percent. The approximate post-merger HHI would be 9232, representing an increase of about 4030.

d. In Mojave County, Arizona, Chancellor's share of the outdoor advertising market, based on advertising revenues, would increase to about 62 percent. The approximate post-merger HHI would be 4340, representing an increase of about 770.

In each of the Four Counties, Chancellor and Kunz compete head-to-head and, for many local and/or national advertisers buying space, they are close substitutes for each other. During individual price negotiations, advertisers that desire to reach a certain audience can help ensure competitive prices by ''playing off'' Kunz against Chancellor. Chancellor's acquisition of Kunz will end this competition. After the acquisition, such advertisers will be unable to reach their desired audiences with equivalent efficiency without using Chancellor's outdoor advertising. Because advertisers seeking to reach these audiences would have inferior alternatives to the merged entity as a result of the acquisition, the acquisition would give Chancellor the ability to raise prices and reduce the quality of its service to some of its advertisers in each of the Four Counties.

New entry into the advertising market in response to a small but significant price increase by the merged parties in any of these markets is unlikely to be timely and sufficient to render the price increase unprofitable.

For all of these reasons, plaintiff concludes that the proposed transaction would lessen competition substantially in the sale of outdoor advertising in the Four Counties, eliminate actual and potential competition between Chancellor and Kunz, and result in increased prices and/or reduced quality of services for outdoor advertisers in each of the Four Counties, all in violation of Section 7 of the Clayton Act.

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment would preserve existing competition in the sale of outdoor advertising space in the Four Counties. It requires the divestiture of either all Kunz or all Chancellor advertising assets in each of the Four Counties; thus maintaining the level of competition that existed premerger, and ensuring that the affected markets will suffer no reduction in competition as a result of the merger. Advertisers will continue to have alternatives to the merged firm in purchasing outdoor advertising. Finally, the ownership structure is maintained in that the number of competitors who may compete for advertisers' business will remain unchanged.

Unless plaintiff grants an extension of time, the divestitures must be completed within four (4) months after the filing of the Complaint in this matter or within five (5) business days after notice of entry of this Final Judgment by the Court, whichever is later. Until the divestitures take place, Chancellor must maintain and operate the advertising assets as active competitors; maintain the management, staffing, sales, and marketing of the advertising assets; and maintain the advertising assets in operable condition at current capacity configuration.

The divestitures must be to a purchaser or purchasers acceptable to the plaintiff in its sole discretion. Unless plaintiff otherwise consents in writing, the divestitures shall include all the assets of the outdoor advertising business being divested, and shall be accomplished in such a way as to satisfy plaintiff, in its sole discretion, that such assets can and will be used as viable, ongoing commercial outdoors/ advertising businesses. In addition, the purchaser or purchasers must intend in good faith to continue the operations of the outdoor advertising businesses as were in effect in the period immediately prior to the filing of the Complaint, unless any significant change in the operations planned by a purchaser is accepted by the plaintiff in its sole discretion. This provision is intended to ensure that the outdoor advertising businesses to be divested remain competitive with Chancellor's other outdoor advertising businesses in the Four Counties.

If Chancellor fails to divest these outdoor advertising assets within the time periods specified in the Final Judgment, the Court, upon plaintiff's application, is to appoint a trustee nominated by plaintiff to effect the divestitures. If a trustee is appointed, the proposed Final Judgment provides that Chancellor will pay all costs and expenses of the trustee and any professionals and agents retained by the trustee. The compensation paid to the trustee and any persons retained by the trustee shall be both reasonable in light of the value of the advertising assets, and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestitures and the speed with which they are accomplished. After appointment, the trustee will file monthly reports with the plaintiff, defendants and the Court, setting forth the trustee's efforts to accomplish the divestitures ordered under the proposed Final Judgment. If the trustee has not accomplished the divestitures within six (6) months after its appointment, the trustee shall promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestitures, (2) the reasons, in the trustee's judgment, why the required divestitures have not been accomplished and (3) the trustee's recommendations. At the same time the trustee will furnish such report to the plaintiff and defendants, who will each have the right to be heard and to make additional recommendations.

The proposed Final Judgment contains provisions to ensure that these outdoor advertising assets will be preserved, so that the advertising assets remain viable competitors after divestiture.

The proposed Final Judgment requires Chancellor to provide at least thirty (30) days notice to the Department of Justice before acquiring more than a *de minimis* interest in any assets of, or any interest in, another outdoor advertising company in the Four Counties. Such acquisitions could raise competitive concerns but might be too small to be reported otherwise under the Hart-Scott-Rodino (''HSR'') premerger notification statute. Moreover, Chancellor may not agree to sell outdoor advertising space for any other outdoor advertising company in the Four Counties without providing plaintiff with notice. Thus, the provision in the proposed Final Judgment ensures that the Department will receive notice of and be able to act, if appropriate, to stop any agreements that might have anticompetitive effects in the Four Counties.

The relief in the proposed Final Judgment is intended to remedy the likely anticompetitive effects of Chancellor's proposed transaction with Kunz in the Four Counties. Nothing in this Final Judgment is intended to limit the plaintiff's ability to investigate or to bring actions, where appropriate, challenging other past or future activities of defendants in the Four Counties.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against defendants.

V. Procedures Available for Modification of the Propose Final Judgment

The plaintiff and the defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the plaintiff has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of a least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the plaintiff written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The plaintiff will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Final judgment at any time prior to entry. The comments and the response of the plaintiff will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to: Craig W. Conrath, Chief, Merger Task Force, Antitrust Division, United States Department of Justice, 1401 H Street, NW; Suite 4000, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and that the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

Plaintiff considered, as an alternative to the proposed Final Judgment, a full trial on the merits of its Complaint against defendants. Plaintiff is satisfied, however, that the divestiture and other relief contained in the proposed Final Judgment will preserve viable competition in the sale of outdoor advertising space in the Four Counties. Thus, the proposed Final Judgment would achieve the relief the government would have obtained through litigation, but avoids the time, expense and uncertainty of a full trial on the merits of the Complaint.

VII. Standard of Review Under the APPA for Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty (60) day comment period, after which the Court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' In making that determination, the Court may consider—

> (1) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered and any other considerations bearing upon the adequacy of such judgment;
>
> (2) The impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e).

As the United States Court of Appeals for the D.C. Circuit held, this statute permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient and whether the decree may positively harm third parties. *See United States* v. *Microsoft*, 56 F.3d 1448, 1461–62 (D.C. Cir. 1995).

In conducting this inquiry, ''[t]he Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' [1] Rather,

> [a]bsent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. *Mid-America Dairymen, Inc.*, 1977–1 Trade Cas. ¶ 61,508, at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequency of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988), *citing United States* v. *Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir.) *cert. denied*, 454 U.S. 1083 (1981); *see also Microsoft*, 56 F.3d at 1460–62. Precedent requires that

> the balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''*within the reaches of the public interest.*'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[2]

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' '' [3]

The relief obtained in this case is strong and effective relief that should fully address the competitive harm posed by the proposed transaction.

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the plaintiff in formulating the proposed Final Judgment.

Dated: November 17, 1998.

Respectfully submitted,

Barry L. Creech,

D.C. Bar No.—421070, Merger Task Force, U.S. Department of Justice, Antitrust Division, 1401 H Street, NW.; Suite 4000, Washington, DC 20530, (202) 307–0001.

Exhibit A Definition of HHI and Calculations for Market

''HHI'' means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. It is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of thirty, thirty, twenty and twenty percent, the HHI is 2600 ($30^2+30^2+20^2+20^2=2600$). The HHI takes into account the relative size and distribution of the firms in a market and approaches zero when a market consists of a large number of firms of relatively equal size. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

Markets in which the HHI is between 1000 and 1800 points are considered to be moderately concentrated, and those in which the HHI is in excess of 1800 points are considered to be concentrated. Transactions that increase the HHI by more than 100 points in concentrated markets presumptively raise antitrust concerns under the Merger Guidelines. See Merger Guidelines § 1.51.

Certificate of Service

I, Barry L. Creech, hereby certify that, on November 16, 1998, I caused the foregoing documents to be served on defendants Kunz & Company and Chancellor Media Corporation by having a copy mailed, first-class, postage prepaid, to:

Steven H. Schulman, Bruce J. Prager, Latham & Watkins, 1001 Pennsylvania Ave., NW., Suite 1300, Washington, DC 20004, Counsel for Chancellor Media Corporation

Riccarda Heising, Powell, Goldstein, Frazer & Murphy LLP, 191 Peachtree Street, NE., 16th Floor, Atlanta, GA 30603, Counsel for Kunz & Company

Barry L. Creech,

D.C. Bar No.—421070.

[FR Doc. 98–32148 Filed 12–2–98; 8:45 am]

BILLING CODE 4410–11–M

---

[1] 119 Cong. Rec. 24598 (1973). *See United States* v. *Gillette Co.*, 406 F. Supp. 713, 715 (D. Mass. 1975). A ''public interest'' determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. See H.R. Rep. 93–1463, 93rd Cong. 2d Sess. 8–9 (1974), *reprinted in* U.S.C.C.A.N. 6535, 6538.

[2] *Bechtel*, 648 F.2d at 666 (citations omitted) (emphasis added); *see BNS*, 858 F.2d at 463; *United States* v. *National Broadcasting Co.*, 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *Gillette* 406 F. Supp. at 716. *See also Microsoft*, 56 F.3d at 1461 (whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest' '') (citations omitted).

[3] United States v. *American Tel. and Tel. Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982), *aff'd. sub nom. Maryland* v. *United States*, 460 U.S. 1001 (1983), *quoting Gillette*, 406 F. Supp. at 716 (citations omitted); *United States* v. *Alcan Aluminum, Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985).

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review: election form to participate in an employment eligibility confirmation pilot program.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on August 25, 1998 at 63 FR 45262, allowing for a 60-day public comment period. The INS on this proposed information collection received no comments.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until January 4, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Reinstatement without change of previously approved information collection which has expired.

(2) *Title of the Form/Collection:* Election Form to Participate in an Employment Eligibility Confirmation Pilot Program.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–876. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. The information gathered from employers will assist the INS in allocating resources and priorities in conducting the three pilot programs mandated by Public Law 104–208. The company information is needed to contact employers so INS and SSA can send appropriate documents for participation.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 200,000 responses at 1 hour per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 300,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan, 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact Ms. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: November 27, 1998.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 98–32176 Filed 12–2–98; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection under Review: Haitian Deferred Enforced Departure (DED) Supplement to Form I–765.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on August 25, 1998 at 63 FR 45264, allowing for a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until January 4, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Reinstatement without change of previously approved information collection which has expired.

(2) *Title of the Form/Collection:* Haitian Deferred Enforced Departure (DED) Supplement to Form I–765.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–765D. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. The data collected on this form is used by the INS to determine eligibility for the requested benefit, pursuant to the requirements of the Presidential Order. The data enables Center Adjudications Officers at four remote sites to adjudicate the underlying benefit applications without the need of requiring individual interviews in local INS offices in most cases.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 40,000 responses at 1 hour per response.

(6) *An estimate of the total public (in hours) associated with the collection:* 40,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instruction, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact Ms. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: November 27, 1998.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 98–32177 Filed 12–2–98; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection under Review: Passenger List, Crew List.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on August 11, 1998 at 63 FR 42877, allowing for a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until January 4, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proposer performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Passenger List, Crew List.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–418. Inspections Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. This form is prescribed by the Attorney General for the INS for use by masters, owners or agents of vessels in complying with sections 231 and 251 of the Immigration and Nationality Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to response:* 95,000 responses at 1 hour per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 95,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington DC 20530.

Dated: November 27, 1998.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 98–32178 Filed 12–2–98; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities; Proposed Collection; Comment Request

ACTION: Notice of Information Collection under Review: Document Verification Request and Document Verification Request Supplement.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on August 25, 1998 at 63 FR 45263, allowing for a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days of public comments. Comments are encouraged and will be accepted until January 4, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Reinstatement without change of previously approved collection which has expired.

(2) *Title of the Form/Collection:* Document Verification Request and Document Verification Request Supplement.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Forms G–845 and G–845 Supplement. SAVE Branch, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This form is an integral part of the Systematic Alien Verification for Entitlement (SAVE) Program. It provides direct access to the automated Alien Status Verification Index (ASVI) system.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 500,000 responses at 5 minutes (.083) hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 41,500 annual burden hours.

If your have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directive and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response times may also be directed to Mr. Richard A. Sloan.

If additional information is required contact Ms. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: November 27, 1998.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 98–32179 Filed 12–2–98; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection under Review: Petition for Amerasian, Widow(er), or Special Immigrant.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on August 25, 1998 at 63 FR 45262, allowing for a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until January 4, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Reinstatement without change of previously approved collection which has expired.

(2) *Title of the Form/Collection:* Petition for Amerasian, Widow(er), or Special Immigrant.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–360. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This form is used to determine eligibility or to classify an alien as an Amerasian, widow or widower, battered or abused spouse or child and special immigrant, including religious worker, juvenile court dependent and armed forces member.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 8,397 responses at (two) hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 16,794 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536.

Additionally, comments and /or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response times may also be directed to Mr. Richard A. Sloan.

If additional information is required contact Ms. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: November 27, 1998.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 98–32180 Filed 12–2–98; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection under Review: Fax Request Form from Benefit Agency to INS for Confirmation of Status of I–130 & Fax Request Form from Benefit Agency to EOIR for Confirmation of Status.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on August 26, 1998 at 63 FR 45516, allowing for a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until January 4, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Fax Request Form from Benefit Agency to INS for Confirmation of Status of I–130 and Fax Request Form from Benefit Agency to EOIR for Confirmation of Status.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* No Agency Form Number. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State, Local or Tribal Governments. The data collected on these fax request sheets will be used by the INS and EOIR to determine eligibility for immigration benefits. The fax request sheets permit the INS and EOIR to share information with state and federal benefit granting agencies, making determinations relating to battered aliens for whom an I–130 petition has been filed, or who have made a prima facie case for status.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 12,00 responses at 20 minutes (.333) hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 3,996 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instruction, or additional information, please contact Ricard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street NW., Washington, DC 20536, Additionally, comments and/or suggestions regarding the items(s) contained in this notice, especially regarding the estimated public burden and associated response

time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact Ms. Brenda E. Dyer, Deputy Clearance Officer, United State Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington DC 20530.

Dated: November 27, 1998.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 98–32181 Filed 12–2–98; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection under Review: Petition to Remove Conditions on Residence.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on August 25, 1998 at 63 FR 45263, allowing for a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until January 4, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Reinstatement without change of previously approved collection which has expired.

(2) *Title of the Form/Collection:* Petition to Remove Conditions on Residence.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–751. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. Persons granted conditional residence through marriage to a United States citizen or permanent resident use this form to petition for the removal of those conditions.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 128,889 responses at 80 minutes (1.33) hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 171,422 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Services, U.S., Department of Justices, Room 5307, 425 I Street, Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response times may also be directed to Mr. Richard A. Sloan.

If additional information is required contact Ms. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington DC 20530.

Dated: November 27, 1998.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 98–32182 Filed 12–2–98; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Emergency Extension of Existing Collection; Telephone Verification System (TVS) Phase II Pilot Non-Citizen Employees Employment Status Report.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted an emergency information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995 to provide for the required period of public review and comment and the subsequent 30-day time period for OMB's review and final action. To ensure that the review process is conducted in accordance with the procedures specified in 5 CFR 1320.10, the INS is also requesting an extension of the current OMB approval period until January 29, 1999.

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until February 1, 1999.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overviiew of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Telephone Verification System (TVS), Phase II Pilot Non-Citizen Employees Employment Status Report.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* No Agency Form Number. SAVE Branch, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. This information will be used by the INS to determine the number of non-citizen employees who are authorized for employment in the United States as a result of the Telephone Verification System Phase II Pilot Project. The users of the Telephone Verification System are various employers throughout the Untied States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent of the response:* 276,000 queries at approximately 7 minute per response; and 1,000 employers responding to MOU at approximately 1.5 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 33,516 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Services, U.S. Department of Justice, Room 5307, 425 I Street, Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact Ms. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justices Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington DC 20530.

Dated: November 27, 1998.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 98–32183 Filed 12–2–98; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection under Review: Immigrant Petition for Alien Workers.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on August 11, 1998 at 63 FR 42877, allowing for a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until January 4, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Immigrant Petition for Alien Workers.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–140. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This form is used to petition to classify a person under section 203(b)(1), 203(b)(2), or 203(b)(3) of the Immigration and Nationality Act. The data collected on this form will be used by the INS to determine eligibility for the requested immigration benefit.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 186,000 responses at 1 (one) Hour per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 186,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan, 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact Ms. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice

Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: November 27, 1998.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 98–32184 Filed 12–2–98; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection under Review: Application for Advance Permission to Enter as Nonimmigrant (Pursuant to 212(d)(3) of the Immigration and Nationality Act).

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on July 28, 1998 at 63 FR 40316, allowing for a 60-day public comment period. One comment was received and addressed by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until January 4, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Application for Advance Permission to Enter as Nonimmigrant (Pursuant to 212(d)(3) of the Immigration and Nationality Act).

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–192. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. The information furnished on Form I–192 will be used by the Immigration and Naturalization Service to determine if the applicant is eligible to enter the U.S. temporarily under the provisions of section 212(d)(3) of the Immigration and Nationality Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 12,000 responses at 15 minutes (.25) hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 3,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instruction, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact Ms. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: November 27, 1998.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 98–32185 Filed 12–2–98; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Office of Justice Programs, Bureau of Justice Assistance

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection Under Review; (Reinstatement, without change, of a previously approved collection for which approval has expired).

Denial of Federal Benefits for Drug Offenders

The Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. This proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until February 1, 1999.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Ellen Wesley, 202–616–3558, Office of Budget and Management Services, Office of Justice Programs, U.S. Department of Justice, 810 7th Street, NW, Washington, DC 20531.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information:

(1) *Type of information collection:* Reinstatement, with change, of a previously approved collection for which approval has expired.

(2) *The title of the form/collection:* Denial of Federal Benefits for Drug Offenders.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number is 3500/2, Office of Justice Programs, Bureau of Justice Assistance, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* State Courts. *Other:* none.

The Denial of Federal Benefits Drug Offenders, P.L. 100–690, contains collection of information requirements to ensure that convicted offenders do not receive Federal benefits that have been denied by court action.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 500 respondents will complete this form. A respondent will take an estimate of 5 minutes to complete each form.

(6) An estimate of the total public burden (in hours) associated with the collection: It is estimated that the total public burden associated with this collection is 41 annual burden hours.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: November 27, 1998.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 98–32186 Filed 12–2–98; 8:45 am]

BILLING CODE 4410–18–M

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

''FEDERAL REGISTER'' CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 63, No. 226/Tuesday, November 24, 1998.

PREVIOUSLY ANNOUNCED TIME AND DATE: 9:30 a.m., Tuesday, December 1, 1998.

CHANGE IN MEETING: A majority of the Board Members determined by recorded vote that the business of the Board required amending the agenda to delete the following item:

7093: Brief of Accident-BK–117–B2 helicopter crash, N909CP, New York City, April 15, 1997; and Safety Recommendation to the Federal Aviation Administration about Blind Rivets.

FOR MORE INFORMATION CONTACT: Rhonda Underwood, (202) 314–6065.

Dated: December 1, 1998.

Rhonda Underwood,

Federal Register Liaison Officer.

[FR Doc 98–32305 Filed 12–1–98; 2:09 pm]

BILLING CODE 7533–01–M

RAILROAD RETIREMENT BOARD

Proposed Data Collection Available for Public Comment and Recommendations

SUMMARY: In accordance with the requirement of Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and Purpose of Information Collection

Availability for Work: Under Section 1(k) of the Railroad Unemployment Insurance Act, unemployment benefits are not payable for any day for which the claimant is not available for work.

Under Railroad Retirement Board (RRB) regulation 20 CFR 327.5, ''available for work'' is defined as being willing and ready for work. This section further provides that a person is ''willing'' to work if that person is willing to accept and perform for hire such work as is reasonably appropriate to his or her employment circumstances. The section also provides that a claimant is ''ready'' for work if he or she; (1) is in a position to receive notice of work and is willing to accept and perform such work, and (2) is prepared to be present with the customary equipment at the location of such work within the time usually allotted.

Under RRB regulation 20 CFR 327.15, a claimant may be requested at any time to show, as evidence of willingness to work, that he or she is making reasonable efforts to obtain work. In order to determine whether a claimant is: (a) available for work, and (b) willing to work, the RRB utilizes Forms UI–38 and UI–38s to obtain information from the claimant and Form ID–8k from his union representative. One response is completed by each respondent. No changes are proposed to any of the three forms.

Estimate of Annual Respondent Burden: The estimated annual respondent burden is as follows:

Form No.	Annual responses	Time (Min)	Burden (Hrs)
UI–38s:			
In person ...	250	6	25
By mail	500	10	83
UI–38	3,750	11.5	719
Id–8k	3,100	5	258
Total	7,600	.....	1,085

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 98–32199 Filed 12–2–98; 8:45 am]

BILLING CODE 7905–01–M

Department of State

[Public Notice #2934]

Overseas Security Advisory Council; Renewal

The Department of State has renewed the Charter of the Overseas Security Advisory Council. This advisory council will continue to interact on overseas security matters of mutual interest between the U.S. Government and the American private sector. The Council's initiatives and security publications provide a unique contribution to protecting American private sector interests abroad. The Under Secretary for Management has determined that the Council is necessary and in the public interest.

The Council consists of representatives from four (4) U.S. Government agencies and twenty-one (21) American private sector companies and organizations. The Council will follow the procedures prescribed by the Federal Advisory Committee Act (FACA) (Public Law 92–463). Meetings will be open to the public unless a determination is made in accordance with Section 10(d) of the FACA, 5 U.S.C. 552b (c) (1) and (4), that a meeting or a portion of the meeting should be closed to the public. Notice of each meeting will be provided in the **Federal Register** at least 15 days prior to the meeting.

For more information contact Nick Proctor, Executive Director, Overseas Security Advisory Council, Department of State, Washington, D.C. 20522–1003, *phone*: 202–663–0533.

Dated: October 13, 1998.

Peter E. Bergin,

Director of the Diplomatic Security Service.

[FR Doc. 98–32146 Filed 12–2–98; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice; Receipt of Noise Compatibility Program Revision and Request for Review, Key West International Airport, Key West, Fl.

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the revised current and future noise exposure maps submitted by Monroe County, Florida, for Key West International Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96–193) and 14 CFR Part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Key West International Airport under Part 150 in conjunction with the noise exposure maps and that this program will be approved or disapproved on or before May 8, 1999.

EFFECTIVE DATE: The effective date of the FAA's determination on the revised noise exposure maps and of the start of its review of the associated noise compatibility program is November 9, 1998. The public comment period ends January 8, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Tommy J. Pickering, P.E., Federal Aviation Administration, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, Florida 32822–5024, (407) 812–6331, Extension 29. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the revised noise exposure maps submitted for Key West International Airport are in compliance with applicable requirements of Part 150, effective November 9, 1998. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before May 8, 1999. This notice also announces the availability of this program for public review and comment.

Under Section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as ''the Act''), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties to the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

Monroe County, Florida, submitted to the FAA on October 26, 1998, revised noise exposure maps, descriptions and other documentation which were produced during the Key West International Airport FAR Part 150 noise study conducted between October 1, 1996, and October 25, 1998, was requested that the FAA review this material as the noise exposure maps, as described in Section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under Section 104(b) of the Act.

The FAA has completed its review of the revised noise exposure maps and related descriptions submitted by Monroe County, Florida. the specific maps under consideration are ''1998 Noise Exposure Map'' and ''2003 Noise Exposure Map'' in the noise compatibility program submission. The FAA has determined that these maps for Key West International Airport are in compliance with applicable requirements. This determination is effective on November 9, 1998. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under Section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of Section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours

onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under Section 103 of the Act. The FAA has relied on the certification by the airport operator, under Section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for Key West International Airport, also effective on November 9, 1998. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the revised program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before May 8, 1999.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150, Section 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed revised program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the revised noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, Florida 32822–5024.

Division Director of Community Services, Public Services Building, 5100 College Road West, Wing 4, Room 405, Key West, Florida 33040.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT:**

Issued in Orlando, Florida November 9, 1998.

W. Dean Stringer,

Manager, Orlando Airport District Office.

[FR Doc. 98–32192 Filed 12–2–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

Advisory Council on Transportation Statistics

AGENCY: Bureau of Transportation Statistics, DOT.

ACTION: Notice of Meeting.

SUMMARY: Pursuant to Section 10(A)(2) of the Federal Advisory Committee Act (Public Law 72–363; 5 U.S.C. App. 2), notice is hereby given of a meeting of the Bureau of Transportation Statistics (BTS) Advisory Council on Transportation Statistics (ACTS) to be held Friday, December 18, 1998, 10:00 to 4:00 pm. The meeting will take place at the U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC, in conference room 6200–04 of the Nassif Building.

The Advisory Council, called for under Section 6007 of Public Law 102–240, Intermodal Surface Transportation Efficiency Act of 1991, December 18, 1991, and chartered on June 19, 1995, was created to advise the Director of BTS on transportation statistics and analyses, including whether or not the statistics and analysis disseminated by the Bureau are of high quality and are based upon the best available objective information.

The agenda for this meeting will include a review of the last meeting, introduction of new Director, continued discussion of TEA–21 and its impact on BTS, identification of substantive issues, review of plans and schedule, other items of interest, discussion and agreement of date(s) for subsequent meetings, and comments from the floor.

Since access to the DOT building is controlled, all persons who plan to attend the meeting must notify Ms. Carolee Bush, Council Liaison, on (202) 366–6946 prior to December 15. Attendance is open to the interested public but limited to space available. With the approval of the Chair, members of the public may present oral statements at the meeting. Noncommittee members wishing to present oral statements, obtain information, or who plan to access the building to attend the meeting should also contact Ms. Bush.

Members of the public may present a written statement to the Council at any time.

Persons with a disability requiring special services, such as an interpreter for the hearing impaired, should contact Ms. Bush (202) 366–6946 at least seven days prior to the meeting.

Issued in Washington, DC, on November 30, 1998.

Robert A. Knisely,

Executive Director, Advisory Council on Transportation Statistics.

[FR Doc. 98–32210 Filed 12–2–98; 8:45 am]

BILLING CODE 4910–62–U

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported For Exhibition Determinations

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985). I hereby determine that the object to be included in the exhibit ''A Treasure of Books: The Library of Duke August of Brumswick-Wolfenbuttel, here'' imported from abroad for temporary exhibition without profit within the United States, is of cultural significance. This object is imported pursuant to a loan agreement with the foreign lender. I also determine that the exhibition or display of the listed exhibit object at The Groiler Club, New York, New York, from on or about December 8, 1998, to on or about February 6, 1999, is in the national interest. Public Notice of the these determinations is ordered to be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Jacqueline H. Caldwell, Assistant General Counsel, 202/619–6982, and the address is Room 700, U.S. Information Agency, 301 4th Street, SW, Washington, DC 20547–0001.

Dated: November 27, 1998.

R. Wallace Stuart,

Deputy General Counsel.

[FR Doc. 98–32157 Filed 12–2–98; 8:45 am]

BILLING CODE 8230–01–M

Federal Register

Thursday
December 3, 1998

Part II

Department of the Interior

Bureau of Land Management

43 CFR Part 3100 et al.

Onshore Oil and Gas Leasing and Operations; Proposed Rule

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3100, 3110, 3120, 3130, 3140, 3150, 3160, 3170 and 3180

[WO–310–1310–00–2I–IP]

RIN 1004–AC94

Onshore Oil and Gas Leasing and Operations

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Land Management (BLM) is proposing to revise its Federal oil and gas leasing and operations regulations. This rule uses performance standards in certain instances in lieu of the current prescriptive requirements. These proposed regulations cite industry standards and incorporate them by reference rather than repeat those standards in the rule itself. Also, BLM's onshore orders and national notices to lessees would be incorporated into these regulations to eliminate overlap with existing regulations. This rule would increase certain minimum bond amounts and would revise and replace BLM's current unitization regulations with a more flexible unit agreement process. Finally, this proposed rule would eliminate redundancies, clarify procedures and regulatory requirements, and streamline processes.

DATES: *Comments:* Commenters must submit comments by April 5, 1999. BLM will consider comments received or postmarked on or before this date in the preparation of the final rule.

ADDRESSES: Comments: If you wish to comment, you may hand-deliver comments to the Bureau of Land Management Administrative Record, Room 401, 1620 L Street, NW, Washington, D.C., or mail comments to the Bureau of Land Management, Administrative Record, Room 401LS, 1849 C Street, NW, Washington, D.C. 20240. Commenters may transmit comments electronically via the Internet to: WoComment@wo.blm.gov and please include in your comments the regulation identifier number AC94 and your name and return address. If you do not receive confirmation from the system that we have received your Internet message, contact us directly.

FOR FURTHER INFORMATION CONTACT: Ian Senio at (202) 452–5049 or John Duletsky at (202) 452–0337 or write to Bureau of Land Management, U.S. Department of the Interior, 1849 C Street, NW, 401LS, Washington, D.C. 20240.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

Written Comments

Written comments on the proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any recommended change. Where possible, comments should reference the specific section or paragraph of the proposal which the commenter is addressing. BLM may not necessarily consider or include in the Administrative Record for the final rule comments which BLM receives after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

You may view an electronic version of this proposed rule at BLM's Internet home page: www.blm.gov.

Comments, including names, street addresses, and other contact information of respondents, will be available for public review at this address during regular business hours (8:00 a.m. to 4:30 p.m.), Monday through Friday, except Federal holidays. BLM will also post all comments on its Internet home page (www.blm.gov) at the end of the comment period. Individual respondents may request confidentiality. If you wish to request that BLM consider withholding your name, street address, and other contact information (such as: Internet address, FAX or phone number) from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. BLM will honor requests for confidentiality on a case-by-case basis to the extent allowed by law. BLM will make available for public inspection in their entirety all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses.

II. Background

Oil and gas produced from lands managed by BLM accounted for about 5.7 percent of domestic oil production and about 10.7 percent of domestic gas production in 1996. BLM has jurisdiction and responsibility over virtually all aspects of leasing, exploration, development, and production of oil and gas from onshore Federal oil and gas and approves and supervises most operations on Indian lands. BLM administers 52,457 Federal and Indian leases, of which nearly 23,524 are in a producing or producible status. As of December 31, 1996, there were 70,569 producing or producible wells under BLM's jurisdiction, and 2,347 new wells were drilling during the year. In 1996, more than $6.1 billion of oil and gas and associated products were sold from Federal and Indian oil and gas leases, which generated $665 million in royalties.

Mining Law

The Federal Government did not have an oil and gas leasing system before 1920. However, Federal oil and gas reserves could be developed under the Mining Law of 1872 (17 Stat. 91, 30 U.S.C. 22 *et seq.*) after the applicant located a placer mining claim. If the mining claim was validated by the location of a valuable discovery, the locator essentially was entitled to fee title to the lands covered by the claim. Congress soon realized that the Mining Law was not well suited for oil and gas development since it resulted in over drilling and waste of the resources. Congress passed the Mineral Leasing Act of 1920 (41 Stat. 437, 30 U.S.C. 181 *et seq.*) (MLA) and on February 25, 1920, the President signed it into law. The MLA still remains the primary authority under which the Federal Government leases the majority of Federal onshore oil and gas.

Mineral Leasing Act

There have been several amendments to the MLA that affected the Federal oil and gas leasing system, but it stayed substantially the same until the enactment of the Federal Onshore Oil and Gas Leasing Reform Act of 1987 (Pub. L. 100–203, 101 Stat. 1330–256) (Reform Act). Before the Reform Act, Federal lands within known geologic structures (KGS) of producing oil and gas fields were leased competitively to the highest qualified bidder. Lands not within a KGS were leased ''over the counter'' basically on a first-come and first-serve basis to qualified entities.

In 1960, BLM implemented a simultaneous leasing system in order to address concerns over the potential for fraud in the noncompetitive leasing system. Under that system, all applications for available public lands that were received within the time specified in the notice were considered as received simultaneously. Applications then were drawn randomly to determine the winner. Only

a fraction of Federal lands fell into the KGS category and most of the Federal oil and gas leases that BLM issued were issued noncompetitively through the lottery. The leasing system operated for many years before Congress and the public became concerned that BLM's leasing system was not functioning properly. The primary concern was that the Federal Government was not receiving fair market value for oil and gas resources. There was also concern that it was becoming increasingly difficult for BLM to make KGS determinations, that the leasing system was subject to fraud and abuse, and that the Bureau was not taking enough care in protecting the environment affected by development of Federal oil and gas leases.

The Reform Act

Congress passed the Reform Act on December 22, 1987, to address concerns over the existing leasing system. The principal change made by the Reform Act was to require that BLM offer competitively all lands eligible and available for Federal oil and gas leasing before leasing noncompetitively. KGS designations were eliminated, environmental provisions were added, and BLM was required to have Forest Service consent before leasing oil and gas on Forest Service lands. The Reform Act also required BLM to post a notice of the lands it proposed to include in a lease sale. It also required BLM to post a notice of proposed drilling operations to allow the public and environmental groups an opportunity to comment before BLM made a final determination. Congress dealt with fraud and abuse by making it unlawful to be involved with any plan to defeat the purposes of the Reform Act or its implementing regulations. The Reform Act also provided for severe penalties for violating these fraud provisions.

BLM has been leasing Federal oil and gas under the implementing regulations of the MLA and the Reform Act, with only technical and clarifying amendments, since the Reform Act regulations were published in the **Federal Register** on June 17, 1988 (53 FR 9214, 1988).

FOGRMA

The Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA) (30 U.S.C. 1701 *et seq.*) made a few changes to the leasing and operations aspects of BLM's oil and gas program. FOGRMA focuses mainly on royalty and rental collection but also includes provisions related to on-the-ground operations. BLM published the implementing regulations for the operations aspects of FOGRMA on September 21, 1984 (49 FR 37356), and for the leasing aspects on July 30, 1984 (49 FR 30446). The operational regulations implementing FOGRMA prescribe standards for lessees and operators to follow when conducting operations on Federal and Indian oil and gas leases. The regulations also clarified BLM's responsibilities for inspecting operations. BLM's leasing regulations that implement FOGRMA deal mostly with royalty and rental collections and with lease reinstatement provisions for leases that terminated by operation of law.

III. Discussion of Proposed Rule

This proposed rule puts the regulations in a more logical sequence, streamlines some processes, and reduces duplication. It incorporates most of the existing oil and gas regulations and all of the existing onshore orders and national notices to lessees to make one complete document for lessees and operators to reference. Some sections of the proposed rule contain new language to correct problems, improve procedures, or clarify existing requirements. This proposal does not include regulations that deal with oil and gas drainage (see 63 FR 1936, January 13, 1998, for the proposed rule), Combined Hydrocarbon Leasing (3140), and the Oil and Gas Leasing: National Petroleum Reserve—Alaska (3130).

These regulations are written in plain language to more effectively communicate BLM regulatory requirements. Plain language uses a series of questions and answers in place of the traditional short heading and regulatory requirements. The question and answer together constitute the regulatory requirement. The proposed regulation is also organizationally different from the current regulation and presents sections in a more logical order that closely tracks leasing and operations procedures as they might occur chronologically.

Performance Standards

This proposed rule uses performance standards where possible in lieu of the current prescriptive requirements or design standards. We believe that performance standards offer operators and BLM increased flexibility to deal with unique geologic, ecological, and engineering circumstances, while at the same time protecting the environment and other Federal and Indian interests. Under the current regulations and onshore orders, operators are required to meet certain very specific and often rigid requirements set out in the regulations and orders. This inflexible ''laundry list'' approach may not always work in the most efficient or even most desirable manner. BLM currently issues variances to the regulations to deal with unique geologic, ecological, and engineering situations. This is an administrative burden that BLM cannot afford under current and foreseen declining budgets. It is time consuming and expensive for operators as well.

Under current regulations, BLM ensures that an operator complies with all of the requirements of a given regulation or Order. With performance standards, our focus is no longer on a list of requirements but on the outcome or goal stated in the regulation. This goal-oriented approach better protects the public interest since operators will be held to a stated standard rather than just having to comply with a checklist. This type of regulation is also beneficial to operators because it gives them flexibility to meet the goal stated in the regulation. Finally, these performance regulations will remove some of the administrative burdens and expense caused by having to issue numerous variances to the current regulations.

We used performance standards in situations where there was little or no risk to the health of the land or public health or safety. We were careful to design a meaningful standard that protects the environment, public health and safety and preserves BLM's ability to account for Federal and Indian production. Use of performance standards was limited to specific areas that deal with oil and gas exploration and production. Please comment specifically on the performance standards proposed and whether or not there are other sections of these proposed regulations where performance standards would be appropriate.

Incorporating Industry Standards by Reference

BLM's current onshore orders contain very detailed minimum standards to regulate oil and gas drilling and production operations. In the process of incorporating the onshore orders into this proposed rule, we replaced the many detailed minimum standards with references to American Petroleum Institute (API) and American Gas Association (AGA) standards and practices. BLM and industry recognize API and AGA standards as acceptable operating practices for Federal lands. You can purchase API and AGA publications cited in this proposed rule directly from API and AGA. They will also be available for review at all of BLM's field offices with oil and gas

responsibilities. We cite specific, dated editions of API and AGA standards. Any future amendments or updates to the cited standards will not be incorporated into BLM's regulations until BLM undertakes a rulemaking to update the reference.

Changes From Existing Regulations

We propose to modify the leasing regulations by—

1. Eliminating the formal nomination process. Current regulations give BLM's Director the discretion to post a Competitive Nomination List and require the public to formally nominate lands from that list for future competitive sales. The Director has never exercised this discretion and does not plan to do so in the near future;

2. Eliminating presale offers. The intent of the Reform Act was to emphasize competition for Federal oil and gas resources. Presale offers were created by regulation and are not required by the Reform Act. Eliminating presale offers would more closely follow the intent of the Reform Act. This change would result in a more streamlined leasing process because it would remove the one-year waiting period that currently exists for filing offers on lands previously leased. Current regulations prohibit filing offers for one year from the date of expiration, termination, or cancellation of former leases;

3. Requiring that parcel integrity be maintained during the 2-year post sale window. Under this proposal, you would be able to combine more than one parcel from more than one sale notice in a lease offer. Under the existing system, an offer must include a legal land description. This proposal would simplify the filing of 2-year noncompetitive lease offers since you would be able to use the parcel number in the notice of competitive lease sale rather than listing the complete land description. It would also expedite leasing because lease stipulation revisions would not be necessary for split parcels. Post sale offers could not exceed 2,560 acres;

4. Eliminating the existing requirement that an offer for public domain minerals be for at least 640 acres. The proposal would also allow you to file an offer on lands outside of the current six square mile limit if you provide BLM a valid reason for exceeding the six square mile limit. Eliminating the 640-acre rule and amending the six square mile rule would simplify the leasing process, provide more flexibility in filing offers and provide consistency in the competitive and noncompetitive leasing processes;

5. Reducing the number of copies of an offer that you must file from three to two. This would reduce your administrative burden and still allow BLM to process your application efficiently;

6. Limiting competitive and noncompetitive leases to 2,560 acres for the lower 48 states and 5,760 acres for Alaska. Limiting lease acreage would provide consistency between competitive and noncompetitive leases and should simplify the leasing system. Under current regulations, noncompetitive leases may be for 10,240-acres, while competitive leases are limited to 2,560 acres;

7. Considering the balance of bonus bids timely paid if the payment is ''postmarked'' (or its equivalent for non-U.S. mail transmittals) on or before the due date. The balance of the bonus bids is due within 10 business days after the day of the sale. Current regulations require this balance to be ''submitted.'' We have interpreted this to mean that BLM must receive the payment on or before that date. Currently, we do not accept payments we receive after the tenth business day and BLM will not issue leases if payments for those leases are not made timely. This proposal would benefit those parties that exercise diligence in submitting the balance of their bonus bids;

8. Eliminating unit bonds. Unit bonds are unnecessary since unit operations may be covered under statewide and nationwide bonds. If existing statewide or nationwide bonds are inadequate, BLM would request an increase in those bond amounts rather than require a separate unit bond;

9. Adding a new bond for wells that are inactive for more than one year. After a well is inactive for one year, operators would be required to either increase the bond in place by $2.00 per foot of depth per well, or pay a nonrefundable $100 yearly fee; and

10. Increasing the dollar amount for the different types of bonds that we currently require. Individual bonds would be increased from $10,000 to $20,000 and the amount for statewide bonds would be increased from $25,000 to $75,000. Nationwide bonds would remain at $150,000. BLM has not increased bond amounts since 1960 and the increase takes into account inflation and the fact that current bonding levels do not cover the costs associated with plugging, reclamation, and royalties.

This bond increase would not be immediate. It would be phased in as follows:

a. Parties filing new Applications for Permit to Drill and Changes of Operator subsequent to the effective date of the final rule would be required to meet the increased amounts.

b. Existing bonds with no new activity would remain at their current bond amount for two years at which time the principal must increase the bond amount. During this 2-year period, BLM could request bond increases for other reasons.

This proposal would also add a provision to allow you to apply for a reduction in the bond amount under certain circumstances;

11. Changing BLM's current policy of terminating the period of liability of bonds. BLM would cancel bonds after determining that you have met lease obligations, including proper plugging and abandonment of wells and surface reclamation. The Federal Oil and Gas Royalty Simplification and Fairness Act of 1996 allows the Minerals Management Service (MMS) seven years to complete royalty audits. Since bonds cover royalty obligations, cancellation would be subject to concurrence from MMS that there are no outstanding royalty obligations;

12. Eliminating the need for holders of overriding royalties, production payments or similar interests, to file notice of those interests with BLM. Current regulations require you to file these documents with BLM. BLM does not currently verify these outstanding royalty interests and frequently the official lease file does not contain all outstanding transfers. Therefore, it is not an accurate record for determining outstanding interests. Eliminating the need to file these documents would save the $25 filing fee currently required for each affected lease. If a lessee requested a royalty reduction because the lease cannot be successfully operated, BLM would then require the lessee to report the amount of outstanding overriding royalties. This is not a new requirement;

13. Eliminating the semiannual reporting of lease interests you hold under option. BLM would still request a statement of acreage you hold under option when we conduct audits of acreage holdings. This would reduce your administrative burden and still allow BLM to monitor acreage holdings;

14. Allowing a Class I reinstatement when you pay a nominal deficiency late. Current regulations state that if a rental payment is nominally deficient, the lease will not terminate if the deficiency is paid to the MMS within the specified time. The proposed change would provide flexibility in qualifying for a Class I reinstatement. Under existing regulations, such a lessee is required to

petition for a Class II reinstatement at a higher rental and royalty rate. This does not seem equitable since rental deficiencies could simply be a result of an acreage miscalculation. This rulemaking also clarifies rental payment requirements for fractional acreage amounts; and

15. Providing an increase in the percentage and dollar amount for nominal deficiencies of rental payments. Current regulations provide that a lease will not terminate if the rental deficiency is 5 percent or $100, whichever is less. We are proposing to change that amount to 10 percent or $200, whichever is less. This is consistent with the deficiency percentage and amount allowed when filing a noncompetitive offer.

We propose to modify the drilling, production, and enforcement regulations by—

1. Referencing published industry standards and practices instead of listing minimum standards;

2. Simplifying the procedure to calculate average daily oil production for leases with sliding and step-scale royalty rates;

3. Eliminating the provision to charge the full value of gas vented or flared that would have begun one year after BLM ordered you to capture the gas;

4. Exempting Federal oil wells that produce less than 10 Mcf per day from the obligation to obtain prior BLM approval to vent or flare;

5. Allowing bypasses around oil and gas meters under certain circumstances if sealing requirements are followed;

6. Not requiring site facility diagrams for single oil or condensate tank facilities that service a single well. This is in addition to the current facility diagram exemption for facilities processing dry gas;

7. Exempting gas wells producing 100 Mcf of gas per day or less from requirements for inspection frequency of the meter tube, determination of flowing gas temperature, calibration frequency, and tracking of static pens. These exemptions are in addition to the measurement exemptions that currently exist for low volume wells with respect to beta ratio range and differential pen tracking;

8. Requiring semiannual proving of positive displacement metering (e.g., Lease Automatic Custody Transfer) systems measuring 10,000 barrels of oil per month or less;

9. Assessing operators up to $250 per day for each day a violation remains uncorrected after a specified abatement period. This proposal would also remove the categories of ''major'' and ''minor'' violations of existing regulations. BLM believes this approach will simplify the enforcement process and make it more consistent, while still providing reasonable monetary incentive for operators to comply. BLM would prescribe shorter abatement periods for more serious violations;

10. Changing the system of immediate assessments for serious violations from a $500 per day per violation assessment to a substantially increased one-time amount per violation assessment. This change would simplify the enforcement process and would be more of a deterrent for offenders;

11. Expanding the list of serious violations subject to immediate assessments to include surface disturbance without approval, habitual violation, and commingling of production without approval. These violations would be added because of the potential harm to the environment, production accountability, or public health and safety;

12. Simplifying the language for BLM's civil penalty regulations to more closely follow the provisions of the Federal Oil and Gas Royalty Management Act;

13. Revising BLM's existing oil and gas unitization regulations with a more flexible unit agreement format. The primary change to the unitization process would be an emphasis on up-front negotiation among the various interest owners and BLM. The agreement format would be flexible as long as it addressed the unit area, initial unit obligations and continuing development obligations, productivity criteria, and participating area size; and

14. Requiring a fair market value user fee for geophysical exploration on BLM lands. The user fee would not, however, be charged for geophysical exploration under a Federal oil and gas lease.

Section-by-Section Discussion

In many instances, this proposed rule does not change the policy or procedure of the current regulations and consists only of a translation from current regulatory language into plainer language. The section-by-section analysis for the proposed leasing regulations mostly describes significant changes from current BLM regulatory policy or procedure. Certain sections also describe areas where we have clarified existing procedures or policies. The section-by-section analysis for the operating regulations is more detailed because the proposed changes to the operating regulations are more complex than the proposed leasing changes. The operating regulations' discussion also provides tables that cross reference the proposed sections with existing requirements. The discussion of the proposed regulatory text is generally a discussion of changes from current policy or procedure.

The regulations would provide the operational requirements for the exploration, development and production of oil or gas on *both* Federal and Indian lands. These regulations also apply to the leasing of Federal lands for oil or gas. However, they do not apply to the leasing of Indian lands. Also, we propose that the operating regulations would apply to oil and gas leases on lands the Federal government may acquire in the future, to the extent that they are not inconsistent with the rights granted in the original lease. The authority under which we would regulate such leases is the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*).

Part 3100—Onshore Oil and Gas Leasing and Operations: General

Subparts 3101—General, 3102—Recordkeeping, 3103—Reports, Submissions, and Notifications, and 3104—Environment and Safety

Definitions Section 3101.5 would consolidate and incorporate the definitions included in the current 3000.0–5, 3100.0–5, 3150.0–5, 3160.0–5, 3180.0–5, 3190.0–5 for easier reference and to eliminate redundancy. The definitions section would also include terms found in current onshore orders. Some of the definitions that appear in existing sections would be moved to a general definitions section proposed under the Definitions rulemaking published on November 19, 1996 (61 FR 58843).

One particularly important definition is the term ''interest,'' which is used frequently in the rule. It is proposed that the term means only record title interest or operating rights interest (also known as working interest). Other interests such as overriding royalty interests would not be included in this definition.

Section 3101.8 would contain a chart which references those sections of these regulations where we cite and incorporate industry standards.

Subparts 3101 through 3104 would lay out general requirements and explanations of the proposed 3100 regulations. These general requirements would include—

1. Principles that underlie the regulation of Federal oil and gas leasing and operations.

2. The need for operators, lessees, and sublessees to comply with the lease terms, stipulations, conditions of approval, notices to lessees, and written or oral orders.

3. An explanation of the process for waiver, exception, and modification of stipulations and variances to the requirements imposed by these regulations.

4. A description of the surface use rights under a lease and your reporting and recordkeeping requirements.

Subpart 3101 would include a chart referencing other regulations that affect leasing or operations on Federal land and Subpart 3102 would include a list of the types of records BLM requires an operator or lessee to keep. Subpart 3103 would identify reports, submissions, and notifications BLM requires and the forms which must be used. It would also include a cross reference to the pertinent section of the regulation to which the record pertains.

Sections 3101.11 through 3101.13 would clarify the liability of various interest owners when there are many parties with an interest in a single lease. This section would state that each record title holder, each operating rights owner, the operator and the bonded parties are each fully responsible for the performance of all lease obligations (in the case of an operating rights owner just for the area or depth subject to its rights), unless provided otherwise in a particular regulation. The rule makes express what is the case under standard contract law: When two or more parties promise the same performance to the same promisee, each is bound for the whole performance thereof. Restatement of the Law of Contracts, Second § 289(1). Furthermore, when an oil and gas lessee assigns an undivided interest in his lease to another, each of them is jointly and severally liable for the performance of lease covenants. See *Hafeman* v. *Gem Oil Co.*, 80 N.W. 139, 163 (Nebr. 1956). BLM bonding policy since 1988 has allowed a single interest holder in a lease to provide a bond on behalf of all lessees and record title holders, reflecting BLM's understanding that by covering one such interest holder the surety has agreed to indemnify BLM for full performance of the lease obligations, up to the amount of the bond. BLM has never been authorized to agree to assume any portion of the cost of reclamation or other lessee duties, just because one interest holder is insolvent or cannot be found. The Bureau Oil and Gas National Performance Review Report dated April 27, 1995, recommended that BLM amend its regulations to make this ''joint and several'' liability more explicit. This regulation would be superseded where a statute or regulation concerning a particular category of obligations limits the liability of a co-lessee to its proportionate interest in the lease, such as the Royalty Fairness and Simplification Act provides with respect to payment obligations.

Section 3101.18 would explain that lessors are responsible for drainage and would cross reference a proposed rule on oil and gas drainage that was published in the **Federal Register** on January 13, 1998 (63 FR 1936). This final rule would incorporate the drainage rule and cross reference it in this section.

Subpart 3104—Environment and Safety

Subpart 3104 would contain an explanation of what an operator must do to protect the environment when conducting operations. This subpart is not meant to describe in detail all of the environmental protection aspects of leasing. It is only an overview of the issues that are involved. The details of environmental protection are considered in several other sections of these regulations and in lease terms and conditions as well as orders and notices BLM may issue.

Subpart 3105—Lessee Qualifications

Subpart 3105 would contain requirements for lessee qualifications including when persons who are not United States citizens or who are minors may hold lease interests. This subpart would also include the maximum acreage limitations for public domain and acquired minerals that may be held by an entity which also applies to options for leases. How BLM computes chargeable acreage would be explained as well as what you must do if you exceed the acreage limitations. However, this subpart would eliminate the existing requirement that option agreements be filed with BLM. Acreage held under option remains chargeable. BLM would request outstanding option agreements for acreage audit purposes.

Subpart 3106—Fees, Rentals, and Royalties

Subpart 3106 would contain general information regarding fees, rentals, royalties and minimum royalties, acceptable forms of payment, and where to submit payments. The proposal includes charts identifying the types of payments, rental, royalty and minimum royalty rates for competitive, noncompetitive, renewal, exchange and right-of-way leases, and leases issued in lieu of unpatented oil placer mining claims. The subpart would also include provisions on waivers, suspensions, and reductions of rental and royalty.

Royalty Rates on Oil Sliding and Step-Scale Leases

Proposed regulations on determining oil royalty rates for sliding and step-scale leases are in sections 3106.50 through 3106.54. These sections would establish a new procedure to calculate average daily production. Sliding and step-scale leases have royalty rates that increase as the average daily production increases.

Proposed regulation	Existing regulation
3106.50 3106.51 3106.52 3106.53 3106.54	3162.7–4.

Sections 3106.50 through Section 3106.54 would describe a new procedure for calculating average daily oil production for the purpose of determining the correct royalty rate for a sliding-scale or step-scale lease.

The existing procedure to determine average daily production involves a complex system of identifying ''countable'' wells based on the number of days a well was produced, whether a well was initially or previously produced, and whether a well was shut-in for conservation purposes. Generally, the average daily production is determined by dividing the gross oil production for the month by the number of countable wells multiplied by the number of days in the month, regardless of how many days the wells actually produced. However, some leases require the gross production to be divided by actual days produced to arrive at the average production rate. You then use the resulting average daily production per well to find the corresponding royalty rate from the royalty provisions of the lease. For these types of leases, the royalty rate increases on a scale from 12½ percent to 25 percent as the average daily production per well increases.

The complex nature of the well count procedure has caused many errors by both industry and BLM in calculating or verifying the average daily production per well. The propensity for errors in the well count procedure in turn results in incorrect royalty payments, which require detailed, time consuming, and expensive audits to correct. Errors are not readily identified by either BLM or MMS because all of the information needed to verify the average production rate or royalty is not found on the monthly report of operations, Form MMS–3160.

These regulations would simplify the procedure to determine the average daily oil production. Under this proposal, gross production from a lease or agreement would be divided by the total number of days ''eligible'' wells are produced or used for production. Any paying well that produces oil is an eligible well, as is any injection well used to recover oil. Wells shut-in for any reason would not have a bearing on the average daily production rate. All of the information necessary to make the computation of average daily production is found on Form MMS–3160. The proposed procedure should not substantially impact royalty payments. The proposed procedure would be implemented as of the effective date of the final rule.

Stripper Oil Property Royalty Reduction

Proposed regulations on determining royalty reductions for stripper oil properties would explain the procedures on how to determine if you have a stripper oil property and, if so, how to apply to receive a royalty reduction. They would also set the reduced royalty rates for eligible production rates, provide for further royalty reductions as production declines, and allow BLM to terminate the stripper oil property royalty reduction program with proper notice.

Proposed regulation	Existing regulation
3106.60	3103.4–2(a)(1).
3106.61	3103.4–2(a)(2) through (4).
3106.62	3103.4–2(b)(2).
3106.63	3103.4–2(b)(3)(i)(B).
3106.64	3103.4–2(b)(3)(ii).
3106.65	3103.4–2(a)(1), (b)(2), (b)(3)(i) and (b)(3)(ii).
3106.66	3103.4–2(b)(3)(ii).
3106.67	3103.4–2(b)(3)(ii), (iii)(B), and (v), and 3103.4–2(b)(3)(ii), (b)(6), and (b)(7).
3106.68	3103.4–2(b)(3)(ii).
3106.69	3103.4–2(b)(3)(ii), (iii)(B), and (iii)(C).
3106.70	3103.4–2(b)(3)(iii)(A) and (B).
3106.71	
3106.72	3103.4–2(b)(3)(iii)(C) and (b)(8).
3106.73	3103.4–2(b)(3)(vi).
3106.74	

The requirements of this proposal are similar to those in existing regulations. One minor change would be in section 3106.63. That section would clarify what oil you must use when calculating your average daily production rate. It establishes what liquid hydrocarbons are considered ''oil'', and therefore eligible for royalty reduction, and what is considered ''condensate'', which is not eligible.

Subpart 3107—Lease, Surety, and Personal Bonds

Subpart 3107 would contain general bonding information regarding who must post a bond, bond amounts, the types of acceptable bonds, and procedures for bond increases, collections, and cancellations. This subpart would generally contain existing regulatory requirements with the following exceptions.

Section 3107.14 would increase amounts for bonds. Individual bonds would increase from $10,000 to $20,000. The amount for a statewide bond would increase from $25,000 to $75,000. The nationwide bond amount would remain at $150,000. BLM believes the increases are justified because the costs to plug a well, restore the surface, remove related facilities, reclaim roads, rights-of-ways, etc., in many cases far exceeds the present bond amounts. In addition, BLM has not increased minimum bond amounts since 1960. Applying an inflation factor to the individual and statewide bond amounts since 1960, would increase them to $50,000 and $135,000 respectively. For these reasons, BLM has concluded that the increase in bond amounts for individual and statewide bonds is reasonable and justified. In BLM's experience, entities that hold nationwide bonds do not pose an unacceptable risk. Therefore, we are not proposing to increase nationwide bonding.

Section 3107.50 would allow you to apply to BLM for a decrease in your bond amount. Your application must include your justification for a decrease in the bond amount. BLM would approve a decrease in your bond amount if we determine that the potential liabilities on your lease are less than the existing bond amount. Please specifically comment on the standards BLM should use to determine whether we will approve a decrease in the bond amount.

Section 3107.52 would require additional bonding for inactive wells. A significant source of orphan wells is temporarily abandoned wells. In 1995, there were more than 6,500 temporarily abandoned wells on BLM-managed lands. This is a major source of potential future liability. The $2.00 per foot or $100 per well fees would complement the proposed increase in individual and statewide bonds and partially cover the potential liability.

Section 3107.70 would change BLM's current policy of terminating only the period of liability of bonds. Under this proposal, BLM would cancel bonds after determining that you met lease obligations, including proper plugging and abandonment of wells, and surface reclamation. The Federal Oil and Gas Royalty Simplification and Fairness Act of 1996 allows MMS seven years to complete royalty audits. Since bonds cover royalty obligations, cancellation would be subject to concurrence from MMS that there are no outstanding royalty obligations.

Current section 3104.4, Unit Operator's bond, provides that a unit operator's bond may be filed in lieu of an individual, statewide or nationwide bond. This proposal would eliminate any provision for an operator of a unit to file a unit bond. This is an unnecessary requirement since BLM allows unit operations to be covered under statewide and nationwide bonds. If existing statewide or nationwide bonds are inadequate, BLM would request an increase in those bond amounts rather than require a separate unit bond.

Subpart 3108 would contain bonding information for geophysical exploration operations. This includes the types of bonds, amount of bond, bond increases, terminations, and action to be taken for nonperformance.

Part 3110—Oil and Gas Geophysical Exploration

Subparts 3110, 3112, and 3113 would contain the requirements for conducting geophysical exploration operations on Federal lands.

Proposed regulation	Existing regulation
3110.10 and 3110.11	3150.0–1.
3110.12	3150.1.
3110.13	New section.
3112.10–12 and 3112.20–3112.21.	3151.1 and 3151.2.
3113.10	3152.1.
3113.11–3113.12 and 3113.20–3113.22.	3152.3–3152.5.
3113.30–3113.31	3152.6.
3113.40	3152.7.
3113.50	3153.1.

Subpart 3110—Onshore Oil and Gas Geophysical Exploration General Provisions

This subpart would contain requirements similar to existing regulations with one exception. Section 3110.13 would require you to pay a fair market value fee (FMV) for the use of the public lands for each Notice of Intent to Conduct Oil and Gas Geophysical Exploration Operations. The Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*) (FLPMA) requires that ''the United States receive the fair market value of the use of the public land and

its resources unless otherwise provided for by statute.'' In addition, a May 1992 audit report by the U.S. Department of the Interior, Office of Inspector General (OIG), recommended that BLM establish and implement procedures to charge FMV for geophysical exploration. In order to comply with the requirements of FLPMA and the OIG recommendation, we propose to adopt a FMV for geophysical exploration. The FMV would be based on the size of the area physically affected by each individual geophysical exploration project. You would not be required to pay the FMV for a geophysical exploration project, or a portion of a project, that is conducted under a Federal oil and gas lease.

Subpart 3112—Geophysical Exploration Outside of Alaska

Sections 3112.10 through 3112.12 and 3112.20 and 3112.21 would describe the procedures you must follow to obtain authorization for geophysical exploration operations outside of Alaska. It would also implement a new provision that establishes when you must submit a notice of intent (NOI) to BLM. Under this proposal, you would submit an NOI ahead of your anticipated starting date. This time period should allow BLM time to process your NOI before the day you plan to start your geophysical exploration project. This section would describe the actions BLM would take after we receive your application. It would include a provision for a BLM field inspection to review the geophysical exploration operations proposal, would describe how and when to notify BLM that you completed operations, and explain how BLM will act on your notice.

A new requirement would be added to make sure BLM receives information to accurately determine the extent of the area affected by your geophysical exploration project and whether you are conducting any part of the project under a Federal oil and gas lease. BLM needs this information to calculate FMV. BLM would not authorize your NOI until you paid the required FMV.

Subpart 3113—Geophysical Exploration in Alaska

This subpart would contain the existing regulatory requirements with the following exceptions.

Section 3113.10 would describe what you must include in your application for an oil and gas geophysical exploration permit. This proposal replaces the detailed, who, what, and where type of information in current section 3152.1, with a general standard for permit application requirements. This standard would provide more flexibility to deal with on-site conditions and individual geophysical exploration plans that may dictate different filing requirements.

This proposal would add a new requirement for determining FMV. This requirement would ensure BLM receives information to accurately determine the extent of the area affected by your geophysical exploration project and whether any part of the project is being conducted under a Federal oil and gas lease. BLM would not approve your permit until you paid the required FMV.

Section 3113.40 would describe what you must submit to BLM after you complete geophysical exploration operations, when you need to submit a completion report, and what action BLM takes after we receive a completion report. These sections would not include the detailed what and where type of information that is in current section 3152.7. Rather, section 3113.40 would replace the list of required information with a standard for completion reports. A standard is appropriate in this case because the information BLM needs in a completion report depends on the application filed, the terms of the permit BLM issued, and the results of your on-site activities. BLM proposes this standard because the specific requirements in a completion report are often worked out between the applicant and BLM before we issue a permit. This information may also be included in the terms of the permit.

Part 3120—Oil and Gas Leasing

Subpart 3120—Leasing

Subpart 3120 would contain requirements for competitive and noncompetitive leasing and would describe lands that are available for leasing. It would contain charts outlining the terms of different types of leases, and how to describe lands in a letter of nomination. This subpart also would include procedures for renewal and exchange leases and right-of-way leasing and would generally contain existing regulatory requirements with the following exceptions.

This proposal would eliminate presale noncompetitive lease offers. The intent of the Reform Act was to emphasize competition for Federal oil and gas resources. Presale offers were created by regulation and are not required by the Reform Act. Eliminating presale offers would expedite leasing because it would remove the existing one-year waiting period that prohibits the filing of offers for one year from the date of expiration, termination, or cancellation of a former lease. This would result in a streamlined leasing process, reduce confusion regarding which lands are available for leasing, result in a cost savings for unnecessary filing fees accompanying offers identifying unavailable lands, and encourage competitive leasing.

This proposal would also eliminate the formal nomination procedures in existing section 3120.3. This section gives BLM's Director the discretion to post a Competitive Nomination List and requires the public to formally nominate lands from that list for future competitive sale. The Director has never exercised his discretion to implement these regulations and does not plan to do so in the near future. We therefore believe it would be appropriate to eliminate the requirements of this section.

Section 3122.21 would allow BLM to accept a late payment of bonus bid balances if you provide evidence showing the late payment was postmarked by the U.S. Postal Service, or dated as received by a courier or other delivery service, on or before the tenth business day following the day of the sale. Currently, BLM will not accept payments of bonus bid balances after the tenth business day after the sale.

Sections 3123.30 and 3123.31 would limit the acreage in noncompetitive lease offers to 2,560 acres in the lower 48 States and 5,760 acres in Alaska. Under current regulations, the 10,240-acre limitation for noncompetitive parcels exceeds the 2,560-acre limitation for competitive parcels. As a result, BLM must reconfigure parcels in order to offer the lands for competitive leasing. Limiting the acreage will provide consistency between competitive and noncompetitive leases and will simplify the leasing system.

Those sections would also require you to describe the lands in two-year noncompetitive lease offers by the parcel number indicated in the Notice(s) of Competitive Oil and Gas Lease Sale. Under the proposed rule, you would be able to combine more than one parcel from more than one sale notice in a lease offer. If you combined more than one parcel into an offer, the lands would be required to be within six square miles, unless you show BLM that a larger area is necessary. BLM will consider larger areas if we determine that is in the interest of conservation of resources. The current regulations require that lands be within six square miles. Allowing you to come in with a larger area would give you added flexibility to deal with geologic conditions.

These proposed changes would simplify the filing of two-year noncompetitive lease offers since you would not be required to use legal land descriptions in your offer, but only the parcel number. It would also expedite leasing because lease stipulation revisions would not be necessary for split parcels. The current regulations require that noncompetitive offers for public domain minerals must be a minimum of 640 acres unless the lands are isolated, i.e., there are no contiguous lands. This regulation has resulted in confusion, the loss of filing fees, loss of priority of offers, and is not required by statute. This proposal would eliminate the 640-acre filing requirement.

Section 3123.40 would reduce the number of copies of noncompetitive lease offers you must file. Two copies of a noncompetitive lease offer would be required rather than the current three copies.

Sections 3124.40 through 3124.42 would clarify current provisions that 20-year leases issued under Section 14 of the Act are in effect so long as oil or gas is produced in paying quantities.

Section 3124.44 would require you to file applications for renewal at least 90 calendar days before the lease expiration date. Existing regulations require filing at least 90 calendar days, but not more than six months, from the expiration of the lease term.

Subpart 3129—Record Title, Operating Rights, and Estate Transfers, Name Changes, and Mergers

Subpart 3129 would cover requirements for transfers of record title and operating rights interests in leases. This subpart would generally contain existing regulatory requirements with the following exceptions.

Section 3129.11 would implement a change in policy and procedure. This proposal would eliminate the requirements of current section 3106.4–2 (Transfers of other interests, including royalty interests and production payments) that requires you to file overriding royalty assignments, net profit and production payments with BLM. BLM does not check the accuracy of these transfers and does not verify outstanding royalty interests. BLM only places these documents in the lease file for record purposes. Frequently, the official lease file at BLM does not contain all outstanding transfers and is therefore not an accurate record for determining the outstanding interests. Eliminating the filing of these documents would save you the $25 filing fee currently required for such transfers. Under these proposed regulations, if you requested a royalty reduction under section 3106.40, BLM would still require you to document the amount of outstanding overriding royalties.

Sections 3129.20 and 3129.21 would define mass transfers and would describe a change from current procedure. BLM would no longer require three originally-signed copies of mass transfers with one photocopy for each of the additional leases the transfer affects. This procedure was adopted under the 1988 regulations and is confusing to some. Under this proposed rule, you would be required to file three originals of the record title assignment and operating rights transfer forms for each affected lease. BLM would not accept photocopies of the signed documents for each additional lease the transfer affects.

Part 3130—Oil and Gas Agreements

Subpart 3130—Reservoir Management

This subpart would contain requirements for well spacing, communitization agreements, subsurface storage agreements, development contracts, compensatory royalty agreements and unit agreements. Also, the unitization subpart would change current policy and procedure and is discussed in greater detail in that subpart discussion. This proposal contains additional types of agreements that are not covered in existing regulations. These agreements would be added to identify all types of agreements acceptable under current BLM policy.

Proposed regulation	Existing regulation
3130.10	3162.3–1(a) and (b).
3130.11	3162.3–1(a).
3130.12	3162.5–2(b).
3130.13	3162.2(b).
3132.10	3161.2.
3132.11	New section.
3132.12	3105.2–2, 3105.5–4, and 3107.
3132.13 and 3132.14	New sections.
3133.10	3105.2–2.
3133.11	3105.2–3(a).
3133.12	3105.2–3(b).
3133.13 through 3133.15	3105.2–3(c).
3133.16 through 3133.18	New sections.
3134.10	3105.5–2.
3134.11	3105.5–3.
3134.12	3105.5–2.
3135.10	New section.
3135.11	3105.3 and internal BLM guidance (WO IM Number 95–146 and The Oil and Gas Development Contract Task Force Report, March 1988) on the application and use of development contracts.
3135.12	3105.3–2.
3135.13	3105.3.
3135.14 through 3135.19	New sections.
3136.10	New section.
3136.11	3100.2–1.

Well Spacing

Subpart 3130 would contain requirements substantially similar to those in existing regulations.

Subpart 3132—Oil and Gas Agreements: General

Subpart 3132 would contain requirements substantially similar to existing requirements with the following exceptions.

Section 3132.10 would set out the types of agreements which require BLM approval. The language in this section consolidates general provisions that are stated in many places throughout Federal mineral leasing laws and BLM's existing regulations.

Section 3132.12 would state the benefits you receive for fulfilling the requirements of an approved oil and gas agreement. This is a new section. However, it contains no new requirements or policy issues.

Section 3132.13 would describe when you would be required to obtain rights-of-stway for roads, facilities, or other surface uses for Federal lands excluded from an agreement by contraction or termination. This is a new section. However, it contains no new requirements or policy issues.

Section 3132.14 would state that you may include State, Indian, or private mineral interests with Federal interests in a Federal agreement. This is a new section. However, it contains no new requirements or policy issues.

Subpart 3133—Communitization Agreements

Communitization agreements are currently covered in subpart 3105. This proposal would cover the application process and how BLM would set the terms and conditions of the agreement. The subpart would contain current regulatory requirements and implements existing policy with the following exceptions.

Section 3133.11 would detail what you must submit to BLM in your application. This section would eliminate the existing requirement that the communitization agreement be signed by or on behalf of all necessary parties. Instead, this section would require you to certify, as applicant, that all necessary parties have committed their interests to the agreement. This change was made as a result of a recommendation of BLM's Onshore Oil and Gas Performance Review to streamline the communitization process. Please specifically comment on alternative ways to submit the required information.

Section 3133.13 would require BLM to notify the operator when we make a decision on your request to communitize. It also would require the operator to notify all necessary parties of BLM's decision within 30 calendar days. This new section would clarify current administrative processes.

Subpart 3134—Subsurface Storage Agreements

This subpart contains current regulatory requirements and implements existing policy. It does contain more detail than existing regulations on subsurface storage agreements. However, it does not implement new policy or procedure.

Subpart 3135—Development Contracts

This subpart contains current regulatory requirements and implements existing policy. It does contain more detail than existing regulations on development contracts. However, it does not implement new policy or procedure.

Subpart 3136—Drainage Agreements

This subpart contains current regulatory requirements and implements existing policy. It does contain more detail than existing regulations on drainage agreements however, it does not implement new policy or procedure. One section in this subpart would cross reference another proposed rule. Proposed section 3136.10 cross references regulatory requirements in a proposed rule on oil and gas drainage that was published in the **Federal Register** on January 13, 1998 (63 FR 1936). This final rule would incorporate the drainage rule and cross reference it in this section.

Subpart 3137— Unit Agreements

BLM developed this subpart of the proposal to respond to industry concerns identified by the Bureau Oil and Gas Performance Review and reinventing government initiatives. The public commented that the existing unitization process was inflexible and that was a limitation on increased development. Secretary Babbitt issued Secretarial Order 3199 on April 4, 1996, directing BLM to ''reengineer Federal oil and gas unitization into a more efficient and flexible process.'' On September 39, 1998, the Secretary renewed the order until the unit regulations go into effect or September 30, 1999, whichever occurs first. BLM drafted these regulations to focus the unitization process more on what is to be accomplished rather than on how regulated entities would achieve their objectives. BLM identified the following as limitations on the effectiveness of the current unitization process—

1. The process is unnecessarily complicated and is a barrier to innovative and creative exploration and development;

2. Paying well determinations based solely on economics cause delays;

3. Allocation of unitized production is often delayed because paying well determinations cannot be made in a timely manner. This necessitates extensive corrections to production and royalty reporting;

4. The unit designation process adds unnecessary complexity to the application process; and

5. The existing model unit form (see 43 CFR 3186) contains many terms unnecessary to the Secretary's decision whether to approve a unit agreement or not.

These proposed regulations attempt to eliminate or minimize these barriers, while still meeting the intent of the Mineral Leasing Act of 1920.

These regulations would increase the flexibility of the unitization process by allowing operators and BLM to negotiate exploration and development terms before entering into a unit agreement. The focus of this new process would be to protect the public interest rather than to rely on the existing model unit agreement. This regulation would not change the terms and conditions of existing unit agreements or the way BLM administers existing agreements.

Proposed regulation	Existing regulation
3137.10 and 3137.11	3186.1.
3137.12	New section.
3137.13	3181.2 and 3186.1.
3137.14	3181.3 and 3186.1.
3137.15	3181.3.
3137.16	3186.1, sec. 20.
3137.17 and 3137.18	New sections.
3137.20	3186.1.

Proposed regulation	Existing regulation
3137.21 and 3137.22	New sections.
3137.30	3186.1, sec. 3.
3137.31 through 3137.34	New sections.
3137.40	3181.2.
3137.50 through 3137.52	3186.1, sec. 9.
3137.53	New section.
3137.54	3186.1, sections 9 and 20.
3137.55 through 3137.59	New sections.
3137.61 through 3137.66	3186.1, sec. 11.
3137.67	3181.4 and 3181.5.
3137.68	3101.3–1.
3137.69	3186.1, sec. 11.
3137.70 through 3137.73	3186.1, sec. 11.
3137.74	New section.
3137.80 and 3137.81	3186.1, sec. 8.
3137.82	3186.1, sec. 5 and 3186.3.
3137.83	3186.1, sec. 4.
3137.84	3181.5 and 3186.1, sec. 17.
3137.90	3186.1, sec. 25.
3137.91	3186.1, sec. 9.
3137.100	3186.1, sec. 20(b) and 20(d).
3137.101	3183.4(b).
3137.102	New section.
3137.110	3186.1, sec 14.
3137.111	3181.5 and 3186.1, sec 17(b).
3137.112 through 3137.114	3186.1, sec 14.
3137.120 and 3137.130	New sections.

The primary change to the unitization process would be an emphasis on up-front negotiation among the various interest owners and BLM. Operators would be able to use any agreement format in their unit agreement as long as it addressed the following four basic issues: (1) Unit area; (2) Initial and continuing development obligations; (3) Productivity criteria and participating areas; and (4) BLM's ability to set or modify the quantity, rate and location of development and production.

The unit operator and BLM would base the negotiation of unit agreement terms on many factors. These factors may include the history of the area, the environment, economics, the number and depth of wells previously drilled in the area, the size of the area and the cost of the proposed operations.

Under these proposed regulations, BLM would accept only a limited number of additional unit agreement terms beyond the mandatory terms. If the unit agreement does not specifically address modifications, they would not be permitted unless all of the original parties or their successors to the agreement agree. The unit agreement would be considered to include all producing intervals unless the unit agreement specifies producing interval(s).

Another change from current procedure involves the creation and size of initial participating areas and additions to existing participating areas. The amount of land to be included in any participating area revision would be specified in the unit agreement whereas currently it is not. Under existing procedure, participating areas include only specific producing intervals. An addition to an existing participating area occurs when a new well that meets the productivity criteria defined in the unit agreement is drilled outside of that participating area.

The current obligation to drill an exploratory well and subsequent wells under a plan of operations would be replaced with initial and continuing development obligations. Under this proposal, you and BLM would negotiate the initial and continuing development obligations and would include those terms in the unit agreement. These terms would define the number and frequency of wells you plan to drill or operations that would establish new unitized production. Under this proposal, the unit would automatically contract to the existing participating area(s) when you do not meet a continuing development obligation. Existing regulations allow five years for drilling and development of the unitized area before automatic elimination would occur for lands not in a participating area. This proposal would eliminate the 5-year initial drilling and development period of current regulations. BLM believes this new requirement would increase the potential for oil and gas development by encouraging operators to follow a continuous development program or risk contraction of the unit area to the participating area(s).

Paying well determinations would be replaced with well productivity criteria. This would allow the unit operator to negotiate criteria that are not tied strictly to well economics. Currently, production must cover the drilling and operating costs attributed to that well. Under this proposal, costs for that well would be considered as part of unit costs and not be required to be covered by production from that well alone. Productivity criteria must be adequate to indicate a well has established future production potential to pay for the cost of drilling, completing and operating.

Another change to the current system concerns development requirements. After unitization, operators would know the effect of development on participating areas and royalty distribution immediately, without having to wait extended periods for BLM approvals. This is because the criteria for deciding whether wells qualify to be included in a participating area would be clearly spelled out in the agreement.

Under existing regulations, operators are limited to a set time to develop the entire unit. Under the proposed regulations, the unit would not contract as long as development continued at the rate set out in the agreement. Once you meet the initial development obligations, all leases committed to a unit would continue to receive the benefits of unitization as long as the unit is productive.

Under this proposal, BLM could grant suspensions and extensions of time to

carry out the initial and continuing development obligations. In those instances, the unit operator would be required to prove to BLM that the obligations cannot be carried out due to circumstances beyond the control of the operator, despite the exercise of due care and diligence. Existing regulations contain similar provisions.

This subpart for the most part discusses new procedures and policy or new regulatory requirements. Where a given section is substantially similar to existing policy, procedure or regulatory requirement, it is not discussed.

Application

Section 3137.10 would describe the types of unit agreements the subpart covers. Up to now, BLM's regulations have not distinguished between exploratory and enhanced recovery unit agreements. Since enhanced recovery operations differ from exploratory operations, their unit obligations should differ.

Sections 3137.11 and 3137.12 would require you to negotiate with BLM on the terms of exploratory and enhanced recovery unit agreements before you apply and explains that BLM will accept any unit agreement format. Currently, BLM's regulations require that you use the unit agreement form in section 3186.1.

Section 3137.13 would explain what you must include in your unitization application.

Section 3137.14 would describe what the unit operator must certify in the unitization application. This is a new requirement. Currently, BLM requires the operator to submit signatures of all parties committed to the unit. The certification would replace the signatures which will reduce paperwork for you and BLM.

Section 3137.15 would make it clear that you are not required to file with BLM evidence that all leases have actually committed to the unit. However, BLM will require you to keep copies of the invitations to join the unit, including written reasons why parties did not join the unit.

Section 3137.16 would change existing policy and procedure. Under existing regulations, BLM approves a unit agreement effective the date of approval. If the unit does not meet the public interest requirement, the unit is void ab initio. Under the proposal, BLM would provisionally approve units and final approval would be given once you meet the public interest requirement, retroactive to the date of the provisional approval. One effect of this change would be that when a lease that is partly in and partly out of a unit area is segregated into two leases, the provisional approval would not give the lease that is outside of the unit any benefits of unitization, including an extension, until final unit approval. Final unit approval would be given when the unit meets the public interest requirement by meeting the initial unit obligations.

Section 3137.17 would require BLM to notify the unit operator in writing when we approve the agreement. This section would also require the unit operator to notify all parties to the agreement after it receives BLM notice.

Section 3137.18 would explain that BLM will reject a unit agreement application if it does not meet the requirements of this subpart.

Mandatory Topics

Section 3137.20 would define the mandatory terms of exploratory and enhanced recovery unit agreements. Existing unit agreements contain terms that deal with the relationship between the parties committed to the unit agreement and not BLM. This proposal would also reduce the number of permissible unit agreement terms to only those that deal with the relationship between BLM and the parties committed to the unit.

Section 3137.21 would describe only mandatory terms in enhanced recovery unit agreements and exploratory unit agreements. The area you want to include in an enhanced recovery unit agreement must be fully developed at the time you make the proposal. This section also explains that ''fully developed'' means that you have drilled to reasonably delineate the boundaries of the reservoir. Therefore, you would not be required to include terms for initial unit obligation, participating areas, productivity criteria and unit contraction. Instead, you would be required to define enhancement obligations in an enhanced recovery unit agreement.

Section 3137.22 would prohibit terms in unit agreements other than those contained in the listed sections of the proposal. Parties to the unit could set out other terms under private agreements.

Optional Provisions

Section 3137.30 would explain that you may include optional provisions in the agreement for limiting the agreement to certain producing intervals, authorizing multiple unit operators, and providing means for unit agreement modifications. If those provisions are not included in the agreement, the agreement applies to all intervals, contemplates a single unit operator and requires unanimous consent for modification. BLM would approve those optional provisions if you demonstrate that they promote additional development or enhance production potential. These optional provisions are not in existing regulations. However, BLM does allow for these optional provisions if operators apply and circumstances warrant that they be included. BLM would add these provisions to the regulations to clarify existing policy and procedure.

Sections 3137.31, 3137.32 and 3137.33 would set out the requirements for having multiple unit operators, the circumstances under which you may modify the terms of the unit agreement and what you must submit to BLM if you modify a unit area, or change the commitment status of a lease.

Section 3137.34 would make it clear that other agreements do not affect the terms and conditions of a Federal unit agreement.

Size and Shape

Section 3137.40 would require that the unit area consist of tracts that are contiguous at least at one point. It would explain that areas of noncommitted tracts totally within the exterior boundary of the unit are allowed and that BLM may limit the size and shape of the unit area. BLM currently has policies and procedures to deal with the size and shape of units that are similar to this section.

Development

Section 3137.50 would define initial unit obligations for exploratory unit agreements. Existing regulations require you to drill at least one well to explore for unitized substances for your initial unit obligation. As a matter of policy, one well will hold up to about 30,000 acres, depending on geology, economics and other factors. This proposal would require that you negotiate with BLM and define the number of wells necessary to determine the existence of oil and gas in the area of the unit. This proposal would also require that the unit agreement define the primary target for each well and the time between drilling those wells. This would also be subject to negotiation. Existing regulations only require you to define the primary target for the initial well and the time between drilling the well depends on whether it is a producing well or not. BLM believes that negotiation of the provisions for development would allow operators flexibility and ensures that the resources will be diligently developed.

Section 3137.51 would define what you must do to meet initial unit obligations and fulfill the public interest

requirement for an exploratory unit agreement. Before the time set out in the agreement, you must drill at least one well that establishes unit production, drill a test well to the primary target, or convince BLM that drilling the initial well(s) or future wells is unwarranted or impracticable.

Section 3137.52 would define the enhancement obligations for enhanced recovery unit agreements. The unit agreement would define that amount, type and timing of enhanced recovery operations.

Section 3137.53 would define what you must do to meet enhancement obligations and fulfill the public interest requirement for enhanced recovery unit agreements. You would be required to fulfill the provisions of section 3137.52, or prove to BLM either that enhanced recovery operations have actually increased reservoir performance or that further enhancement operations are unwarranted, impracticable or uneconomical.

Section 3137.54 would state that if you do not meet initial unit obligations or enhancement obligations, BLM's approval of the agreement is invalid and BLM will not extend the term of any lease in the unit.

Section 3137.55 would define continuing development obligations. This section would require that your program of exploration or development exceed the pace of non-unitized operations in the area near the unit. The exploration program must also represent an investment commensurate with the size of the unit agreement. BLM believes that these standards for a continuing development obligation would ensure that the resources will be diligently developed.

Section 3137.56 would describe how to define continuing development obligations in the unit agreement. Continuing development obligations occur after you complete initial development obligations, but do not include work you performed prior to unitization. This differs from existing policy in that this new provision would be negotiated up front and defined in the agreement. Currently, continuing development obligations are not defined at the outset, but are laid out after an initial discovery, in a plan of development.

Section 3137.57 would explain that continuing development may occur within or outside a participating area. Currently, starting five years after a participating area is established, you are required to drill outside established participating areas to continue the unit. This proposal would provide flexibility for operators and still encourage additional exploratory drilling by allowing them to negotiate for additional drilling within established participating areas.

Section 3137.58 would require a unit to contract if you do not meet a continuing development obligation. Under existing regulations, if you have not drilled outside of a participating area after five years from the date the first participating area was established, the unit contracts to existing participating areas.

Section 3137.59 would require you to submit certain information to BLM after you meet continuing development obligations. You would be required to submit documentation that supports your certification. If you establish production in a well that does not meet the productivity criteria, you would be required to operate, produce, and report the well on a lease basis. This section is substantially similar to existing requirements. BLM does not currently require a certification, however, the information required would be substantially similar to the information in the current application to establish or expand a participating area.

Productivity Criteria and Participating Area

Section 3137.60 would require that productivity criteria be defined in the unit agreement. This section would require that the productivity criteria indicate future production potential sufficient to pay for the costs of drilling, completing and operating the well on a unit basis. This section would also require that the productivity criteria warrant continued production of the individual well itself and that the well must be ready to produce unitized substances. This section would explain that BLM will enlarge participating areas when you drill a well that meets the productivity criteria outside of an existing participating area. Paying well determinations would be replaced with well productivity criteria. This would allow the unit operator to negotiate criteria that are not tied strictly to well economics. Currently, production must cover the drilling and operating costs attributed to that well. Under this proposal, costs for that well would be considered as part of unit costs and not be required to be covered by the production from that well alone. Productivity criteria must be adequate to indicate a well has established future production potential to pay for the cost of drilling, completing and operating.

Section 3137.61 would describe the function or purpose of participating areas. The unit agreement allocates production to committed leases within the participating areas in proportion to the leased surface acreage relative to the total acreage of the participating area. This is similar to existing policy and procedure.

Section 3137.62 would explain that the first well you drill after unitization that meets the productivity criteria establishes a participating area. Existing regulations use the term ''production in paying quantities'' as the sole acceptable productivity criteria. This section would further explain that when you establish the first participating area, lands which contain previously existing wells that meet the productivity criteria will either be added to the initial participating area or become a new participating area.

Section 3137.64 would require you to submit to BLM certification that you established unitized production, a map of the participating area, and a schedule that establishes the allocation to each interest owner in the participating area. This section is substantially similar to existing requirements. BLM does not currently require a certification. However, the information used to make that certification would be substantially similar to the information in the current application to establish or expand a participating area.

Section 3137.65 would require the size of participating area additions to be approximately the same size as the initial participating area for that interval. Currently, BLM does not require them to be the same size. Requiring the participating area additions to be the same or similar in size would simplify expansion of unit participating areas.

Unit Operations

The sections covered under the heading ''Unit Operations'' are substantially similar to existing regulatory requirements.

Suspensions and Extensions of Development

The sections covered under the heading ''Suspensions and Extensions of Development'' are substantially similar to existing regulatory requirements.

Unit Termination

The sections covered under the heading ''Unit Termination'' are substantially similar to existing regulatory requirements.

Royalties

The sections covered under the heading ''Royalties'' are substantially similar to existing regulatory requirements.

Leases and Contracts Conformed and Extended

The sections covered under the heading ''Leases and Contracts Conformed and Extended'' are substantially similar to existing regulatory requirements.

Change in Ownership

The section covered under the heading ''Change in Ownership'' is substantially similar to existing regulatory requirements.

Part 3140—Oil and Gas Lease Administration

Subpart 3140—Extensions

Subpart 3140 would contain provisions for drilling extensions, continuation of leases by production, unit production and segregations, elimination of leases from unit and communitization agreements, leases segregated by assignments, and compensatory royalty and lease payments for subsurface storage of oil or gas. This subpart would not change requirements of existing regulations, with the exception of segregations as they relate to provisional unit approval described earlier in the discussion of proposed section 3137.16.

Subpart 3141—Suspensions

Subpart 3141 would contain requirements for obtaining suspensions of operations, suspensions of production or suspensions of operations and production. Filing requirements for approval of a suspension of operations or production would be outlined. This subpart would describe the effects of a suspension on the terms of a lease and also requirements for the suspension or waiver of lease rights during pending legal proceedings. This subpart would not change requirements of existing regulations.

Subpart 3142—Lease Terminations and Reinstatements

Subpart 3142 would contain requirements for obtaining Class I and Class II reinstatements for leases that terminate for nonpayment or late payment of rental. This subpart would also include Class III provisions for converting unpatented oil placer mining claims to noncompetitive oil and gas leases. This subpart proposes two changes from existing requirements. One change allows a Class I reinstatement for the late payment of a nominal deficiency (see section 3142.20). The other change increases the nominal deficiency amount from 5 percent or $100, to the lesser of 10 percent or $200, which provides consistency with the nominal deficiency amount allowed for noncompetitive offers (see section 3142.11).

Subpart 3143—Relinquishments

Subpart 3143 would generally contain existing regulatory requirements and clarifications of existing requirements pertaining to relinquishments.

Subpart 3144—Cancellations

Subpart 3144 would contain provisions for cancellations and would not change existing regulatory requirements. It would also contain existing regulatory requirements regarding bona fide purchasers.

Part 3145—Oil and Gas Drilling

Subpart 3145—Drilling and Additional Well Operations

This subpart would incorporate the requirements from existing and proposed regulations dealing with drilling and additional well operations. The Onshore Orders referenced in this preamble that relate to the conduct of operations and appear in the charts and proposed operations regulations that follow are: Onshore Order Number 1, which was published on October 21, 1983, (48 FR 48916); Proposed Onshore Order Number 1, which was published on July 23, 1992, (57 FR 32756); Onshore Order Number 2, which was published on October 18, 1988, (53 FR 46798) (Revised on December 9, 1988, (53 FR 49661), September 27, 1989 (54 FR 39528), and January 27, 1992, (57 FR 3023)); Onshore Order Number 3, which was published on February 24, 1989, (54 FR 8056) (Revised on September 27, 1989, (54 FR 39528)); Onshore Order Number 4, which was published on February 24, 1989, (54 FR 8086); Proposed Onshore Order Number 4, which was published on March 9, 1994, (59 FR 11019); Onshore Order Number 5, which was published on February 24, 1989, (54 FR 8100) (Revised on September 27, 1989, (54 FR 39527)); Proposed Onshore Order Number 5, which was published on January 6, 1994, (59 FR 718); Onshore Order Number 6, which was published on November 23, 1990, (55 FR 48958) (Revised on January 17, 1992, (57 FR 2039 and 2136) and on February 12, 1992, (57 FR 5211)); Onshore Order Number 7, which was published on September 8, 1993, (58 FR 47354) (Revised on November 2, 1993, (58 FR 58505)); and Proposed Onshore Order Number 8, which was published on May 6, 1991, (56 FR 20568). This proposal also references Notice to Lessees (NTL) Number 3A, which was published on January 10, 1979, (44 FR 2204) and NTL Number 4A which was published on December 27, 1979 (44 FR 76600). The following is a crosswalk for this subpart.

Proposed regulation	Existing regulation	Onshore order
Application for Permit to Drill or Reenter (APD)		
3145.5	3162.1 and 3162.3–3	
3145.10	3162.3–1(c), (d) and (g)	Order Number 1, III.D.; Order Number 2, parts of I., II., III.G. and D.5.; and Proposed Order Number 1, II.B., III.B., III.C., III.E. and IV.
3145.11	3162.3–1(h), 3164.3(b) and (c)	Order Number 1, III.G.4.; and Proposed Order Number 1, III.C.2.
3145.12 and 3145.13	3162.3–1(d)(1)–(4), (e) and (f)	Order Number 1, III.C., III.G.; and Proposed Order Number 1., III.A., III.C., and III.F.3.
3145.14		Order Number 1, VII.A.; and Proposed Order Number 1, parts of section IV.
3145.15		Order Number 1, VII.B.; and Proposed Order Number 1, V.
3145.16	3162.3–1(e) and (f)	Order Number 1, Introduction and III.G.4.
3145.17 and 3145.18		Order Number 1, III.B.1.; and Proposed Order Number 1, III.D.
3145.19	3162.3–1(g) and (h)	Order Number 1, III.B. and III.C.; and Proposed Order Number 1, III.E., III.F.
3145.20		Proposed Order Number 1, III.E.
3145.21		Proposed Order Number 1, I.D
3145.22	3162.4–2	Order Number 1, VIII

Proposed regulation	Existing regulation	Onshore order
Technical Drilling Standards		
3145.30	3162.5–2(a)	Order Number 2, III.A.
3145.31	3162.5–2(a)	Order Number 2, III.E.
3145.32	3162.5–2(a) 3162.5–3	Order Number 2, III.B., III.C. and III.E.; and Order Number 6, III.C.4.c.
3145.33	3162.5–2(c)	Order Number 2, III.B.
3145.34		Order Number 2, III.D.
Drilling Operations in a Hydrogen Sulfide Environment		
3145.40	3162.5–3	Order Number 2, III.C.6.b; and Order Number 6, III.A., III.B., and IIIC.
3145.41	3162.5–1(d)	Order Number 6, I.C., III.A., III.B., and IIIC.
3145.42	3162.5–3	Order Number 6, II.S.
3145.43	3162.5–3	Order Number 6, III.C.1.c.
3145.44	3162.5–3	Order Number 6, III.C.3.a., C.3.b.
Additional Well Operations		
3145.50	3162.3–2(a) and 3162.3–3	Order Number 1, parts of IV.A., IV.B., and IV.C.; Proposed Order Number 1, part of VI.; Order Number 7, III.E.1.f., and III.F.; and Proposed Order Number 8, parts of III.A. through III.D.
3145.51	3162.3–2(a) and 3162.3–3	Order Number 1, IV.A, IV.B., and V.; Proposed Order Number 1, VI, Order Number 7, III.A.; and Proposed Order Number 8, parts of III.A. through III.D.
3145.52	3162.3–2(b) and (c) and 3162.3–3	Order Number 1, IV.A. and C.; and Proposed Order Number 1, parts of VI.
3145.53	3162.3–2(a)	Order Number 1, IV.B.; Proposed Order Number 1, VI.; and Order Number 7, III.A.
3145.54	3162.3–2	Order Number 1, IV.A. and IV.B.; and Proposed Order Number 1, VI.; Proposed Order Number 8, parts of A., B. and C.
3145.55	3162.5–1(b)	Proposed Order Number 1, VII.A.; and Proposed Order Number 8, parts of III.A.

Application for Permit to Drill or Reenter

Regulations for Application for Permit to Drill or Reenter (APD) would include filing, processing, and surface and drilling operating requirements. Generally, the sections discussed in this subpart contain changes from existing policy or procedure.

Section 3145.5 would make it clear that you must conduct all operations on Federal and Indian leases, including those that do not require BLM approval, according to the surface use and drilling standards of this subpart. BLM currently applies similar standards to workovers and additional well operations via conditions of approval. This regulation would clarify that existing policy.

Section 3145.10 would require you to submit an Application for Permit to Drill or Reenter (Form 3160–3) to BLM for review and approval before you disturb the surface or begin any drilling operations for a new well or reentry of an abandoned well. Under this section, you would be required to have a BLM-approved APD before you start any construction activity or any operation to develop a Federal or Indian lease, including activity on private surface necessary to operations on a Federal or Indian lease. This would include the need to obtain BLM approval for horizontal or directional wells that develop any portion of a Federal or Indian lease, even if the well site is located on State or private surface.

The Reform Act requires that BLM post a public notice of Federal well proposals for 30 calendar days before we are authorized to approve it. Therefore, you should submit your well proposals to BLM at least 31 calendar days before you plan to begin drilling operations to give BLM enough time to post it. This time period would allow BLM time to process your APD before the day you plan to start drilling your well. This period also matches the filing requirement that you should follow if you are requesting a suspension of operations or production in connection with drilling a new well or reentering an abandoned well (section 3141.12 of these proposed regulations).

The Forest Service (FS) approves surface use plans on National Forest System lands (NFS). Surface use plan submittal time frames on NFS lands are longer because the FS must comply with the Reform Act and timeframes established by Section 322 of the Department of the Interior and Related Agencies Appropriation Act for Fiscal Year 1993 (P.L. 102–381, 106 Stat. 1419, 16 U.S.C. 1612 note.). The FS needs time for the public notice period mandated by the Reform Act, a public comment period for review of environmental assessments completed for well proposals, and an appeal period. The minimum time the FS requires to process surface use plans is 120 calendar days.

Section 3145.11 would state the authority and general involvement of the FS and other Federal or State agencies in processing APD's you propose on a Federal or Indian lease where the surface is not managed by BLM or a private landowner. This section addresses BLM's limited responsibility for managing oil and gas operations on lands managed by the FS. The Reform Act limited BLM's responsibility on NFS lands to development or operational proposals involving subsurface activity, related impacts, and any appeals regarding the same. Surface use plans on NFS lands require only FS approval, and all appeals related to the surface use plan are appeals of the FS decision. Unlike existing regulations, the proposal would not require you to submit a surface use plan of operations with your APD, if the proposed drilling location is on NFS lands. Agency responsibilities under this rule and the Reform Act are determined on the basis of subsurface

(BLM) and surface (FS) authority for oil and gas operations on NFS lands.

BLM also shares responsibility for approving surface use plans on National Wildlife Refuge lands in Alaska. If your proposal involved these types of lands, the U.S. Fish and Wildlife Service would be responsible for approving surface use plans for APD's on land it manages.

Sections 3145.12 and 3145.13 would describe what information you must submit to BLM for a complete APD and what requirements you must comply with during operations. This section would require you to submit a drilling and surface use plan and also would establish standards for conducting Federal and Indian lease operations. This section would not require the prescriptive 8-point drilling plan and 13-point surface use plan of operations required by Order Number 1. Instead, it would require your plan to describe how your proposal will affect, protect, or mitigate impacts to surface and subsurface resources. This section would identify the resource concerns that BLM expects you to address in your plan and operations. This is in contrast to the approach of Order Number 1, which places more emphasis on specific information that you must submit to BLM.

The term useable water would be used in these sections and other places in section 3145.32. We defined this term as water containing less than 10,000 parts per million (ppm) of total dissolved solids. This definition is consistent with the regulations of the Environmental Protection Agency (EPA) at 40 CFR 144.3 and 146.3, for an underground source of drinking water. This is also consistent with the existing definition in Onshore Oil and Gas Order Number 2. This section would require you to submit Form 3160–3 for each new well that you propose to drill, or abandoned well you propose to reenter.

Section 3145.14 would provide for additional APD submission requirements when your well has a proposed surface location on privately-owned surface. It also would discuss conditions under which BLM may approve an APD if you are unable to reach agreement with the surface owner for access or occupancy. BLM's responsibilities under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), Endangered Species Act (16 U.S.C. 1531), and the National Historic Preservation Act (16 U.S.C. 470 *et seq.*), are essentially the same for Federal or Indian surface and split-estate lands. BLM will seek full cooperation of the private surface owner. However, the surface owner may not veto Federal statutory requirements. Consequently, surface use agreements with private landowners must satisfy the private surface owner and meet BLM's requirements for environmental protection and mitigation. This proposed rule would also apply to horizontal or directional wells that are located on State or private surface, if the well ultimately develops Federal or Indian leases.

Section 3145.15 would provide for additional APD requirements when your proposed well is located on an Indian oil and gas lease or on surface held in trust for an Indian tribe or an individual Indian. It also describes circumstances where a surface-use agreement is not necessary.

Section 3145.16 would allow you to submit either a single APD package for each well or a field-wide APD package for several wells in a field or area of geologic or environmental similarity. You would be able to develop a field-wide plan for the drilling plan, the surface use plan, or both. If you developed a field-wide plan, it would allow you to reference already approved material when you propose future well sites. This would reduce the amount of paperwork that you would be required to submit for each APD. If your drilling or surface use plan were nearly identical to a previously approved field-wide plan, you would be required to submit information to BLM only on the items that deviate from your approved field-wide plan.

Sections 3145.17 and 3145.18 would allow you to submit a Notice of Staking (NOS) to notify BLM that you have selected a drilling location. You would submit a NOS before an APD to provide BLM the basic information on the type and location of the well you propose to drill. You would submit a NOS only if you actually intended to file an APD at a later date. Section 3145.18 would list the basic information required in a NOS application and surveying requirements that you must complete before BLM conducts a predrill inspection under a NOS.

Section 3145.19 would describe general actions BLM will take to process your APD. Order Number 1 and current regulations at sections 3162.3–1(h) and 3162.5–1 require BLM to complete processing of applications in specified timeframes. Order Number 1 also includes specific timeframes for BLM to conduct predrill inspections and to notify operators that additional information is needed. The only processing time frames included in this subpart are the 30-day public notice period required by the Reform Act and the 120-day period for surface use plan proposals on NFS lands. The other processing time frames of current regulations are not statutory and would be eliminated by this proposal. BLM will continue to process complete applications in a timely manner.

Section 3145.20 would allow up to two extensions of 12 months for APD's. Existing regulations do not address extensions of APD's. However, current practice in many BLM offices is to grant APD extensions when justified.

Section 3145.23 would require you, within 30 calendar days after a well becomes inactive, to put the well into production or service, submit to BLM plans to conduct well work to restore production or service, submit plans to plug and abandon the well or comply with the requirements of section 3107.53. These would be new requirements. BLM has found that inactive wells often become orphan wells that BLM would eventually have to plug and abandon. This section would require operators to take action to put inactive wells back into service, plug and abandon them or provide additional bonding or pay into a fund to help mitigate costs of orphan wells. BLM believes that this is necessary to encourage operators to fulfill their lease obligations as they pertain to inactive wells.

Technical Drilling Standards

Technical drilling standards are BLM's requirements for designing and drilling wells on Federal and Indian leases. Areas covered by these sections would include well control, air drilling, well design and construction, well integrity testing, and drill stem testing.

Section 3145.30 would list the general well control requirements that you must comply with when you design and drill a well. This section would contain performance standards that would replace certain prescriptive requirements of Order Number 2. This section would also incorporate by reference the applicable American Petroleum Institute's (API) publication on well control systems. Many of the existing requirements in BLM's regulations on well control mirror the requirements in the cited API publication. This section also contains specific well control provisions that BLM believes are essential to protect surface and downhole resources and public health and safety.

Section 3145.31 would require you to follow the standards contained in the referenced API document when drilling with gas, air or mist. As noted above, many requirements in BLM's existing orders contain requirements similar to the cited API publication.

Section 3145.32 would state the performance standards for designing and drilling your well. As with the well control section, this section would require certain specific measures that BLM believes critical to resource protection and public health and safety. You must address all of the applicable requirements of this section in your APD and conduct your drilling operations accordingly. These performance standards would replace the prescriptive requirements of Order Number 2.

Section 3145.33 would require you to pressure-test all casing strings below the conductor pipe before you set the next string of casing. You also must perform a mud weight equivalency test for all exploratory wells and any part of a well approved to use a 5000 pounds per square inch blowout prevention equipment system (BOP). The proposed requirement differs from the existing Order Number 2 requirements in that it does not specify minimum test pressures or standards for a successful test. Under this proposal, testing would be performed in any manner that demonstrates that the casing or formation can withstand the maximum pressure it is likely to be subject to throughout its useful life. BLM would determine the adequacy of your testing program before approving your APD.

Drilling Operations in a Hydrogen Sulfide (H_2S) Environment

Section 3145.44 would require you to train all personnel working at the wellsite about H_2S drilling and contingency procedures according to standards contained in the referenced API publication. This section would require that training be completed at least three business days before drilling into, or before reaching a depth of 500 feet above, known or probable H_2S zones. The training frequency contained in the referenced API publication would replace the existing Order 6 requirement to have weekly H_2S and well control drills. The API standard would allow you and BLM to agree upon a training frequency commensurate with the H_2S potential. This section also states who must have appropriate personal protective breathing devices at your wellsite and requires such equipment to comply with the standards contained in the referenced API document.

Additional Well Operations

Regulations for additional well operations would address general filing, processing and operating requirements for well operation activities that generally occur after you drill a well, including reclamation requirements. More specific information is included for some of these activities in separate subparts of this proposed rule (e.g., subpart 3155 for disposal of produced water and subpart 3159 for temporary and permanent abandonment).

Section 3145.50 would include filing requirements and a reference to the form (Sundry Notice, Form 3160–5) that you must use when applying for additional well operations that require BLM approval. The filing requirements and operating standards would parallel requirements in this subpart for drilling a new well or reentering an abandoned well.

Section 3145.51 would list additional well operations that BLM must approve before you begin them. These operations would require BLM approval, although there would be some exceptions described in other sections of this proposed rule. For example, section 3155.12 describes cases when an approval for disposal of produced water is not necessary. This section also includes standards to determine when other additional well operations, which are not specifically listed in this section, would require BLM approval. Some of these activities may be fully addressed in your approved APD. If this is the case, a Sundry Notice and a separate approval would not be necessary, unless you plan to change proposals that were part of your approved APD.

Existing regulations allow BLM to grant oral approval for plugging and abandonment of newly drilled dry holes, drilling failures and in emergency situations. This proposal would allow BLM to grant oral approvals for additional well operations that require BLM written approval. We propose this change because many of these operations are repetitive in terms of technical design, equipment use, the time it takes to complete the operation, and surface use.

Section 3145.52 would identify when additional well operations would not require BLM approval. See the definition of ''routine well maintenance'' in section 3101.5 of this proposal to accurately apply these standards. This section would also contain a requirement that you notify BLM within 48-hours of actions taken to correct or contain an emergency.

Section 3145.54 would require you to submit reports, well logs, test data, and other information that may be required by a condition of approval within 30 calendar days after you complete additional well operations. A well completion report would also be necessary within 30 calendar days if a well completion occurs in a new formation.

This section would require you to submit a subsequent report on Sundry Notice, Form 3160–5, within 30 calendar days after you complete additional well operations, if you alter the existing wellbore configuration. A subsequent report would also be required if BLM requested it.

Section 3145.55 would include reclamation standards that you must follow during drilling and lease operations. Current regulations require you to submit a plan that explains how you will reclaim the disturbed area. This section would set out performance standards for recontouring, seedbed preparation and revegetation. The details of these standards would be laid out in your APD or Sundry Notice for additional lease operations and approved by BLM.

Part 3150—Oil and Gas Measurement and Operations

Subpart 3151—Production Storage and Measurement—General and Production Operations With Hydrogen Sulfide

This subpart would contain regulations on the production, storage, and measurement activities that require BLM approval. This subpart would contain requirements substantially similar to existing requirements with some exceptions.

Proposed regulation	Existing regulation	Existing order or NTL
3151.10	3162.3–2	Order Number 4 section III.E. and F.;
	3162.7–2	Order Number 5 section III.D.; and
	3162.7–3	Notice to Lessees (NTL)–4A.
3151.11	3162.7–2	Order Number 4 section III.E. and F.;
	3162.7–2	Order Number 5 section III.D., NTL–4A; and
	3162.7–3	BLM Manuals and Instructional Memorandums.
3151.12	3162.7–1(a) and (b).	
		Order Number 7 section III.A.3
3151.13	3162.7–1(e).	

Proposed regulation	Existing regulation	Existing order or NTL
3151.14	3162.7–1(d)	Order Number 4 section II.O.3. and section III.B.;
3151.15		NTL–4A sections I and II; and BLM Instructional Memoranda.
3151.16		NTL–4A section III.

Production, Storage, and Measurement—General

Section 3151.16 would list instances where you would be able to vent or flare gas royalty-free without prior BLM approval. Under this proposal you would be able to vent or flare 10,000 cubic feet or less of associated gas per well, provided the gas is produced as part of normal oil production operations and is vented or flared in a safe manner according to applicable laws, regulations and accepted industry practice. This would be a new regulatory requirement that implements existing policy.

Production Operations With Hydrogen Sulfide

Proposed regulations on production operations with H_2S would require you to test your wells and facilities to identify the potential for H_2S and take the necessary steps to protect public health and safety and the environment.

Proposed regulation	Existing regulation	Existing orders
3151.20	3162.5–1(a) and 3162.5–3	Onshore Order Number 6 section III.A.2.b. and c.
3151.21		Order Number 6 section III.A.2.a., III.D.1.c., and III.D.2.
3151.22		Order Number 6 section III.D.2.b. through g.
3151.23		Order Number 6 section III.D.3.a through j.
3151.24		Order Number 6 section III.D.1.c.

Section 3151.22 lists the public protection requirements that would apply to storage tanks that meet the criteria in proposed section 3151.21. Many types of signs and fences satisfy the requirements to warn of danger and restrict access. The proposed section leaves out much of the existing regulatory detail regarding the visual appearance of danger signs and the type of fencing required. The proposed rule would allow BLM the flexibility to accept practices appropriate for a particular area as long as they could achieve the stated performance standard of alerting the public of the potential H_2S hazard and restricting access to production facilities.

Section 3151.23 lists the public protection requirements that would apply to completed wells and production facilities when the H_2S concentration in the gas stream is 100 ppm or more. As with proposed section 3151.22, a standard for signs and fences is proposed that would eliminate the regulatory detail that presently exists in Order Number 6. The section would require that your facility be designed and constructed in accordance with the referenced API publication and would require you to calculate the 100 and 500 ppm radii of exposure. You would also be required to implement the contingency planning procedures of the referenced API publication when the identified standards are exceeded.

Section 3151.24 would require you to take specific actions to reduce ambient air concentrations of H_2S and sulphur dioxide if the specified thresholds for sustained ambient air concentrations are exceeded.

Subpart 3152—Site Security

This subpart would contain regulations on site security to provide for production accountability through sealing requirements, site security plans, facility diagrams, well and facility identification, recordkeeping and theft reporting.

Proposed regulation	Existing regulation	Existing orders
3152.10	3161.1(b)	Onshore Order Number 3 section I.B., I.C.
3152.20	3162.7–5(a) and (b) (1), (2), (4), and (5).	Order Number 3 section III.A.1 and 2.
3152.21		Order Number 3 section III.A.1.b and g; and Order Number 3 section III.A.2.a.
3152.30	3162.7–5(b) (2) and (3)	Order Number 3 section III.B. and D.
3152.40	3163	Order Number 3 section IV.
3152.50	3162.7–5	Order Number 3 section III.F. and H.
3152.51	3162.7–5(d)	Order Number 3 section III.I.
3152.52		
3152.60	3162.6.	
3152.70	3162.7–1(c) (1) through (4)	Order Number 4 section III.E.
3152.80	3162.7–5(b)(8)	Order Number 3 section III.E.

Site Security—General

Section 3152.10 would set site security standards for Federal and Indian oil and gas lease facilities and those facilities that store allocable production.

Storage and Sales Facilities—Seals

Section 3152.20 would contain a performance standard for when a particular valve is subject to seal requirements. The performance standard would describe the characteristics of valves you must seal. This differs from Order Number 3, which lists specific valves that are either subject to, or exempt from, sealing requirements. This standard should give operators the flexibility to take into account local conditions or practices that may affect the need to seal a valve. This section would eliminate the list in Order Number 3 section

III.A.1.c through f and section III.A.2.a., of specific valves that need to either be sealed, or are exempt from, seal requirements.

This section also establishes the standard for how to seal valves and how to seal sealable measurement system components. This part of the section does not change existing requirements.

Section 3152.21 would describe when you must seal the valves that meet the standards in section 3152.20.

Oil and Gas Meters

Section 3152.30 would state BLM's site security requirements for oil or gas metering systems. This section describes the characteristics of components of a Lease Automatic Custody Transfer (LACT) unit you must seal. This differs from the Order Number 3 approach of listing the specific components subject to sealing. This proposal would also require BLM approval for any bypass. We recognize that meters may be used in an operation for check purposes and not for determining royalty volumes.

Federal Seals

Section 3152.40 addresses how and when BLM would seal a valve that is in violation of these regulations. The proposed rule would not change BLM's current procedure on Federal seals.

Plans and Facility Diagrams

Section 3152.50 would state what you must include in your site security plan and would require you to follow your plan for Federal facilities. As with existing Order Number 3, you would not be required to send in your site security plan unless BLM requests it.

Sections 3152.51 and 3152.52 would address what you must include in your site facility diagram and for which facilities you must prepare a diagram. This section would except the requirement for a site facility diagram where a single tank is used for collecting small volumes of oil and condensate produced from a single well. In these circumstances, the design of the facility is so simple that a diagram is unnecessary. Also, the volumes these wells produce are low and the risk for significant royalty loss is minimal. The time frame for submitting the site facility diagram is covered in the general recordkeeping section 3103.10 of this proposed rule and is not repeated here.

Well and Facility Identification

Section 3152.60 would require you to identify wells and facilities with signs that show basic information. This is a change from existing requirements in that it would eliminate the detailed requirements of existing regulations and replace them with a standard. The standard for well and facility identification would require the sign to identify the wells and facilities so that anyone visiting the site will know the ''who'' (operator), ''what'' (lease or agreement number), and ''where'' (legal description) of the site.

Transporter Documentation

The section on transporter documentation contains requirements similar to existing requirements.

Theft

Section 3152.80 would address when and how you must report incidents of oil or condensate theft from your lease. BLM and the person reporting the theft would determine the level of detail needed to document the incident. Existing regulations require you to use a form to report a theft. This section would not.

Subpart 3153—Oil Measurement

This subpart on oil measurement would identify the types of measurement systems and procedures that must be used to accurately measure the quantity and quality of oil you produce.

Proposed regulation	Existing regulation	Existing order
3153.10	3162.7–2.	
3153.20		Order Number 4 section III.C.
3153.30		Order Number 4 section III.D.1 and 2.
3153.31		
3153.32		Order Number 4 section III.D.3.c.; and Proposed Order Number 4 section III.D.4.
3153.33		Order Number 4 section III.D.3.a(1) and (2); and Proposed Order Number 4 section III.D.3.a.(2).
3153.34		Order Number 4 section III.D.3.b.
3153.35		Order Number 4 section III.D.3.c(4) and section III.D.4 Proposed Order Number 4 section III.D.4.
3153.36		
3153.37		Order Number 4 section III.D.5.
3153.38		Order Number 4 section III.D.4.
3153.40		Order Number 3 section III.C.1.a and b.

Oil Measurement—General

Section 3153.10 would establish how you must measure oil produced from or allocated to a Federal or Indian lease. The proposed section requires oil to be measured by tank gauging, positive displacement metering system, or a method that you can demonstrate to BLM is equivalent in accuracy and accountability to tank gauging or a positive displacement metering system.

Tank Gauging

Section 3153.20 would contain a table that lists activities which affect volume and quality determinations if you use tank gauging to measure oil. For each of the listed activities, the table also lists the API standards and practices that you must follow to ensure proper oil measurement. API standards are equivalent to the minimum standards that presently exist in Order Number 4 for tank gauging.

Lease Automatic Custody Transfer (LACT)

Sections 3153.30 and 3153.31 would specify how you must install, operate, and maintain a LACT system to measure oil. The section identifies the API specifications and standards that would become the regulatory requirements for LACT systems. It also lists specific components that you must use in a LACT system, even though components are considered optional in the referenced API documents. You would not be required to retrofit LACT systems installed before the effective date of the rule to meet the requirements of the listed API references. Section 3153.31 would require that oil gravity, sediment, and water be determined in the same manner as you would for tank gauging. Incorporating the API publications by reference should be equivalent to the minimum standards that presently exist in Order Number 4 for LACT systems.

Sections 3153.32 through 3153.38 would specify: (1) how and when you must determine the composite meter factor for a LACT meter; (2) requirements for meter provers used to determine meter factors; (3) the acceptable tolerance for composite meter factors; (4) corrective action in the event of an out-of-range meter factor; (5) reporting requirements for LACT systems; and (6) how you must correct volumes if your meter factor changes between provings. These sections incorporate by reference the appropriate API references for proving a LACT. Accuracy and repeatability standards for prover meters, the meter proving process, and the LACT's meter factor are not specified in the referenced API documents. However, BLM believes these are important to volume accuracy. Therefore, the repeatability tolerances of existing Order Number 4 (five consecutive proving runs within 0.05 percent) and the tolerance for deviation of the composite meter factor (±0.0025 between provings) would continue to be required. The range for initial and repaired meter factors (0.9950 to 1.0050) presently in Order Number 4 has been deleted in the proposed rule. There is no evidence to support repair or replacement of a meter that does not fall within 0.9950 and 1.0050 upon installation as long as the repeatability and meter factor deviation requirements are met.

Section 3153.40 states how you would document the sale of oil from your production facility. To be consistent with API publications, the proposed section uses the term ''measurement ticket'' as a new standard term to refer to ''run ticket'' and ''receipt and delivery ticket'' which are terms customarily used in the oil industry to mean the same thing. This proposed section would apply to documentation of sale or removal of oil regardless of the measurement system you use.

Subpart 3154—Gas Measurement

The subpart on gas measurement would establish the performance standards for measurement systems used to measure and report Federal and Indian gas. This subpart would also include requirements on installation, operation, and maintenance requirements for orifice metering systems. Other areas covered in this subpart would include metering systems other than orifice meters, reportable volume corrections, and gas quality measurements.

Subpart 3154 would incorporate by reference certain API standards relating to gas measurement. These standards are recognized by both BLM and industry as sound operating practices and BLM believes the cited API standards are appropriate. However, BLM is specifically seeking comment on the applicability of such industry standards as they relate to the measurement, sampling, quality determination, and frequency of meter calibration for gas produced from or allocated to Federal and Indian lands. Please also comment on the point of measurement for reporting such production for royalty purposes.

Proposed regulation	Existing regulation	Existing order
3154.10	3162.7–3	
3154.20		Order Number 5 section III.C.1–3, and 6–11.
3154.21		Order Number 5 section III.C.21.
3154.30		Order Number 5 section III.C.5.
3154.31		Proposed Order Number 5, section III.D.11.
3154.32		Order Number 5, section III.C.12–16.
3154.33		Order Number 5, section III.C.17.
3154.40		Order Number 5, sections III.B. and III.C.1 and 6; and Proposed Order Number 5, section III.C.1, 2, and 6.
3154.50		Order Number 5, section III.D.
3154.60		Order Number 5, section III.C.19 and 20; and Proposed Order Number 5, section III.D.8.
3154.70		Order Number 5, section III.E.4.

Gas Measurement—General

Section 3154.10 would establish the standards that would apply to all measurement systems that are used to measure gas from Federal and Indian lands. Any measurement system meeting these standards could be installed and used without prior BLM approval. Currently, you are required to obtain BLM approval before using anything other than an orifice meter system. BLM believes that measurement systems that meet the standards of this section would accurately measure gas to ensure proper royalty payments. Measurement systems not meeting these standards must either be approved by BLM before they are used or be modified to meet the performance standards. This section also states the base temperature and pressure at which you must report gas volumes to MMS and references MMS reporting regulations for Federal and Indian gas. Finally, the section would list the acceptable methods to determine the volume of gas you use for beneficial purposes.

Orifice Meters—Primary Element

Section 3154.20 would identify the API standard that you must follow to install, operate, and maintain an orifice meter. This section would also supplement the API standard with additional requirements that BLM believes are essential to ensure your orifice meter measures accurately. The additional requirement that sets a 6-year meter tube inspection frequency is new and is based on recommended industry practice found in API Manual of Petroleum Measurement Standards, Chapter 20.1, ''Allocation Measurement.'' This section would exclude the additional standards for meters measuring less than 100 Mcf since the cost of compliance for meters measuring lower volumes would likely exceed the value of any additional Federal or Indian royalty that might result. This section would also allow orifice meters installed before the effective date of the final rule to comply with an earlier API standard. This ''grandfathering'' of older orifice metering systems would apply for as long as the existing system is in operation or until the system is completely replaced, whichever comes first.

Section 3154.21 would require you to make volume determinations through your orifice meter using the flow equations found in the referenced API document. BLM currently requires you to use the same equations to measure gas volumes. However, we do not currently reference the API document containing those equations.

Orifice Meters—Secondary Element

Section 3154.30 would set the required tracking range for static and differential pressures on your chart recorder. This section would modify the existing requirement of Order Number 5, Section III.C.4, by increasing the allowable range for differential pressures from the upper 66.7 percent (i.e., 2/3rds) of the chart to the upper 80 percent. (In regards to inverted charts, where the zero position is at the outer limits of the chart, the accuracy of the differential element depends on the physical distance of the pen from ''zero,'' regardless of the type of chart you use.) BLM concluded that expanding the tracking range would not significantly decrease overall meter accuracy because the required range would still be well above the minimum differential pressure range of a given meter. This change would better accommodate wells with declining production.

This section would apply only to meters measuring more than 100 Mcf of gas per day and would exempt meters where operating conditions such as erratic flow patterns preclude tracking in the required range. The latter exemption is not presently in Order Number 5 and was added as result of BLM's experience with variance requests for meters servicing wells with erratic flow patterns.

Section 3154.31 would establish additional requirements if your secondary element uses an electronic flow computer (EFC). EFC's are not addressed in existing Order Number 5 or other BLM regulations. However, this section implements current policy. EFC requirements would be no more stringent than those for chart recorders. The current static pressure, differential pressure, and temperature would have to be displayed on a continuous basis, and the EFC would be required to have a back-up power source capable of retaining collected data for a minimum of 35 calendar days. To meet the requirement to continuously display parameters, EFC's may have either a scrolling display or a toggle switch that allows the display to be activated.

Section 3154.32 would require you to calibrate your orifice meter by following the recommended API practices for on-site calibrations. Because it is not addressed in the referenced API standard, this section would retain the requirement of Order Number 5, section III.C.15, to test the linearity of differential and static pens at 100 percent of the element's range. This section would also require you to document calibrations of your meter.

Section 3154.33 would establish how frequently you must calibrate the secondary element of your orifice meter. Quarterly calibrations would be required only for orifice meters that measure more than an average of 100 Mcf or less per day on a monthly basis.

Orifice Meters—Low Volume Exemptions

Section 3154.40 requires orifice meters that measure an average of 100 Mcf or less per day on a monthly basis to comply with all the requirements of this subpart except for the listed items. We believe the cost for you to comply with these standards for low volume production could exceed the value of the gain in measured gas from the incremental increase in accuracy.

Some of the alternatives listed in this section are carryovers from Order Number 5. New alternatives include—

(1) Waiving the six-year inspection requirement for the meter tube. We believe that a six-year frequency of meter tube inspections for low volume meters is not needed to ensure accurate gas measurement;

(2) Allowing the use of a temperature that reasonably represents the average flowing temperature of the gas stream to calculate volumes. As long as you use a temperature that reasonably represents flowing gas temperature, you would no longer be required to submit a variance to BLM for approval to use something other than a continuous temperature recorder or an indicating thermometer, as you currently do under existing Order Number 5;

(3) Calibrating your meter at least annually rather than quarterly. BLM would pay particular attention to implementation of this exemption to ensure that less frequent calibration of low volume meters does not have an adverse impact on Federal and Indian royalty income; and

(4) Inspecting your orifice plate at least annually rather than semiannually. As with annual calibrations, BLM would monitor the impact of this requirement on measurement accuracy and royalty income.

Other Metering Systems

Section 3154.50 would deal with other metering systems and is substantially similar to existing regulatory requirements.

Volume Corrections

Section 3154.60 would deal with volume corrections and is substantially similar to existing regulatory requirements. However, the proposed rule would drop the existing requirement from Order Number 5 that volumes are to be corrected only if the volume error is more than 2 percent. This gives BLM and MMS the flexibility to require volume corrections when it is in the public interest.

Gas Quality Measurements

Section 3154.70 would require you to determine the quality of the gas you produce at least annually, or more frequently, if BLM requires it. This section would also identify—

(1) Where you must collect your sample;

(2) The industry standard you must follow to collect and handle samples; and

(3) How you must determine the specific gravity and heating value of the gas sample.

This section would cite API standards for collecting and handling natural gas samples and would specify where samples are to be collected. Existing regulations do not address this issue. Implementing this section would ensure that sample collections are uniform in determining the quality and liquid content of the gas.

Subpart 3155—Produced Water Disposal

This subpart would require you to obtain BLM approval before you dispose of produced water. These sections would also require certain construction and operating practices to ensure proper disposal of produced water from Federal and Indian lands.

Proposed regulation	Existing regulation	Onshore order
3155.10	3162.5–1(b) 3162.5–3	Order Number 7, III.A., III.B.2.
3155.11 and 3155.12		Order Number 7, I.C. and requirement 1 of III.F.
3155.13		Order Number 7, III.A., III.B.1., III.B.2., III.C. and III.G.
3155.14		Order Number 7, III.B.1, III.B.2, III.C., III.B.1.a., III.B.1.b., III.B.2a, and III.B.2.b.

Proposed regulation	Existing regulation	Onshore order
3155.15 and 3155.16		Order Number 7, II.D.1., III.D.2, III.E. and requirements 4 through 9 of III.F.
3155.17		Order Number 7, requirement 11 of III.F.
3155.18		Order Number 7, III.G.1.F.
3155.19		Order Number 7, Part III.A.

Section 3155.10 would describe the reasons you must have BLM approval to dispose of produced water from a Federal or Indian well, or from a communitized or unitized private or State well for disposal into a Federal disposal facility within the same communitized or unitized area.

Sections 3155.11 and 3155.12 would describe when you need BLM approval to dispose of produced water. This proposal would add two instances to those in existing regulations that would not require BLM approval for disposal of produced water. Under this proposal, BLM would not require approval for the disposal of produced water if simultaneous injection or disposal of produced water into the same formation occurs in a producing well. This section would also eliminate the need for BLM approval for disposal of produced water if it is injected into an approved disposal well on the same Federal or Indian lease.

Section 3155.13 would describe the type of water disposal BLM allows. This section includes the requirements from III.A., Order Number 7, that lists how you must dispose of produced water from Federal and Indian leases. This section would include additional examples of disposal methods not in Order Number 7. We included these examples to show other methods available to dispose of produced water that could ultimately provide water for beneficial uses.

Section 3155.14 would describe the forms or permits you must submit to construct and operate disposal facilities, and to obtain approval for disposing of produced water. It also cites those regulations you must follow that dictate the type of information that you must submit with these forms. This section would list the BLM forms required under different surface ownership, lease status, and disposal methods.

This section would require you to submit a Sundry Notice, Form 3160–5, or other acceptable filing instrument (letter) for water disposal, unless you are drilling a Federal or Indian injection or disposal well on-lease as part of your produced water disposal plan.

In addition to BLM approval, you must have an Underground Injection Control (UIC) permit issued by the EPA, State, or Indian Tribe, according to 40 CFR parts 144 and 146, before drilling an injection well or converting an existing well to an injection well. The EPA, State or Indian Tribe also require permitting for National Pollution Discharge Elimination System permit (NPDES) facilities and the State or Indian Tribe may require permitting for constructing and operating an earthen pit. This section would provide the option to either submit a copy of these permits from other agencies to BLM, or include a reference to the location and permit name or number to BLM.

The proposed rule would also allow you to submit to BLM the same information you use to obtain a UIC permit, earthen pit or NPDES permit, if you are planning to construct or convert a Federal or Indian facility into a water disposal facility.

This section includes the conditions that would require a BLM right-of-way (R/W) or similar permit from other agencies, individuals, or Indian tribes for constructing or operating disposal facilities, roads, and pipelines. It also provides a reference to BLM's R/W regulations.

This section would require that your Sundry Notice for disposal of produced water include plans for construction of roads or pipelines on-lease if they are part of your overall disposal plan.

Sections 3155.15 and 3155.16 would describe the requirements you must follow to dispose of produced water into lined and unlined pits. These sections would incorporate the requirements of parts III.D.1. and 2., III.E., and requirements 4 through 9 of III.F. of Order Number 7. These sections would replace the extensive list of requirements found in Order Number 7 with performance standards. The performance standards would provide the flexibility to deal with different ecological and geographical conditions, changing technology, specific proposals, and local knowledge about specific design measures that are best suited to local conditions.

Order Number 7 requires you to submit a water quality analysis that tests specific parameters and also provides exceptions from this requirement. The proposed rule would allow the same water quality submittal exceptions found in Order Number 7, but the specific requirements would be changed. This proposal would require that you provide the information on the ''quality of the produced water'' with your application for disposal of produced water into a pit. BLM has determined that flexibility is needed to require testing when necessary, but only for parameters that are unknown and needed to process an application for the disposal of produced water.

This section would eliminate the detailed construction and design provisions in Order Number 7. The detailed provisions in Order Number 7 would be replaced with standards that would allow you to design and obtain permits for facilities without time consuming variance requests.

Section 3155.17 would require you to submit to BLM an amended proposal to dispose of produced water if the quantity or quality of produced water changes.

Section 3155.18 would describe what you must submit to BLM to surface discharge produced water under a NPDES. This section would incorporate the requirements of Order Number 7, III.G.1.F, with the following change: This section would require you to submit information you use to obtain an NPDES permit, if BLM requested it. This provision would streamline the permitting process in situations where existing applications for other agency permits already include information required by this section (water quality analysis, description of site facilities or surface use plans).

Section 3155.19 would explain that BLM would terminate your water disposal permit if the EPA, State, or Indian tribe cancels or suspends your disposal facility permit. This would require you to propose another disposal method to BLM.

Subpart 3156—Spills and Accidents

This subpart would require you to report spills and accidents to BLM. The term, ''Spills and Accidents'' would be used instead of the currently used term, ''Undesirable Events.''

BLM determines if hydrocarbons are avoidably or unavoidably lost even though oil and gas lessees must report this information to MMS (30 CFR, part 216, subpart B). Existing NTL–3A and this proposal do not require you to file reports with BLM of spills or discharges

in nonsensitive areas involving less than 10 barrels of liquid or 50 Mcf of gas. BLM is able to monitor spills involving less than 10 barrels of oil by tracking MMS required reports. We still would require that you report spills on all volumes of more than 10 barrels of liquid or more than 50 Mcf of gas lost. These larger losses are cases that could involve avoidably lost hydrocarbons and BLM will continue to make avoidable and unavoidable determinations to ensure production accountability.

Proposed regulation	Existing regulation	Onshore order or notice to lessees
3156.10	3162.5–1(c)	
3156.11		NTL–3A section I; and Order Number 7, III.H.
3156.12		NTL–3A section II., Section III.; and Order Number 7, III.H.
3156.13		NTL–3A section II., section IV.; and Order Number 7, III.A.3.
3156.14		NTL–3A section II.

Section 3156.10 would describe the actions you must take after an accident or spill that involves Federal or Indian oil or gas. These actions include corrective measures to mitigate the spill or accident, reporting to BLM the spill or accident, and BLM's approval and monitoring of your reclamation and remediation plans.

Section 3156.11 would describe the type of spills and accidents that you must report to BLM within 24 hours of an event. In addition, this section would implement several changes to the current requirements.

The proposal would require you to report the release of hazardous substances. Reporting this information to BLM would not relieve you of any other reporting required by any State or other Federal regulations.

This proposal would eliminate the existing exception to 24 hour reporting of spills of 100 barrels of liquids or more if they are contained within the firewall. This quantity of oil or water in a confined area could migrate deeper than a spill in an unconfined area and affect shallow groundwater. In addition, a confined spill would more likely attract birds and wildlife. BLM believes it is necessary to report these types of spills within 24 hours to minimize contamination and threats to wildlife.

Existing NTL–3A states that these types of spills or accidents should be reported immediately and also states that reports must be furnished, ''as soon as practical, but within a maximum of 24 hours.'' This section would require reports within 24 hours of the event. This proposal would change the deadline for reporting major and life threatening injuries. Existing NTL–3A requires reporting for these types of injuries within 15 days of the event. BLM believes that a major or life threatening injury is important information and should be reported within 24 hours.

Section 3156.12 would describe the type of spills and accidents that you are not required to report within 24 hours of an event and when you would be required to submit initial written reports.

This section would not include an existing requirement to submit two copies of a written report within 15 days following all spills and accidents. Instead, this section would require a written report within 10 business days after a spill or accident occurs for specific events listed, and all events that require you to notify BLM within 24 hours.

Section 3156.13 would describe what you must include in written and oral reports. These standards would contain more guidelines than NTL–3A and would require information that is directly related to the purpose of requiring reports of spills and accidents. This would help BLM determine if loss of oil or gas is avoidable or unavoidable, if sites need to be inspected, if an approval is needed for spill remediation or reclamation, and if corrective orders or contingency plans are needed to address future events.

Section 3156.14 would describe when you must submit more than one written report of a spill or accident to BLM. Under existing regulations intermediate reports are required when BLM requests them. This proposal would require intermediate reports to allow BLM to more effectively monitor spill clean up.

Subpart 3159—Well Abandonment

This subpart would incorporate requirements from existing regulations and some proposals from proposed regulations. Proposed and existing regulations on well abandonment require you to submit a plan to BLM for approval before a well is temporarily abandoned for more than 30 calendar days and before a well is permanently abandoned. This subpart also explains how to obtain BLM approval for abandonment and sets the performance standards that you must meet when you plug a well. This subpart generally contains existing requirements with a few exceptions.

Proposed section	Existing regulation	Existing orders
3159.10	3162.3–4(c)	Proposed Order Number 8 section III.C.1. and 2.
3159.11		
3159.20	3162.3–4(a)	
3159.21	3162.3–4(a)	Order Number 2 section III.G.
3159.22		Proposed Order Number 8 section III.D and Order Number 2 section III.G.
3159.23		Proposed Order Number 8 section III.D and Order Number 2 section III.G.
3159.24	3162.3–4(b)	
3159.25	3162.3–4	Proposed Order Number 8 section III.D.3.b.
3159.26	3161.2	Proposed Order Number 8 section III.D.1.

Temporary Abandonment

Section 3159.11 would set out the basic performance goals for temporary abandonment operations. This section would implement existing policy that you temporarily abandon a well so that it does not prevent proper permanent abandonment, the well bore is secured

to prevent fluid migration and the wellhead is secure at the surface.

Permanent Abandonment

Section 3159.20 would identify when you must permanently plug and abandon a well. This section also allows you to delay the permanent abandonment of your well if BLM approves it. Each approved delay may be for up to 12 months. BLM is concerned with the liability associated with temporarily abandoned wells, and therefore this proposal would impose additional bonding as a condition of approval (see sections 3107.54 and 3107.55).

Section 3159.21 would describe how to obtain BLM approval to permanently abandon a well. It would require you to submit a ''Notice of Intent to Abandon'' along with information on abandonment and reclamation procedures. This section would allow BLM to issue oral approvals for permanent abandonment for newly drilled dry holes, drilling failures, and in emergency situations, provided you submit a written application within five business days of BLM's oral approval. This section also explains that the FS has the authority to approve plans to reclaim the surface on lands it manages.

Section 3159.22 would set standards and incorporate by reference the minimum standards from the API's Bulletin E3 for well abandonment practices. Permanent abandonment is the final opportunity to ensure proper protection of surface and down hole resources. As such, this section would not institute a performance-based approach and it would retain the details of existing abandonment regulations.

Section 3159.26 would require you to submit a ''Subsequent Report of Abandonment'' (SRA) on Form 3160–5, within 30 calendar days after you complete permanent well plugging operations, including any changes that BLM approved orally. This section would also allow you to eliminate the additional notification if the SRA contains the estimated timetable for completing recontouring and reclamation procedures. If you chose not to submit the timetable for recontouring and reclamation, a ''Final Abandonment Notice'' (FAN), Form 3160–5, would be required to notify BLM that the site is ready for final inspection. BLM would approve the SRA or FAN after it determines that you have complied with all conditions of your abandonment and that vegetation has been established to the satisfaction of BLM or the surface management agency.

Part 3160—Oil and Gas Inspection and Enforcement

Subpart 3161—Inspections

This subpart would explain the general purposes of BLM's inspection of lease operations. The proposal would require you to allow authorized inspectors to conduct inspections of your operations. These regulations would implement provisions of FOGRMA that allow inspection of motor vehicles that transport Federal and Indian oil. This subpart contains existing regulatory requirements.

Proposed section	Existing regulations
3161.10	3161.2.
3161.11	3162.1(b) and (c).
3161.12	3162.7–1(c)(3) and (4).

Subpart 3162—Enforcement

This subpart would explain the enforcement actions BLM will take after we discover a violation. Enforcement actions include notifying you of violations in writing and providing a reasonable time to correct violations. Also, if necessary to gain compliance, BLM may order you to shut down your operations. This subpart contains existing regulatory requirements.

Proposed section	Existing regulation
3162.10	3163.1(a).
3162.11	3165.3(a).
3162.12	3163.1(a)(3).

Subpart 3163—Assessments

Under this subpart, BLM would charge you a monetary assessment if you fail to correct a violation within the time set out in BLM's notice. This subpart would also include provisions for immediate assessments for certain serious violations. Under this proposal BLM would also be able to enter your lease to correct violations at your expense and would charge you for actual loss or damage due to your noncompliance. This subpart would contain existing regulatory requirements with some exceptions.

Proposed section	Existing regulation
3163.10	3163.1(a)(1) and (2).
3163.11	3163.1(b)(1), (2), and (3).
3163.12	3163.1(e).
3163.13	3163.1(a)(4).
3163.14	3163.1(a)(6).

Section 3163.10 would allow BLM to assess a monetary assessment up to $250 per day for each day a violation continues beyond the abatement period. This section states that you will also be liable for civil penalties under proposed subpart 3164.

This section would eliminate existing regulatory provisions which classify violations into ''major'' and ''minor'' categories and the corresponding assessment amounts of $500 per day for major violations and a one-time $250 for minor violations. This section would also eliminate existing provisions which cap assessments for major violations at $1,000 per day per lease and minor violations at $500 per lease per inspection. There would be no caps on either the amount of assessments per day per lease or the total assessment amount that could accumulate per violation.

Section 3163.11 would contain a table that lists serious violations and a corresponding assessment amount BLM would charge you immediately when the violation is discovered. The table was compiled from the specific violations listed in existing 43 CFR 3163.1(b) (1) through (3) and adds new violations subject to immediate assessments for—

1. Conducting surface disturbance without an approved BLM permit for a Federal or Indian well, regardless of surface ownership. This would deter operators from building access roads and locations or disturbing the surface without BLM approval. This section would also add an assessment for surface disturbance on surface managed by another Federal agency or on State or privately owned surface;

2. Repeat Offenders. The ''repeat offender'' violation would be added in response to problem operators who, after BLM notifies them of a violation, continue to repeat that violation. This section is aimed at repeat offenders who correct a violation within the time BLM gives them to correct it, thus avoiding an assessment. However, the operator often repeats the violation and corrects it only when they are notified again by BLM of a new violation. Operators engaging in this activity often repeat a violation many times. This pattern of compliance results in excessive and unnecessary administrative cost to BLM. The proposed assessment of $500 would be to deter those repeat violators who comply just enough to avoid assessment. The repeat offender assessment would be triggered when BLM cites you for the same type of violation four times on the same lease within a 12-month period;

3. Commingling production without BLM approval from different formations, leases, communitized areas,

units, or unit participating areas. This violation would be added because commingling without approval is a serious impediment to BLM's ability to ensure production accountability; and

4. Failure to notify BLM of H_2S concentrations as required by these proposed regulations. This violation would be added because of the serious health and safety risks hydrogen sulfide poses to both the general public and BLM inspection personnel.

In addition to expanding the list of violations that will earn an immediate assessment, BLM proposes to charge an increased, one-time assessment for any violation on the list. This would simplify the approach in current regulations which applies an assessment amount per violation per day up to a maximum amount per incident. The size of the proposed one-time assessment is set at an amount BLM believes is necessary to emphasize the seriousness of the listed violations. BLM may charge up to the proposed amounts to deal with specific circumstances.

Section 3163.12 would allow BLM to reduce or waive an assessment that you receive. You must provide your reasons in writing why BLM should reduce or waive the assessment within 30 calendar days after you receive your notice of assessment.

Section 3163.13 would authorize BLM to occupy your lease to perform necessary work to correct a violation, at your risk and expense, whenever you fail to perform the work BLM directed you to perform. If BLM performs the work to correct a violation, you would be charged for the actual cost to perform the work plus an additional 25 percent for administrative costs. This is not a change from current requirements.

Section 3163.14 would allow BLM to charge you for any loss or damage to Federal resources that result from your noncompliance. This is not a change from current requirements.

Subpart 3164—Civil Penalties

Under this subpart, you would be subject to civil penalties for violations of any statute, regulation, order, notice to lessee, lease, or permit relating to your obligations under this part. This subpart would describe the amounts of civil penalties, when you become liable for civil penalties, and notices you will receive from BLM. There are provisions for BLM to charge you immediate civil penalties for certain serious violations. BLM would also initiate cancellation of your lease if the noncompliance continues.

Proposed section	Existing regulation
3164.10	3163.2(a) and (b).
3164.11	
3164.12	3163.2 (a) and (b).
3164.13	3163.2(d) through (f).
3164.14	3163.1(a)(5) and 3163.2(k).
3164.15	3163.2(h).
3164.16	3165.3(c) and 3165.4(b)(2).
3164.17	3165(e)(2).
3164.18	3165.4(b)(1).
3164.19	3165.4(f).
3164.20	3163.4 and 3163.5(a) and (b).
3164.21	
3164.22	3163.2(a), (b), and (i).
3164.30	3163.3.

Section 3164.10 would explain that BLM may assess civil penalties under FOGRMA, as provided in existing regulations.

Section 3164.11 would describe when BLM will assess civil penalties and would explain the requirements for service of Notices of Incidents of Noncompliance (INC). These requirements are similar to existing regulations.

Section 3164.12 would explain the actions you must take after receiving an INC for civil penalties. If you receive an INC for civil penalties, you must correct the violation within 20 calendar days or you are liable for a penalty of up to $500 per day per violation for each day the violation continues beyond the date you received the INC.

If you did not correct the violation within 40 calendar days of the initial INC, you would be liable for up to $5,000 per violation for each day the violation continues beyond the date you received the INC.

This section would also explain that you would be able to request a hearing on the record on the INC if you did not correct the violation within 20 calendar days of your receiving the INC. Of course, you are risking an assessment of penalties if you do not correct the violations. If you did correct the violation within 20 calendar days of receiving the INC to avoid a penalty assessment, you would not have the option of requesting a ''hearing on the record.'' However, you would be able to appeal the INC under the appeals provisions of this part if you thought BLM issued the INC erroneously.

Section 3164.13 would explain that BLM would issue INC's for serious violations. This section lists several serious violations that are set out in FOGRMA and lists their corresponding penalty amounts (see 30 U.S.C. 1719). Existing regulations cap the maximum total penalty amount per violation. However, this proposal would not dictate, nor does FOGRMA impose, a cap on the total civil penalty amount.

Section 3164.14 would explain the action BLM would take if you do not correct a violation listed in section 3164.13. The actions BLM could take would include lease cancellation for the violations listed in sections (b) through (f) of section 3164.13. These requirements are similar to existing regulations.

Section 3164.15 would explain that you may request BLM to waive or reduce civil penalties within 30 calendar days after you receive notice of the proposed civil penalty. These requirements are similar to existing regulations.

Section 3164.16 would explain that you may request a hearing on the record for serious violations within 20 calendar days of receiving the INC. Existing regulations are similar to this provision.

Section 3164.17 would explain that penalties accrue each day until you correct the violation. Under this proposal, BLM may suspend the requirement that you correct the violations pending completion of the hearings provided for in this subpart. Existing procedure and regulations are similar to this proposal.

Section 3164.18 would explain that you may appeal a decision of the Administrative Law Judge to the Interior Board of Land Appeals. This is the same as existing regulations.

Section 3164.19 would explain that you may appeal a final order to the U.S. District Court with jurisdiction over the lands where the violation took place. This is the same as existing regulations.

Payment of Assessments and Civil Penalties

Section 3164.20 would require you to pay assessments within 30 calendar days after BLM gives you written notice and civil penalties within 30 calendar days after either a final BLM decision or a final order of a court or other legal body. This section would also provide for any civil penalties you pay to be deducted from any monies the United States owes you.

Section 3164.21 would state that BLM would charge you interest on assessment amounts that you have not paid or underpaid.

Section 3164.22 would allow BLM to deduct any assessments you have paid from any civil penalties you are required to pay under this subpart. Assessments and penalties charged to you under this part would be in addition to any assessment or penalty

you are charged for your noncompliance under other provisions of law.

Section 3164.30 would inform you that you may be liable for both civil and criminal penalties for violating these regulations. This is not a change from existing regulations.

IV. Procedural Matters

Regulatory Planning and Review

In accordance with the criteria in Executive Order 12866, BLM has determined that this rule is not a significant regulatory action. The Office of Management and Budget (OMB) makes the final determination under Executive Order 12866. BLM has determined that the rule does not meet any of the criteria for a significant regulatory action, as discussed below and in the Economic Analysis.

a. The proposed rule will not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. An economic analysis has been completed and is attached (see Economic Analysis).

b. This rule will not create inconsistencies with other agencies' actions. This rule does not change the relationships of the oil and gas program with other agencies' actions. These relationships are all encompassed in agreements and memorandums of understanding that will not change with this proposed rule.

c. This rule will not materially affect entitlements, grants, loan programs, or the rights and obligations of their recipients. However, this rule proposes to add a fair market value user fee (FMV) for the use of the public lands for geophysical exploration for each Notice of Intent to Conduct Oil and Gas Geophysical Exploration Operations. The Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*) (FLPMA) requires that ''the United States receive the FMV for the use of the public land and its resources unless otherwise provided for by statute.'' In addition, a May 1992 audit report by the U.S. Department of the Interior, Office of Inspector General (OIG), recommended that BLM establish and implement procedures to charge FMV for geophysical exploration. In order to comply with the requirements of FLPMA and the OIG recommendation, we propose to adopt a FMV for geophysical exploration. The FMV would be based on the size of the area physically affected by each individual geophysical exploration project. You would not be required to pay the FMV for a geophysical exploration project, or a portion of a project, that is conducted under a Federal oil and gas lease. BLM will determine the amount of the user fee in a future action.

d. This rule will not raise novel legal or policy issues. Some of the proposed rules may be controversial (bonding increases, agreement rules, immediate assessments, and automatic assessments for repeated noncompliance), but they are not novel. Some have been tried in the past and others have been used by some States.

Regulatory Flexibility Act

This rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). A final Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required.

For the purposes of this section a ''small entity'' is considered to be an individual, limited partnership, or small company, considered to be at ''arm's length'' from the control of any parent companies, with fewer than 500 employees or less than $5 million in revenue. Mid-sized and large corporations and partnerships under their direct control have access to lines of credit and internal corporate cash flows that are not available to the ''small entity.'' Many of the operators we work with in the oil and gas program would be considered small entities.

The only proposed change that may have the potential to affect a significant number of small entities is the increased bonding requirements. As discussed in the Economic Analysis, the costs would be negligible. The two basic changes in bonding are increases in minimum State and lease bonds, and specific fees and bond increases for shut-in and temporarily abandoned wells. Lease and well specific bonding increases are already authorized by the existing regulations. The proposed rule better enables BLM and the operator to predict what these costs will be when the operator is planning future actions. The additional bond requirements would provide an incentive to these operators to acquire the additional resources or sell their wells to other operators that can meet the obligations before BLM notifies the operator that his bond requirements have increased. Operators consider reductions of uncertainty to be a major benefit. Another benefit for many small entities is that operators with low liabilities could qualify for a bond reduction.

While the increased minimum State and lease bonding may affect a large number of small entities, at an average of $43 per well per year, the impact on each entity will be small (see Economic Analysis). For example, for a stripper oil well producing only five barrels per day at a profit of $2 per barrel, the additional bonding cost would be covered by the profit from three weeks of production. Thus, there would not be a significant impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million or more, as demonstrated in the Economic Analysis.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. The increase in bonding requirements will be offset by a reduction in orphan wells, thereby reducing the costs to the public of reclaiming those wells. The amount of the proposed FMV user fee for geophysical exploration is not known at this time. The amount will be determined in a separate action and the estimated economic impact will be discussed at that time. BLM plans to determine the FMV fee before the final rule is published and the economic impacts will be discussed in the final rule.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. The shift to performance standards in the operating regulations should increase innovation and productivity and thereby increase the ability of the domestic oil and gas industry to compete in the global marketplace.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

a. This rule will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. This proposed rule does not change the relationship of between BLM's oil and gas program and small governments.

b. This rule will not produce a Federal mandate of $100 million or greater in any year, i.e., it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act (see Economic Analysis).

Takings

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required. The proposed rule would not take away or restrict an operator's right to develop an oil and gas lease in accordance with the lease terms.

Federalism

In accordance with Executive Order 12612, the rule does not have significant Federalism effects. A Federalism assessment is not required. The proposed rule does not change the role or responsibilities among Federal, State, and local governmental entities. The rule does not relate to the structure and role of States and will not have direct, substantive, or significant effects on States.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. BLM drafted this rule in ''Plain-English'' to provide clear standards and to ensure that the rule is clearly written. BLM consulted with the Department of the Interior's Office of the Solicitor throughout the rule drafting process for the same reasons.

National Environmental Policy Act

BLM has prepared an environmental assessment (EA), and has made a tentative finding that the proposed rule would not constitute a major Federal action significantly affecting the quality of the human environment under section 102(2)(C) of NEPA, 42 U.S.C. 4332(2)(C). BLM anticipates making a Finding of No Significant Impact for the final rule in accordance with BLM's procedures under NEPA. BLM has placed the EA on file in BLM Administrative Record at the address specified previously (see **ADDRESSES**). BLM will complete an EA on the final rule and make a finding on the significance of any resulting impacts prior to promulgation of the final rule.

The proposed action would have no major impact on the human environment, either positive or negative. The revised regulations may provide some environmental benefits.

The proposed action would cause some impacts on the environment, although most of the requirements in the proposed action would cause no changes to the environment. Most of the proposed changes would not differ substantially from the existing regulations, such as the portions which are being written in plain English, or the plan to remove unnecessary procedural requirements and actions which need approval from BLM. For example, the proposal would exempt operators of Federal oil wells that produce less than 10 Mcf/day from having to obtain approval to vent or flare gas. This provision includes a performance standard that would in effect negate this exemption if the gas is economic to capture or if it cannot be vented or flared safely and according to applicable laws and regulations. The environmental impact of this provision is identical to the no action alternative because BLM almost always approves venting or flaring applications for these small gas volumes and the only reason an application would not be approved under the existing regulations would be if BLM determines that the gas is economic to capture. BLM would retain the authority to issue an order to capture gas under the provisions of the proposed action.

Under current regulations, an operator that follows all of the terms of a given regulation, theoretically, could be in compliance regardless of whether their operations meet the overriding objectives of BLM's management of the oil and gas program. By contrast, with performance standards the focus would shift from describing specific actions that dictate how operations must be conducted, to the regulation's desired outcome or goal. This goal-oriented approach would better protect the public interest and the environment because operators would be held to a sensible, stated regulatory standard. This type of regulation would also provide oil and gas operators the flexibility they seek to determine how a stated objective could be achieved, depending on specific proposals, local conditions, the operating environment and changing technology.

The substantive changes contained in this rule do not directly pertain to environmental protection measures or BLM's responsibility to comply with existing environmental laws and regulation. However, they are more likely to enhance BLM's role as a steward of the public lands than undermine it. In addition, the proposed action would only include performance standards if they would not jeopardize BLM's ability to fulfill its responsibility to protect public health and safety and the environment. Therefore, BLM's use of performance standards, to the extent that they depart from the existing system, would not have an impact on the environment.

Changing many of the minimum standards contained in the onshore orders to references to the API standards would have no impact on the environment. Incorporating industry standards by reference does not represent a profound change, because the onshore orders currently paraphrase many of these same standards. Incorporating the standards by reference directly into the regulations simplifies how the standards are organized. Since the same standards would be used, this should not result in any impacts to the environment.

BLM's proposal to limit competitive and noncompetitive lease acreage to 2,560 acres outside Alaska and 5,760 acres in Alaska should not impact the environment. This measure would lower the acreage limit for noncompetitive leases to make it consistent with competitive leasing. The remainder of changes to the leasing regulations, with the exception of the changes to bond provisions, affect only administrative activities and would not impact the environment.

Other substantive changes would more likely result in a positive benefit to the environment, although the extent of any benefits is presently too speculative to assess. For example, raising the bonds required would not only increase an operator's incentive to prevent adverse environmental impacts, but would also provide BLM a source of funds to clean up or correct any negative impacts caused by oil and gas operations. This would reduce the BLM's and the public's exposure to future liabilities associated with plugging wells and reclaiming well sites. Raising the dollar amounts and expanding the number of types of penalties for noncompliance and removing assessment and civil penalty caps would offer additional incentives for operators to meet all environmental standards.

These and the impacts discussed in the economic analysis are the only foreseeable impacts of the proposed action. BLM recognizes that slight changes to complex regulatory schemes can have unintended downstream effects. However, whether such ''ripples'' would themselves lead to environmental impacts is something that cannot be meaningfully assessed at this time. Furthermore, because the program consists of leasing Federal land and permitting resource development of

Federal and Indian oil and gas, the individual actions taken under this program are themselves subject to further NEPA analysis. When actions are proposed under the oil and gas leasing and operations program, BLM will prepare all required NEPA documents.

Because the proposed action would not substantially change BLM's overall management objectives or environmental compliance requirements, the proposed rule would have no impact, or will only marginally benefit, the following critical elements of the human environment as defined in Appendix 5 of the BLM National Environmental Policy Act Handbook (H–1790–1): air quality, areas of critical environmental concern, cultural resources, Native American religion concerns, threatened or endangered species, hazardous or solid waste, water quality, prime and unique farmlands, wetlands, riparian zones, wild and scenic rivers, environmental justice and wilderness.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951) and 512 DM 2, we have identified potential effects on Indian trust resources and they are not yet addressed in this rule. BLM has consulted with the Bureau of Indian Affairs in the process of this rulemaking and plans to consult with affected tribes prior to final rulemaking. Furthermore, BLM will consider tribal views in the final rulemaking. Accordingly:

a. We have not yet consulted with the affected tribe(s).

b. We have not yet treated and consulted with tribes on a government-to-government basis. However, we plan to before final rulemaking and the consultations will be open and candid so that the affected tribe(s) could fully evaluate the potential impact of the rule on trust resources.

c. We will fully consider tribal views in the final rulemaking.

d. We have consulted with the appropriate bureaus and offices of the Department about the potential effects of this rule on Indian tribes. We have consulted with the Bureau of Indian Affairs and the Division of Indian Affairs, Office of the Solicitor.

Economic Analysis

These regulations would increase the amount of lease and statewide performance bonds. Presently, operations are covered by lease, statewide, or nationwide bonds with some collective bonds on units. The increased bond requirements will take effect in two years. The rule clarifies BLM's authority to increase the required bonding level for existing bonds where an operator has been delinquent in meeting his obligations to the government or where the potential costs of plugging and reclaiming the site exceed the bonds covering those operations. Increasing the penalties for noncompliance is also proposed. Both of these proposals will have minimal effects on the economy or the costs of producing oil and gas on Federal lands. The primary impact will be to avoid potential problems by:

- Increasing the probability that operators have sufficient financial capability to meet their lease obligations (i.e., if the operator can meet the higher bonding requirement, then he is more likely to have the financial means to meet his other operational requirements),
- Provide a greater incentive to the operator to properly reclaim his lease so that he can recover his bond collateral, and
- Increase the funds available to the land owner/manager if the operator defaults on his obligations.

Small operators with only a few shallow wells, where the reclamation cost is much less than the standard bond coverage, would be able to apply for a reduction in the required bond coverage. The operator must demonstrate that the costs would be less than the bond coverage in order to receive approval for a reduction in the bond requirement. The impact of this change would be to help small operators by relieving them of unnecessary bond requirements.

The purchase of manuals describing the industry standards referenced in the regulations is another cost to operators and lessees, but it is not expected to be a significant cost.

There would be no discernible economic impact on prospective and existing operations due to compliance with the standards found in this proposed rulemaking. In most cases, the cost of complying with the standards would be indistinguishable from those in the existing regulations. The use of performance standards and published industry standards in many places in these proposed rules may even reduce the cost of compliance in some cases. Overall, however, these benefits will be local in nature and be almost indistinguishable from the existing regulations.

The benefits attributable to these rules are not predictable in the usual strict benefit-cost analysis sense. Discernible changes in the ease of using and understanding the proposed regulations, as well as the elimination of duplication and confusion, will certainly benefit lessees, operators and the BLM. The reduction in the length and number of the existing regulations will also have some benefit. How much of a benefit these changes will actually have is not quantifiable.

The overall effect of the proposed rule will not create an adverse effect upon the ability of the oil and gas industry to compete in the world marketplace, nor will the proposal adversely affect investment or employment factors locally.

Discussion of Potential Impacts

Referencing Published Industry Standards

The most obvious impact associated with this change would be the cost of acquiring the publications that the rule would incorporate by reference. This cost would be borne by both industry and BLM. The total cost to acquire all 26 API publications referenced in the proposed rule would be less than $1,500. A typical operator on a Federal lease would not need to acquire all 26 referenced publications, but only those publications that they do not already have and that directly apply to the particular activities that it conducts. We anticipate that many smaller producers would not purchase any referenced publications at all and depend on other sources to inform them of required industry standards. All BLM field offices with oil and gas responsibilities will have copies of the API publications available for review. For evaluation purposes, we will assume the average operator will spend $300 on referenced publications.

BLM's Automated Inspection Records System (AIRS) data base lists 6,610 operators on Federal leases/agreements. This total overstates the actual number of operators due to differences in how one operator's name may be entered in the database (i.e., XYZ, Inc. and XYZ, Incorporated are counted as two different operators). Alternately, larger producers operating across multiple BLM inspection offices may acquire multiple sets of the API publications. For simplicity sake, the operator total from AIRS will be used without adjustment, making the projected cost to industry to acquire referenced documents to be $1,983,000 (i.e., 6610 operators @ $300/operator).

We will also assume that the 38 BLM offices (combined total of field and state offices) with responsibilities for oil and gas operations would need to acquire a complete set of the publications referenced in the proposed rule. Many BLM offices already have a majority of the API publications as in-house reference documents. Again, for simplicity's sake we will assume the entire suite of publications would be acquired by each of the 38 BLM offices for a projected cost to the Federal Government of approximately $57,000.

BLM believes that the initial cost to industry in acquiring the API publications would be offset by the long term intangible benefits associated with incorporating API standards and practices into regulation. These intangible benefits are the value of consistency, clarity, and flexibility derived from citing widely accepted industry standards rather than the present approach of regulations that are intended to interpret those same standards. In general, adoption of industry standards results in efficiency gains by operators performing activities consistently. This same simplification will likely result in lower supply costs in the long term. Consequently, BLM believes that referencing published industry standards in regulation will have a net positive impact on industry. There are also benefits to BLM from greater compliance by industry. More consistency and compliance by industry reduces the costs of inspection and enforcement. These reduced costs would help offset the costs that BLM would incur by acquiring API publications since greater compliance by operators equates to less administrative cost to BLM.

Reduce Paperwork for Communitization Agreements

Industry contacts estimate the cost to prepare and submit a proposal to communitize Federal minerals costs an average of $1,000 per application. BLM estimates that it expends about 20 hours to process each application at a cost of $460. In fiscal year (FY) 95, BLM received 166 applications to communitize with a projected cost to industry of $166,000 and a projected cost to BLM of $92,000. The proposed rule would reduce the amount of paperwork that industry has to submit to BLM in order to communitize Federal mineral interests. Less paperwork would reduce the administrative costs both for industry and for BLM.

Simplify Procedure to Determine Average Daily Production per Well for Variable Royalty Rate Leases

For variable royalty rate leases, the average daily production per well determines what royalty rate to apply to production. Preliminary calculations using the proposed method to determine average daily production per well show it to be royalty ''neutral'', that is, it should not result in any more or any less royalty being paid to the United States. Hence, the only impact associated with the proposed change would be in administrative costs associated with using the proposed method versus the existing method. Although we do not have any specific estimates of how many work-hours are expended to determine the average daily production per well under either method, the proposed method, without question, would involve less time than the existing method. Less time translates to less labor costs. Reduced labor cost is a positive impact. In addition, simpler procedures are less likely to result in different interpretations. Thus, the time and effort involved in resolving disputes over interpretation of the regulations will be reduced. Both industry and BLM would benefit from the savings in labor costs.

Regulatory Exemptions for Meters Measuring 100 Mcfgpd or Less

Under the proposed rule, operators of metering facilities that are measuring 100 thousand cubic feet of gas per day (Mcfgpd) or less would not be required to:

- Perform an inspection of the meter tube every six years;
- Install a continuous temperature recorder to record flowing gas temperature;
- Calibrate the meter on a quarterly basis;
- Have the meter's static pen track within specific areas of a gas chart; or
- Maintain an overall meter uncertainty within ±3 percent if the meter uses an electronic flow computer.

The exemptions should have a positive impact on industry by reducing the capital and operating expenses of low volume metering facilities. A reduction in operating expenses would proportionately raise the economic limit of low volume gas wells and allow for increased recovery of in-place reserves. These exemptions would also have a positive impact on the Federal Government by increasing the ultimate amount of royalty it would receive. Positive impacts specific to BLM would be a reduction in the number of variances that it would have to process and a reduction in its costs to inspect for and enforce these standards.

Require an Annual Determination for Specific Gravity

Existing regulations call for the heating value (i.e. BTU content) of marketed gas to be determined annually, but do not specify a frequency for specific gravity determination. The proposed rule would require operators to determine specific gravity of gas at least on an annual basis. BLM assumes that most laboratories also determine the specific gravity of gas when calculating the BTU content of a gas sample. Accordingly, requiring an annual specific gravity determination for leases and agreements producing gas would not cause any increase in operating cost for producers. In that values for BTU content and specific gravity are important in determining the volume of gas produced and its quality for royalty purposes, the proposed change would have a positive impact on production accountability.

Eliminating Major/Minor Classification of Violations and Simplifying Assessment Structure

Existing regulations classify violations into two categories: major violations, which, if left uncorrected, could cause immediate, substantial, and adverse impacts to public health and safety, production accountability, or the environment; and minor violations, those violations which do not rise to the level of a major violation. For major violations, operators were liable for an assessment of up to $500 per day if left uncorrected within a time frame specified by BLM. For minor violations, operators were liable for a one-time $250 assessment for violations left uncorrected. The proposed rule would eliminate the major and minor classification for violations and impose a $250 per day assessment for uncorrected violations.

This proposed change should have no impact on industry as a whole. Over the last four fiscal years, BLM had issued an average of 2,735 citations for major violations per year and 13,752 citations for minor violations per year. We estimate that less than 7 percent of the major violations and less than 1 percent of the minor violations have resulted in an assessment being issued to operators. The small number of violations that ever get to the assessment stage suggest that changing the fee structure of assessments will have a negligible impact on industry.

The potential for an assessment encourages compliance. We do not believe that changing the fee structure

for assessments will reduce the compliance rate that is observed under the existing regulations, especially with elimination of the cap on assessments and civil penalties. If anything, we believe that the proposed rule's increased assessment for those violations that are presently classified as minor violations might actually reduce the number of these kinds of violations. For this reason, the proposed rule assessment structure is likely to have a positive impact on the public. That is, fewer violations means a reduction in the potential for environmental problems.

The proposed changes to the assessment structure would have a positive impact on the Federal Government. Eliminating the classification of violations would eliminate the subjectiveness that exists with the existing system in determining whether a violation is major or minor. The proposed single daily assessment amount would be easier to administer. A simpler, more consistent approach to violation classification and assessment structure translates to reduced administrative costs to the Government.

Remove all Caps for Assessments and Civil Penalties

Per day assessments and civil penalties are currently limited to some maximum amount, limiting the incentive to the operator to correct the violation quickly. It is expected that exceeding the current caps will happen rarely, but elimination of the cap should encourage faster correction of violations. Thus, there is negligible impact on industry with some positive impact on the public and the government.

Increased, One-time Assessment for Serious Violations

Under existing regulations, certain serious violations (i.e., drilling without approval, causing surface disturbance without approval, and failure to install a blowout preventer) earned an operator an immediate assessment of $500 per day up to a set maximum amount. In addition to the aforementioned violations, plugging a well without approval resulted in a one time $500 assessment. The proposed rule eliminates the amount per day assessment structure for serious violations and replaces it with increased, one-time amounts.

Due to the limited number of immediate assessments issued by the BLM in any given year, we project the impact to industry of this proposed change would be negligible. Since we believe the increased assessments would represent an even greater deterrent to serious violations, the proposed change would have a positive impact on the public. Fewer serious violations would mean less potential harm to public health and safety and the environment. Again, a simplified assessment structure would reduce the Government's administrative costs, a positive impact.

Expand List of Violations That Receive an Immediate Assessment

For the reasons mentioned in the previous section, the proposal to expand the list of serious violations that would receive an immediate assessment should have a negligible impact to industry, a positive impact on the public, and a positive impact on the Federal Government.

Streamlined Process to set up Unit Agreements

Industry contacts estimate the cost to prepare and submit a proposal for a Federal exploratory unit agreement costs an average of $20,000 per application. BLM estimates that it expends about 40 hours to process each application at a cost of $1280. In FY 95, BLM received 52 applications to unitize with a projected cost to industry of $1,040,000 and a projected cost to BLM of $42,000. The proposed rule would reduce the amount of paperwork that industry has to submit to BLM in order to unitize Federal mineral interests. Less paperwork would reduce the administrative costs both for industry and for BLM. However, the existing standardized terms would be replaced with the requirement to negotiate terms with BLM. Initially, there will be a learning curve for both BLM and operators, and the time to prepare and approve units will be longer and more expensive. However, we believe that the added expense of negotiations will be offset by the flexibility of the process whereby operators would negotiate key development terms. We also believe that over time, negotiations will be less lengthy as BLM and operators become familiar with the process.

The proposed rule stipulates that production allocations for enhanced recovery units or exploratory units with existing production will be determined at the time the agreement is made, rather than after substantial drilling is completed. While the allocations may not be as precise as under the current regulation, the predictability will enable the operators to make better economic decisions regarding the development of the unit. Some other benefits of the new process are:

- It will expedite paying well determinations since they will no longer be based on economics;
- The agreement will establish the size of initial participating areas and additions to existing participating areas. This would benefit operators by establishing participating area size without elaborate subsurface projections; and
- Paying well determinations would be replaced with productivity criteria. This would allow the operator to negotiate criteria that are not tied strictly to well economics. The use of well productivity criteria would allow the costs for that well to be considered as part of unit costs and not be required to be covered by production from that well alone.

Increased Bonding/Bond Reduction for Low Liability Operations

The proposed rule increases minimum individual lease bonds from $10,000 to $20,000 and statewide bonds from $25,000 to $75,000. Nationwide bonds are unchanged. The rule also clarifies BLM's authority to increase bonds on existing wells and leases for a variety of reasons, most having to do with unsatisfied or insufficiently bonded liabilities. BLM already has the authority to increase lease bond requirements in specific situations, but the amount has been left to BLM to determine on a case-by-case basis. With the proposed rule, both BLM and the operator can better anticipate what the additional cost will be. For instance, increasing the bond is one of the options for inactive wells (wells with no activity for 12 consecutive months). Within 30 days of a well becoming inactive, the operator must do one of the following:

- Submit additional bonding of $2.00 per foot of total or plugged-back total depth for each well;
- Pay a non-refundable annual fee of $100 per inactive well (this is only an option for the first six years a well is inactive);
- Put the well in production or service;
- Submit plans to conduct well work to restore production or service; or
- Submit plans to plug and abandon the well and perform reclamation.

Increased bonds or fees are necessary due to the significant unfunded liability that has fallen and continues to fall on the public in general and BLM and other land management agencies in particular. This liability is in the form of orphan oil and gas wells. Unplugged or inadequately plugged wells and unreclaimed sites on Federal lands with no responsible person or company found are left to the government to clean

up. Even if a bond is available for the well, it is frequently insufficient to cover the costs of plugging and reclamation. Furthermore, one bond may represent many wells. The Bureau Performance Review of the Oil and Gas Program included a review of bonding and unfunded liability. The March 1995 report concluded that the public was assuming too much of the risk from orphan wells. The existing regulations provided the authority to increase bonds, but did not provide guidelines on how much to increase the bond requirements. Furthermore, the operator may appeal the amount of the bond increase, adding to the costs for both BLM and the operator. The proposed rule reduces the number of situations where the operator may appeal bond increases. The bond increases in the proposed rule are based on the recommendations from that review. The goal is not to make the bonds high enough to cover all potential costs. While most wells can be plugged and abandoned for between $10,000 and $20,000, an individual lease bond may cover many wells. However, we expect that the higher bonding will provide an incentive to industry to be more diligent in reclamation. The increase in the minimum State and lease bond requirements is less than the rate of inflation since the current amounts were set in 1960. However, the increase may still be an unjustified burden for small operators with only a few shallow wells. The cost of plugging these wells and reclaiming the land may be less than the $20,000 lease minimum, or even less than the current $10,000 lease minimum. The option for the operator to apply for a reduction in the bonding requirement helps to reduce the impact of increasing the bonding requirement on small operators and may even reduce the requirement on some leases below the current $10,000 requirement. This will allow for the bonding requirement increase to only be applied to leases on which the potential liabilities correspond to the higher bond amounts. The following discusses bonding costs in more detail.

What does a bond cost industry? Bond premiums may be as low as 1 percent per year, but often require some collateral such as certificates of deposit (CD's) or other security in addition to the fee. Large, low risk companies may just pay a low premium with no additional security. Requirements will be higher for higher risk companies. Operators may post CD's or other security with the government in lieu of a surety bond (approximately half of all operators on Federal lands use this option). While this costs more than the premium on a surety bond, it is less expensive than pledging security and paying a bond premium. Essentially, the cost of pledging this security is the cost of capital (as the resources could be used for other investment) minus the interest the operator receives on the security. Using the assumption that this cost difference is 3 percent and that it is applied to all existing bonds, the increased cost to industry is shown in the following table. For this estimate we assume that about 500 leases would qualify for a reduced bond and that the average required bond for them would be the current $10,000 requirement.

Type of bonds	Number of Bonds[1]	Increased amt.	Increased cost[2]
Individual	3171		$951,300
	−500		−150,000
		$10,000	
	=2671		=801,300
Statewide	2348	50,000	3,516,000
Nationwide	807	0	0
Collective	139	0	0
Total	6465		$4,317,300

[1] From Bonding Review Report, 3/95, based on AIRS data, 10/94.
[2] Number of bonds × increased bond amt. × 0.03.

This averages to about $43 for each well on Federal lands. A stripper oil well averaging 10 barrels of oil per day and selling oil at $15 per barrel would gross $54,750 per year and pay royalty of $6,850. The marginal cost of production may be about $2 per barrel, or about $7,300 per year. An additional $43 per year is not significant. Thus, the increased bond requirements do not impose a significant new cost on industry.

This rule defines specific costs for inactive wells, which represent the greatest risk for becoming orphan wells, by increasing the bonding by $2.00 per foot of depth for inactive wells or charging $100 annually per inactive well (only an option for the first six years). While this fee is equivalent to the 1 percent fee on the $10,000 additional bonding required for a 5000-foot well, the operator would not have to pledge additional collateral that may be required to obtain the bond. By basing the increased bond requirement on the depth, it better reflects the plugging costs for the well. This targeted increased bonding may be more significant than the across the board increase. For example, the Bonding Review estimated there were about 300 known orphan wells, 6,500 temporarily abandoned wells, and 11,000 shut-in wells on Federal lands. Assuming that 3,000 wells are classified as inactive wells and their average depth is 5,000 feet, the increased bonding would total $900,000 (3,000 wells × 5,000′ × $2 × 3%) or about $300 per inactive well per year. The change allows operators to better plan their operations, as it may affect the decision regarding plugging and abandoning a well versus shutting it in or temporary abandonment. Under this proposal, operators can hold inactive wells for six years with a $100 annual fee before having to obtain the higher bonding or taking one of the other required actions. This amount was calculated to be roughly equivalent to the cost to operators of the proposed increase in the bond due to having an inactive well.

The increased bonding represents a relatively small cost of doing business. It will be incorporated as a cost that may have some impact on decision making in field operations. The increased bond requirements for inactive wells may force some marginal wells that would be inactive under the current requirements to be plugged and abandoned more rapidly under the proposed requirements if the bond increases are higher than what would be charged under the existing regulations. However the opposite could be true, and the advantage of the proposed rule is the

certainty of the costs. While these wells could potentially produce and provide additional revenue, the amount is insignificant and less than the potential cost to the government if they become orphan wells.

Having the bonding reduction option greatly mitigates the impacts of the bonding increases on small operators.

The net impact to industry is negligible. The minor increased cost is more than offset by the gains to the public by reducing the risk of creating new orphan wells. The costs to government are also reduced by having better compliance by industry. This also represents a net gain for the environment. Overall, increased bonding represents a net positive.

Geophysical Exploration Fair Market Value Charges

The proposed rule provides for assessing a FMV charge for the use of public lands for geophysical exploration. This would only be applied to the portion of exploration on federally-owned surface estate that is not already leased for oil and gas. The amount of this FMV assessment will be determined in a separate action. Thus, the estimated economic impact will be published with that proposed action.

Paperwork Reduction Act

BLM has submitted an information collection clearance package to OMB for its approval of the information requirements contained in these proposed regulations under the requirements of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

The information collections listed below for proposed changes in the regulations have not been approved by OMB.

Proposed changes in the regulations would increase the information burden by an estimated 9,441.25 hours. For new information collection, all of which are nonform items, BLM expects the public reporting burden to be as follows:

Information Collections in This Rule That Have Not Yet Been Approved

BLM does not yet have information collection approvals from OMB for the following items. However, these are not new information collections, but are new requests for information collections for OMB information collection approval. Existing regulations require these information collections.

Leasing

Section 3121.12—The respondent must advise BLM by letter of its nominations for competitive leasing in the BLM State Office with jurisdiction over the lands involved and provide a legal description of the nominated lands.

We estimate it will be 15 minutes to prepare a nomination list of tracts. The information is necessary to list tracts nominated by operators or the general public for a lease sale. We estimate that there will be 1,400 filings a year, for a total information collection burden of 350 hours.

Section 3124.32—For an application for lease consolidation, the respondent must identify the affected leases and justify why consolidation promotes conservation of resources that cannot be achieved through unitization or communitization.

BLM requires this information to ensure compliance with the Mineral Leasing Act, to ensure conservation of resources, and to protect the public interest. Leases are combined only when unitization or communitization are not possible or when unitization or communitization will not promote conservation of resources.

We estimate it will take approximately two hours to comply with the required information. The estimate includes time for gathering and compiling data that shows unit requirements, such as drilling and production, are met, and providing certification. We estimate 10 responses, for a total of 20 hours.

Section 3125.11—A lessee wishing to exchange its existing 20-year oil and gas lease for a new lease for the same lands must file an application for lease exchange in the BLM State Office with jurisdiction over the lands.

An exchange converts the renewal lease for the benefit of the lessee and the administrative convenience of BLM.

We estimate it will take approximately 15 minutes to comply with the application information. The estimate includes time for providing lease term information about the original lease. We estimate 25 responses, for a total of 6¼ hours.

Operations

Sections 3103.10(aa) and 3153.37—An operator must provide to BLM a lease automatic custody transfer (LACT) meter proving report.

The information is necessary for BLM to identify the LACT that was proved and where and when it was proved. The proving report contains the LACT unit identification number, its location and information regarding the results of the meter proving, including any adjustments and new meter factors.

We estimate it will take approximately 10 minutes to comply with the notices and report information required. The estimate includes time for compiling the various data requirements. We estimate 200 notices and reports per year, for a total of 33⅓ hours.

Sections 3103.10(bb) and 3154.33—An operator is required to provide to BLM gas charts/meter proving reports.

The gas chart measures gas over a specified period of time that a gas well produces. These are original charts that must be submitted to BLM to allow BLM to perform independent volume calculations or integrations. Charts identify the well, lease, operator, and other information regarding the measurement system. The gas meter proving reports are the results of calibrating the recording component of the gas measurement system. These reports identify the operator, facility number, well number, specifics of the measurement system, and the results of calibrating the meter, including any adjustments that were made.

We estimate it will take approximately 15 minutes to comply with the information requirement, and one thousand reports a year, for a total of 250 hours.

Section 3103.10(dd)—The operator is required to provide to BLM notice of meter proving or calibration and must provide information regarding what meters will be calibrated, their lease and well numbers, and when the calibrations will occur.

These records and notifications are necessary to ensure proper measurement. BLM uses the information to conduct audits to determine correct volumes and to determine volume corrections when the calibration of meters indicate inaccurate measurement. The required tables, charts, and meter proving reports are generally information that a prudent operator would already require for its records in order to verify correct volumes, accurate measurement, etc. Typically, an operator needs only to reproduce such information. We estimate 5,000 such notifications per year, at five minutes each, for a total of 416⅔ hours.

Reports, Submissions and Notifications

Section 3103—The operator is required to provide oral notification that they are commencing the activities listed below. Oral notifications generally only require the operator to identify the lease and well and the anticipated starting or completion time of the operation.

The following sections reference activities that require the operator to orally notify BLM:

Section 3103.10(I)—Construction start-up.

Section 3103.10(j)—Spud notice.

Section 3103.10(m)—Running surface casing and BOP test.

Section 3103.10(o)—Reserve pit closure.

Section 3103.10(x)—Report of theft or production mishandling.

Section 3103.10(z)—Notice of LACT meter proving.

Section 3103.10(ee)—Leak detection system.

Section 3103.10(ff)—Produced water pit completion.

Section 3103.10(gg)—Report of spill or accident.

Section 3103.10(ii)—Well abandonment.

Sections 3103.10(ll) and 3145.43—Concentrations of 100 ppm or more of H_2S.

The notifications are necessary to ensure proper monitoring and inspection by BLM of lease operations.

We estimate approximately 6,000 notifications per year, at five minutes for each notification, for a total of 500 hours.

Subpart 3136—Drainage Agreements

Section 3136.10—Respondents are required to submit any drainage agreements. The agreement includes land identification, lease ownerships, mineral ownerships, and royalty allocation.

This information is necessary to ensure that Federal royalties are collected and that Federal minerals are protected from drainage by non-Federal wells.

BLM estimates there will be five agreements per year and that each one will take 10 hours to prepare and submit. The total information collection will be 50 hours.

Subpart 3137—Unit Agreements

Section 3137.13—The respondent must submit an application for unitization and include the unit agreement, a map of the unit area showing the committed leases and other tracts, a list of committed leases with legal description and other tracts, record title, working interest, acreage, an allocation schedule, if appropriate, certification of invitation to join the unit, economic, geologic, engineering and other data, depending on the type of unit.

We estimate it will take approximately 40 hours to comply with the information requirement for the application for unitization. The estimate includes time for gathering, preparing, completing, and maintaining the specified information, but not the time required to obtain, analyze, and interpret the information normally expended as part of an exploration program without unitization. We estimate that there will be 60 unit applications made within a given year, for a total increase in the information collection burden of 2,400 hours.

Section 3137.64—To establish a participating area or to expand an existing participating area, the respondent must submit certification to BLM that unitized production has been established, and as appropriate, a map showing the participating area and total acreage, and a schedule showing the production allocation for each tract participating in production.

We estimate it will take approximately 12 hours to compile and submit the request for establishing or expanding a participating area. We estimate that there will be an average of 45 participating area applications a year for a total increase in the information collection burden of 540 hours.

Subpart 3145—Drilling

Section 3145.18—This section would require operators to apply for a Notice of Staking (NOS), which includes the information sufficient to identify lands that may be potentially affected by a planned oil or gas well. The information includes legal description, operator name, well number, surface ownership, and lease number. A map must also be included that identifies topographic features. The map would assist BLM in identifying potential problems at the proposed well location.

This information collection provides operators an opportunity to work with BLM to find the best suitable drilling site, develop site specific mitigation, and to avoid unnecessary expense when preparing drilling plans.

Although this information burden is highly variable, we estimate there will be 1,500 NOS applications a year that take 15 minutes each, for a total burden of 375 hours.

Section 3145.51(a)(3)—Reclamation of contaminated lands requires operators to provide to BLM information regarding method of remediation, location of facility or onsite remediation, soil test results, volumes of contaminated soils, and rehabilitation schedule, and request BLM approval.

This information is necessary to ensure that contaminated soils are properly remediated, to minimize environmental impacts and protect the public.

We estimate this information will take approximately five hours to compile and that there will be 100 occurrences per year. The total information burden would be 500 hours.

Subpart 3151—Production, Storage and Measurement

Section 3151.10(c)—Applications for off-lease measurement must include justification for the off-lease measurement and information on the type and location of the off-lease measurement facility, all wells that will produce into that facility, plans for preventing losses in transporting production from the lease to the facility, and certification that any losses will be the responsibility of the operator.

This information is necessary for BLM to ensure that proper measurement occurs, that Federal interests are adequately protected, that Federal rights-of-ways are obtained, and to properly identify and locate the facilities for production accountability inspections.

We estimate 300 applications per year at one hour each, for a total increase in the information burden of 300 hours.

Section 3151.10(d)—In a request for approval of commingling, the operator must identify the affected leases, wells, producing intervals, proposed production allocations, and the quantity and quality of oil or gases that are to be combined.

This information is necessary for BLM to determine if the proposal adversely affects production accountability.

We estimate each request takes 30 minutes and that there will be 500 commingling requests per year, for a total of 250 hours.

Subpart 3164—Civil Penalties

Section 3164.15—To request a waiver or reduction of civil penalties, the operator must submit, in writing, to the appropriate BLM State office, justification for the waiver or reduction. The information is necessary so that BLM may determine whether a waiver or reduction of the civil penalty should be granted.

We estimate that the preparation of each request takes 30 minutes and that there would be 100 requests per year, for a total increase in the information collection burden of 50 hours.

New Information Collections

The following are new information collections that require OMB approval. These information collections are not in existing regulations.

Subpart 3107—Lease, Surety and Personal Bonds

Section 3107.53—Respondents are required to provide to BLM information

that justifies BLM decreasing their bond amount.

This information is to allow BLM to determine if the lease obligations associated with a given lease are less than the bond amount.

We estimate 100 responses per year that take 1 hour per response, for a total of 100 hours.

Sections 3107.56 and 3145.23—The operator is required to submit information regarding each inactive well under Federal jurisdiction. The information includes operator identification, lease and well number, location, and total and plugged-back well depths. Other information that may be needed to exempt operators from the increased bonding requirements includes plans for reworking and returning the well to production; evidence that the well is capable of producing but that it is awaiting pipeline connection, or it is uneconomic at this time to connect to a pipeline; or that the well will be plugged and abandoned. If additional bonding is needed, proof of additional bonding will be necessary, such as riders and bond numbers.

This information is necessary to ensure that adequate bond coverage exists.

We estimate 6,600 operators will provide information for 13,000 wells per year, at 30 minutes per respondent, for a total of 3,300 hours.

Send comments regarding this information collection, including suggestions for reducing the burden, to: Office of Management and Budget, Interior Desk Officer (1004–NEW), Office of Information and Regulatory Affairs, Washington, D.C. 20503, and Information Collection Clearance Officer, Bureau of Land Management, 1849 C St., N.W., Mail Stop 401 LS, Washington, D.C. 20240.

We specifically request your comments on: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility, (2) the accuracy of BLM's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. BLM will analyze any comments sent in response to the notices and include them in preparing the final rulemaking.

Approved Information Collections in This Rule

BLM currently has information collection approvals from OMB as follows:

OMB 1004–0162

Form 3150–4, Application to Conduct Oil and Gas Geophysical Exploration Operations, and Form 3150–5, Notice of Completion of Oil and Gas Exploration Operations, are approved under OMB 1004–0162, Oil and Gas Geophysical Exploration Operations. This information collection expires August 31, 1999. BLM uses Form 3150–4 to determine who is conducting specific geophysical operations on public lands and that appropriate measures are taken to protect the environment under NEPA. BLM uses Form 3150–5 to determine when oil and gas explorations operations are complete and to determine that mitigating measures have been performed to protect the environment as required under NEPA. Collectively, the information serves to maintain an accurate account of operations being conducted on public lands and who is to be held accountable if there is damage to the lands.

OMB 1004–0034

Form 3000–3, Assignment of Record Title Interest in a Lease for Oil and Gas and Geothermal Resources, and Form 3000–3a Transfer of Operating Rights (Sublease), are approved under OMB 1004–0034, Oil and Gas Lease Transfers by Assignment or Operating Rights (Sublease). The collection expires September 30, 1998. BLM uses the two forms, respectively, to transfer all or part of a record title interest, or operating rights, or overriding royalty or similar interest in an oil and gas or geothermal lease to another party under the terms of the mineral leasing laws. They identify ownership of the interest being transferred and the qualifications of the transferee to take interest.

OMB 1004–0074

Form 3000–2, Competitive Oil and Gas or Geothermal Resources Bid is approved under OMB 1004–0074, Oil and Gas and Geothermal Resources Leasing, which expires May 31, 2000. BLM uses the form to determine the highest qualified bonus bid submitted for a competitive oil and gas or geothermal resources lease on public domain and acquired lands. The information collection expires May 31, 2000.

OMB 1004–0145

BLM requires various items of information to determine eligibility of an applicant to lease, explore for, and produce oil and gas on Federal lands. These are non-form information items and are grouped and approved under OMB 1004–0145, Oil and Gas Exploration and Leasing. The collection expires July 31, 1999. BLM needs this information to process oil and gas leases, to ensure compliance with terms and conditions of various statutes, and to determine whether an entity is qualified to hold a lease. Information items that do not require a form are:

Option Acreage Chargeability. Requires a notice of option holdings that is required under the Mineral Leasing Act of 1920 (30 U.S.C. 184(d)(2)). BLM uses this information to determine acreage chargeability. The applicant must submit to BLM copies of notices of options when we request it.

Excess Acreage. The application must include a petition with justification requesting additional time to divest excess acreage.

Lease Holdings. Requires statements showing date, acreage, and the State in which each oil and gas lease is located. BLM does not routinely request this information. However, when BLM requests it, BLM uses it to determine that the lessee is in compliance with the law with respect to acreage limitations (30 U.S.C. 184(d)(2)).

Joinder Evidence Required. A statement is required as to whether or not a prospective oil and gas lessee has joined in a unit agreement if the lease is for lands within an approved unit.

Waiver, Suspension or Reduction of Rental, Royalty, or Minimum Royalty. Application or petition for such benefit is required. The information is required by law and BLM uses it to determine that development cannot be promoted or that the lease cannot be successfully operated if the rental or royalty were not waived, suspended or reduced.

Communitization Agreements. Requires copy of agreement in order to obtain permission to join in oil and gas development with other lands. The information collection has been approved by OMB under 1004–0134. BLM requires this information to confirm that the lease, or portion thereof, cannot be independently developed.

Operating, Drilling or Development Contracts. Requires statement showing interest held by the contractor and a copy of the contract. Copies of contracts are required to obtain approval to permit operators to enter into contracts with a number of lessees sufficient to justify operations on a large scale.

Subsurface Storage of Oil and Gas. Requires application to obtain BLM authorization to store oil and gas underground on Federal lands. BLM requires the information to determine if the subsurface storage avoids waste and promotes conservation of the natural resources.

Heirs and Devisees. In case of the death of an offeror of a tract for a Federal lease, applicant, lessee or transferee, the regulations require a statement that heirs and devisees are qualified to hold a lease interest in accordance with the law.

Change of Name. Requires that a change of name of the lessee be reported to the proper BLM office. The notice of name change must include a list of serial numbers of the leases affected. This information is necessary for acreage chargeability purposes.

Corporate Merger. Requires notification by lessee of corporate merger along with a list of leases affected, which BLM uses to determine acreage accountability.

Renewal Leases. Requires application for renewal, but no specific form. This information requirement may be submitted on the multipurpose lease form 3100–11, which has been designated ''certification only'' by OMB.

Relinquishments. Requires written relinquishment by lessee of a lease or subdivision thereof, but no specific form is required.

Petition for Reinstatement. Requires petitions of reinstatement showing that failure to pay rental, or timely file required instruments, was inadvertent, justifiable, or not due to the lack of reasonable diligence on the part of the lessee. This information is required by law and BLM uses it to determine whether the petitioner is eligible for Class I, II, or III lease reinstatement.

Leasing Under Rights-of-Way. Requires application, but no specific form, for lease of lands under certain types of rights-of-way. Form 3100–11 may be used. The information is required by 30 U.S.C. 301, which authorizes the leasing of oil and gas deposits under railroads and other certain types of rights-of-way, to the owner of the right-of-way, or the entering of a compensatory royalty agreement.

Application for Oil and Gas Exploration Permit in Alaska. The information is required for any person wishing to conduct oil and gas geophysical exploration operations in Alaska as required by the Alaska National Interest Lands Conservation Act, Section 1008. BLM requires this information to determine if the applicant complies with the terms and conditions of the law.

Collection and Submission of Data for an Exploration Permit. BLM requires this information to determine what actions and operations are intended by a exploration permittee in Alaska or on DOD lands, and that the permittee complies with the terms and conditions of the exploration permit.

Completion of Operations. Requires a completion report containing a description of the work, dates exploration was conducted, maps showing the exploration area, and a statement that the operator has complied with all terms and conditions of the permit, or outlines the corrective measures that the operator will take to rehabilitate the lands. BLM needs the information to determine that the operations are complete in order to release your bond.

OMB 1004–0134

Various data on oil and gas operations required to be submitted by the operator or operating rights owner are approved under OMB 1004–0134, Non-form Items. The collection expires November 30, 2000. The information provides data so that proposed operations may be approved; it enables BLM to monitor compliance; and it is used to grant approval to begin or alter operations or to allow operations to continue. The specific information items in this collection cover the following activities:

Drilling Plan. The drilling plan provides technical data and information about the proposed drilling, completing, and associated surface access for a well. BLM needs this information to assure that operations are technically feasible and are conducted in a manner that protects water resources and other environmental values under NEPA, and protects health and safety.

Well Markers. The marker identifies the surface location and provides detailed well information. BLM requires this information to locate wells drilled on Federal or Indian lands.

Directional Drilling. The operator must submit this information to identify whether or not there is potential for adverse impacts on adjoining leases. If drainage or lease boundary crossing is likely, the operator is required to perform a directional survey to chart the direction of the deviation and the bottom hole location. The operator must submit information about the direction of the deviation and the subsurface location of the hole.

Drilling Tests, Logs, and Surveys. Operators routinely perform tests, logs, and surveys during the normal course of business so a copy of the company record suffices. The data consists of lithologic and quantitative logs to indicate type of mineral encountered; drill stem tests to indicate type of hydrocarbon; and possible exposure to gases such as hydrogen sulfide.

Plug and Abandon for Water Injection. Various leasing statutes require the prevention of waste and various laws require the protection of water resources and prevention of undue harm to the surface and subsurface environment. The abandonment plan delineates measures to protect water; measures to prevent escape of toxic gases (hydrogen sulfide); proof of the complete extraction of the oil or gas; any proposed secondary use of the well (water injection); possible requests to waive the requirement for well markers; and mitigation of surface disturbance. The provision for oral approval to remove a drill rig with subsequent written confirmation allows faster action and a reduction in the operator's rental expense.

Conversion to a Water Source Well. This information is required to allow BLM to approve the use of a nonproducing well as a water source well for either the operator or the operating rights owner.

Additional Gas Flaring. The regulations require the operator to conduct operations in such a manner as to prevent avoidable loss of oil and gas. The operator is liable for royalty payments for such losses. If the operator requests additional gas flaring, BLM may require a gas flaring evaluation report from the operator to justify any additional gas flaring requests.

Report of Spills, Discharges, or Other Undesirable Events. The operator must report to BLM all spills or leakages of oil, gas, produced water, toxic liquids, waste materials, etc. The operator's prompt notification enables BLM to protect public health and safety and the environment.

Disposal of Produced Water. BLM monitors the process by which the operator disposes of produced water. BLM needs the information to ensure adequate protection of public health and safety and compliance with environmental laws. The operator must describe the nature and manner in which the produced water will be disposed. The data provides the technical aspects of pit design to allow for sufficient water containment, thereby preventing unnecessary releases of produced water.

Contingency Plan. When BLM requires it, the operator must submit a contingency plan that describes procedures to be implemented to protect life, property, and the environment.

BLM may require either a copy of the Spill Prevention Control and Countermeasure Plan, which is submitted to the Environmental Protection Agency under 40 CFR 112, or another acceptable contingency plan. Plans are generally required for proposed operations in sensitive areas such as hydrogen sulfide high risk areas of Michigan, parts of Florida, Mississippi, and Wyoming, or when the nature of the proposal leads BLM to a determination that public health and safety requires such prior planning. The content of a contingency plan would depend on the nature of the potential hazard and the proximity to potentially affected population or resources.

Schematic/Facility Diagrams. The operator is responsible for documenting how the lease is developed. Most documentation is routinely prepared for company use and is therefore readily available. Within an established time of completing or modifying a facility, the operator submits schematic diagrams that depict facility functions and how oil and gas flows through the operation.

Facility diagrams are filed within 60 days after new measurement facilities are installed or existing facilities are modified or following the inclusion of the facility into a federally supervised unit or communitization agreement. The diagrams are needed to verify and account for all oil and gas produced.

Approval and Reporting of Oil in Pits. Having oil in pits is an unusual operational circumstance, except in emergency situations, and requires BLM's prior approval. Although uncommon, such production operation is reasonable under certain circumstances, and approval is on a case-by-case basis after proper justification.

Preparation of Run Tickets. The operator is required to furnish run ticket information to BLM and the Minerals Management Service, when requested, to account for the volume of production, and for royalty purposes.

Records on Seals. The operator must maintain a record of seal numbers used and document on which valves or connections they were used as well as when they were installed and removed. The seal records are needed for detection of possible theft of oil as well as the proper isolation of a tank prior to and following a sale.

Application for Suspension. In its applications for suspension of operations and/or production the operator must include a full statement of the circumstances that render the relief necessary. Leases and the laws under which they are issued require operations and production and provide authority to suspend this requirement.

Site Security. Site security plans are required to be filed for all facilities. At the operator's option, a single plan may be completed to include all of that operator's leases within a single BLM District. Any security elements in excess of the minimum requirements that the operator wishes to implement, but wants to be held confidential, should not be filed with the BLM but must be available for inspection by BLM personnel on request. The notification can be modified from time to time as additional facilities are brought under the purview of any specific plan.

OMB 1004–0135

Form 3160–5, Sundry Notices and Reports on Wells, is approved under OMB 1004–0135. The collection expires November 30, 2000. The information an operator provides on the Sundry Notices form may be a notice of intent, a subsequent report, or a final abandonment notice and pertains to modifying operations conducted under the terms and provisions of a lease for Federal or restricted Indian lands. The data enables BLM oversight and approval prior to any modifications to existing wells.

OMB 1004–0136

Form 3160–3 Application for Permit to Drill or Reenter, is approved under OMB 1004–0136, Application for Permit to Drill, which expires November 30, 2000. The operator is required to prepare certain items such as drilling plans, diagrams, maps, and contingency and other plans, which are generally submitted with Form 3160–3. The information provides documentation that drilling and associated activities, when and if authorized, are technically and environmentally feasible and ensure proper conservation of resources. The information also provides a basis for evaluating a proposed well's feasibility and, in turn, determining whether the application should be disapproved or approved and, if approved, whether any special conditions of approval should be made part of the permit.

OMB 1004–0137

Form 3160–4, Well Completion or Recompletion Report and Log is approved under OMB 1004–0137, which expires November 30, 2000. BLM uses the information required on Form 3160–4 for technical evaluation of operations performed on a well. The form documents that the operator carried out operations in accordance with the terms and provisions of the lease and in a technically and environmentally safe manner. Failure to collect and submit the requested information would mean that BLM would lack the necessary information to monitor compliance with authorized well activity and operations that were performed on wells.

Authors

The principal authors of this rule are Tim Abing (Milwaukee District Office), Jim Albano (Montana State Office), Lonny Bagley (Montana State Office), Shirlean Beshir (Eastern States Office), Peter Ditton (Great Falls Resource Area Office), Karen Johnson (Montana State Office), Pam Lewis, (Wyoming State Office), Robert Lopez (Utah State Office), Patty Ramstetter (Utah State Office), Sherri Thompson (Colorado State Office), Rick Wymer (New Mexico State Office), John Duletsky of BLM's Fluid Minerals Group (Washington Office) and Ian Senio of BLM's Regulatory Affairs Group (Washington Office).

List of Subjects

43 CFR Part 3100

Administrative practice and procedures, Classified information, Freedom of Information Act, Oil and gas exploration, Public lands-mineral resources, Reporting and recordkeeping requirements, Surety bonds.

43 CFR Part 3110

Alaska, Oil and gas exploration, Public lands-mineral resources, Reporting and recordkeeping requirements, Surety bonds.

43 CFR Part 3120

Government contracts, Oil and gas exploration, Public lands-mineral resources, Reporting and recordkeeping requirements, Surety bonds.

43 CFR Part 3130

Government contracts, Oil and gas exploration, Public lands-mineral resources, Reporting and recordkeeping requirements.

43 CFR Part 3140

Government contracts, Mineral royalties, Oil and gas exploration, Public lands-mineral resources, Reporting and recordkeeping requirements.

43 CFR Part 3150

Government contracts, Indians-lands, Mineral royalties, Oil and gas exploration, Public lands-mineral resources, Reporting and recordkeeping requirements.

43 CFR Part 3160

Government contracts, Indians-lands, Mineral royalties, Oil and gas exploration, Penalties, Public lands-mineral resources, Reporting and recordkeeping requirements.

43 CFR Part 3170

Government contracts, Hydrocarbons, Mineral royalties, Oil and gas exploration, Public lands-mineral resources, Reporting and recordkeeping requirements.

43 CFR Part 3180

Alaska, Government contracts, Mineral royalties, Oil and gas exploration, Oil and gas reserves, Public lands-mineral resources, Reporting and recordkeeping requirements, Surety bonds.

Accordingly, for the reasons stated in the preamble, amend Title 43, Subtitle B, Chapter II, Subchapter C, Parts 3100, 3110, 3120, 3130, 3140, 3150, 3160, and 3180 as follows:

Dated: July 23, 1998.

Bob Armstrong,

Assistant Secretary, Land and Minerals Management.

1. Revise part 3100—Oil and Gas Leasing to read as follows:

PART 3100—ONSHORE OIL AND GAS LEASING AND OPERATIONS: GENERAL

Subpart 3101—General Information

General

Sec.

Subpart 3102—Recordkeeping

Recordkeeping

Subpart 3103—Reports, Submissions, and Notifications

Reports, Submissions, and Notifications

Subpart 3104—Environment and Safety

Environment and Safety

Subpart 3105—Lessee Qualifications

Lessee Qualifications

Acreage Limitation

Subpart 3106—Fees, Rentals and Royalties

Fees and Rentals

Authority: 16 U.S.C. 3150(b) and 668dd; 30 U.S.C. 189, 306 and 359; 43 U.S.C. 1201, 1732(b), 1733, 1734 and 1740; and Pub. L. 105–85.

Subpart 3101—General Information

General

§ 3101.5 What terms do I need to know to understand BLM's oil and gas regulations?

You need to know the following terms to understand parts 3100 through 3190—

Abandonment means operations you conduct to permanently plug a well.

Access, with respect to production, means the ability to enter into any——

(1) Tank or pipe system through a valve, valves, or combination of valves,

or tankage that would permit the removal of oil or gas; or

(2) Component in a measuring system that could affect the quality or quantity of the product being measured, without documentation.

Acquired lands means lands that the United States obtained by deed through purchase or gift, or through condemnation proceedings, including lands previously disposed of under the public land laws, excluding Indian lands.

Act means the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 *et seq.*).

Aliquot part means a subdivision of a section under the rectangular survey system arrived at by dividing a section into halves and quarters (e.g., ½ section, ¼ section, ¼ ¼ section) down to 40 acres, unless the acreage is a lot that may be more or less than 40 acres.

Allocated production means the proportionate share of production that is credited to a Federal or Indian lease under an approved agreement to which the lease is committed.

Association means any entity other than a corporation that is permitted under State law to hold property in its name.

Available lands means those lands not excluded from leasing by a statutory or regulatory prohibition and which the Secretary has discretion to lease.

Avoidably lost means—

(1) Produced gas you vent or flare without BLM's prior, written approval, unless otherwise allowed under parts 3100 through 3190; and

(2) Produced oil or gas lost when BLM determines that the loss occurred as a result of your—

(i) Negligence;

(ii) Failure to take all reasonable measures to prevent or to control the loss; or

(iii) Failure to comply fully with the applicable laws, lease terms, and regulations, appropriate provisions of a previously approved operating plan, or the provisions of prior written BLM orders.

Beneficial purposes means oil or gas that you produce but do not sell from your lease, communitized tract, or unitized participating area and that you use on or for the benefit of that same lease, same communitized tract, or same unitized participating area for operating or producing purposes. Examples include—

(1) Fuel you use to lift oil or gas;

(2) Fuel you use to heat oil or gas to place it in a marketable condition;

(3) Fuel you use to compress gas to place it in a marketable condition;

(4) Fuel you use to fire steam generators for the enhanced recovery of oil; or

(5) Gas you use to actuate automatic valves at wells or facilities.

BIA means the Bureau of Indian Affairs of the Department of the Interior.

Bioremediation means a treatment technology that uses a natural process in which microorganisms, primarily bacteria and fungi, chemically alter and break down organic molecules into other substances, primarily carbon dioxide and water.

BLM means any employee of the Bureau of Land Management authorized to perform the duties described in parts 3100 through 3190.

Blowout prevention equipment system (BOP) means the kill line, choke manifold, closing unit, diverter, blowout preventer, and auxiliary equipment required to operate the blowout preventer under varying rig and well conditions.

Bona fide purchaser means a person who acquired an interest in a Federal lease—

(1) In good faith;

(2) For valuable consideration; and

(3) Without notice of violation of Departmental regulations.

Bond means an agreement in writing in which a surety, or an obligor for a personal bond, guarantees performance or compliance with the lease terms.

Bond rider means any document that amends and becomes a part of an existing bond.

Bonus bid means money a successful bidder pays to the United States for a competitive oil and gas lease.

Bypass means any piping arrangement that allows oil or gas to continue on the sales or allocation lines without passing through the meter. Equipment that allows you to change the orifice plate without bleeding the pressure off the gas meter run is not a bypass.

Cancellation of a lease means revocation or nullification of a lease.

Casual use means activities that involve practices that do not ordinarily lead to any appreciable disturbance or damage to lands, resources, or improvements. Casual use includes activities that do not involve using heavy equipment or explosives and that do not involve vehicular movement except over established roads and trails. For subparts 3110 through 3113, gravity or magnetic surveys, the placement of recording equipment devices, and activities that do not involve vehicle operations that would cause significant compaction or rutting are generally considered casual use.

Commingle means combining production from different formations, leases, communitized areas, or unit participating areas prior to sale.

Committed lease means a Federal, Indian, State or private lease where all owners of record title and all working interest owners have agreed in writing that they will abide by the terms and conditions of an agreement.

Committed in part means a lease of which only a part of the lands have been committed to an agreement.

Communitization agreement means an agreement to jointly operate a lease with one or more other leased or unleased tracts to share the benefits of production within a single spacing unit.

Completion operations means work you conduct to prepare your well for production of oil or gas or service.

Condensate means those natural gas liquids recovered in production equipment or pipelines that remain in a liquid state at atmospheric pressure and temperature, and consist primarily of pentanes and heavier hydrocarbons.

Condition of approval (COA) means a site-specific requirement BLM attaches to approved Applications for Permits to Drill or Renter (APD) or Sundry Notices and Reports (SN).

Director means the Director of the Bureau of Land Management.

Dispersion technique means a mathematical representation of the physical and chemical transportation, dilution, and transformation of H_2S gas emitted into the atmosphere.

Drainage means the migration of hydrocarbons, inert gases or associated resources from Federal or Indian lands caused by production from wells on adjacent lands.

Eligible lands means those lands available for leasing when all statutory requirements and reviews have been met.

Enhanced recovery unit means a unit created to produce oil and gas from an area that is unrecoverable by primary recovery methods.

Escape rate means the maximum volume used as the escape rate in determining the radius of exposure specified as follows:

(1) For a production facility, it is the maximum daily rate, or the best estimate of that rate, of gas you produce through that facility;

(2) For gas wells, it is the current daily absolute open-flow rate against atmospheric pressure;

(3) For oil wells, you must calculate it by multiplying the producing gas-oil ratio by the maximum daily production rate; and

(4) For a well you are drilling in a developed area, you may determine the escape rate by using offset wells completed in the interval(s) in question.

Essential personnel means those on-site personnel directly associated with the operation being conducted and necessary to maintain control of the well.

Exception means a case-by-case waiver of a lease stipulation, condition of approval, order, or lease term, that continues to apply to all other sites within the leasehold, or area covered by the original order, stipulation or condition of approval.

Exploratory unit means two or more leases operated under an agreement for the purpose of exploring for or developing the oil and gas resources of an area.

Federal lands means all lands and interests in lands owned by the United States that are subject to the mineral leasing laws, including mineral resources or mineral estates reserved to the United States in the conveyance of a surface or nonmineral estate, excluding Indian lands.

Federal lease means an onshore oil and gas lease issued under the mineral leasing laws. It does not include Indian oil and gas leases.

Gas means any fluid, excluding helium, either combustible or noncombustible, that is produced in a natural state from the earth and which maintains a gaseous or rarefied state at ordinary temperatures and pressure conditions. This includes any fluid within coal resources.

Gas well means a well for which the energy equivalent of the gas it produces, including the entrained liquid hydrocarbons, exceeds the energy equivalent of the oil it produces.

Geophysical exploration means activity relating to the search for oil or gas that results in surface disturbance or disturbance to resources or land uses. It includes, but is not limited to, geophysical operations, construction of roads and trails and cross-country transit of vehicles over the lands. It does not include core drilling for subsurface geologic information or drilling for oil or gas. However, this definition includes drilling operations necessary for placing explosive charges.

H_2S public protection plan means a written plan that provides for the safety of the potentially affected public with regard to H_2S and sulphur dioxide (SO_2).

Hazardous material: (1) Means any—

(i) Substance, pollutant, or contaminant listed as hazardous under 42 U.S.C. 9601;

(ii) Hazardous waste defined under 42 U.S.C. 9601;

(iii) Extremely hazardous substances defined under 40 CFR part 355; or

(iv) Nuclear or byproduct material defined under 42 U.S.C. 2011;

(2) Does not include any petroleum products that are not otherwise specifically listed or designated as a hazardous substance under 42 U.S.C. 9601 (14). The term does not include natural gas, natural gas liquids, liquified natural gas, or synthetic gas useable for fuel (or mixture of natural gas and synthetic gas).

Hazardous substance: (1) Means any—

(i) Substance designated under 33 U.S.C. 1321(b)(2)(A);

(ii) Element, compound, mixture, solution, or substance designated under 42 U.S.C. 9602;

(iii) Hazardous waste having characteristics identified under or listed under 42 U.S.C. 6921 (but not including any waste the regulation of which under the Solid Waste Disposal Act, 42 U.S.C. 6901 *et seq.*, has been suspended by Act of Congress);

(iv) Toxic pollutant listed under 33 U.S.C. 1317(a);

(v) Hazardous air pollutant listed under 42 U.S.C. 7412; or

(vi) Immediately hazardous chemical substance or mixture with respect to which the Administrator of the Environmental Protection Agency has taken action under 15 U.S.C. 2606;

(2) Does not include any petroleum products that are not otherwise specifically listed or designated as a hazardous substance under this definition. The term does not include natural gas, natural gas liquids, liquified natural gas, or synthetic gas useable for fuel (or mixture of natural gas and synthetic gas).

Held by production means a lease term is extended so long as oil or gas is produced or capable of being produced in paying quantities from the lease or agreement area to which the lease is committed.

Indian lands means any lands or possessory interest in lands owned or held by any individual Indian or Alaska Native, Indian tribe, band, nation, pueblo, community, rancheria, colony, or other group, the title to which is held in trust by the United States or, as a matter of Federal law, is subject to a restriction against alienation.

Indian lease means an oil and gas lease on Indian lands issued under the regulations in Title 25 of the CFR and approved by the Secretary, or an agreement entered into under the Indian Mineral Development Act of 1982 (25 U.S.C. 2102) and the regulations in 25 CFR part 225.

Injection well means a well used to dispose of produced water or used for primary or enhanced recovery operations of oil or gas.

Interest means ownership in a lease or future interest lease of all or a portion of the record title or operating rights.

Isolating means using one or any combination of cement, cast iron bridge plugs, or retainers, to protect, separate, or segregate usable water and mineral resources.

Lease means any contract, profit-share arrangement, joint venture or other agreement issued or approved by the United States under a mineral leasing law that authorizes exploration for, or extraction and removal of oil and gas.

Lease site means any lands on which exploration for, or extraction and removal of, oil or gas is authorized under the lease.

Lessee means any person holding record title or operating rights in a lease issued or approved by the United States.

Marketable condition means lease products that are sufficiently free from impurities and otherwise in a condition that they will be accepted by a purchaser under a sales contract typical for the field or area.

Maximum ultimate economic recovery means the recovery of oil and gas from leased lands that a prudent operator could be expected to make from that field or reservoir—

(1) Given existing knowledge of reservoir and other pertinent facts; and

(2) Utilizing common industry practices for primary, secondary or tertiary recovery operations.

Meter calibration means the operation by which you compare meter readings with an accepted standard and when necessary, adjust the meter so that its readings conform to that standard.

Meter uncertainty means the overall inaccuracy of a flow meter caused by the inherent errors of the flow measurement equipment.

Minimum royalty means the minimum amount of annual royalty due under the lease or under parts 3100 through 3190 after production is established.

Mishandling means unmeasured or unaccounted-for removal of production from a facility other than through theft.

Modification means a temporary or permanent change to the provisions of a lease stipulation, condition of approval, order, or lease term. It may include an exception from or alteration to a stipulation, condition of approval, order, or lease term. The modified stipulation, condition of approval, order, or lease term may apply to all or part of the leasehold or area covered by the original order or condition of approval.

National Forest System Lands (NFS) means all National Forest lands reserved or withdrawn from the public domain of the United States, or acquired through purchase, exchange, donation, or other means. It also includes the National Grasslands and land utilization projects administered by the U.S. Department of Agriculture, Forest Service, under Title III of the Bankhead-Jones Tenant Act (7 U.S.C. 1010 *et seq.*), and other lands, waters, or interests administered by the Forest Service as part of the system under 16 U.S.C. 1609.

National Pollutant Discharge Elimination System (NPDES) means a program administered by the Environmental Protection Agency, primacy State, or Indian tribe, that requires permits for the discharge of pollutants from any point source into navigable water of the United States.

Off-lease measurement means conducting measurements at a tank battery or measurement facility off the lease.

Oil means all nongaseous hydrocarbon substances other than those substances leasable as coal, oil shale or gilsonite (including all vein-type solid hydrocarbons).

Oil well means a well for which the energy equivalent of the oil it produces exceeds the energy equivalent of the gas it produces, including the entrained liquid hydrocarbons.

Operating rights (working interest) means any interest held in a lease with the right to explore for, develop, and produce leased substances.

Operating rights owner means a person who holds operating rights in a lease issued by the United States. A lessee may also be an operating rights owner in a lease if it did not transfer all of its operating rights in a lease.

Operator means any person or entity (whether a lessee or operating rights owner or an agent thereof) who has stated in writing to BLM that it is responsible under the terms and conditions of the lease for the operations conducted on the lease or portions of the lease. An operator need not be an operating rights owner.

Participating area means the lands that contain at least one well that meets the productivity criteria established in an exploratory unit agreement. A participating area may be particular to separate producing intervals or areas.

Paying well means—

(1) On a lease basis, a well with sufficient production capacity to recover the cost of day-to-day operating expenses with a profit, no matter how small; or

(2) On a unit basis, a well with sufficient production capacity to return a reasonable profit over the cost of drilling, equipping, completing and operating that well.

Person means any individual, firm, corporation, association, partnership, trust, consortium, or joint venture.

Primary element means the equipment necessary to produce a measurable and predictable pressure drop in the gas stream. For orifice installations this includes the orifice plate, orifice plate flanges or plate holder, the meter tube or ''run'', thermometer well and sampling taps, and straightening vanes.

Produced water means water produced in conjunction with oil and gas production.

Producing interval means the geologic strata from which you extract hydrocarbons. It does not have to be a recognized United States Geological Survey formation. BLM may consider multiple producing intervals from a formation as one producing interval.

Production facility means any header, piping, treating, or separating equipment, water disposal pit, processing plant, measurement facility, or combination of those things and includes the approved measurement point for any lease, communitization agreement, or participating area.

Production phase means that period of time or mode of operating during which crude oil is delivered directly to or through production vessels to the storage facilities and includes all operations at the facility other than those defined by the sales phase.

Prospectively valuable deposit of minerals means any deposit of minerals, other than fluid hydrocarbons, BLM determines to have characteristics of quantity and quality that make it technologically feasible to develop and, therefore, that warrant its protection from undue damage by oil and gas operations.

Public domain lands means lands, including mineral estates, that—

(1) Never left United States ownership;

(2) The United States obtained in exchange for public domain lands;

(3) Have reverted to the ownership of the United States through the operation of the public land laws; or

(4) That Congress specifically identified as part of the public domain.

Public lands means lands or minerals that the United States may lease for oil and gas.

Reclamation means returning disturbed land and water to their former uses or other productive uses in a stable state that maintains healthy ecological conditions.

Recompletion means reentering your well to restore productivity of the original completion.

Record title means legal ownership of an oil and gas lease recorded in BLM's records.

Record title owner means the person(s) to whom BLM issued a lease or the person(s) to whom BLM approved the transfer of record title in a lease.

Routine well maintenance means work you conduct on a well without altering its configuration. It includes replacing or repairing malfunctioning equipment, clean out, or evaluation. This work includes, but is not limited to—

(1) Cutting paraffin and hot oil treatment;

(2) Changing rods and tubing;

(3) Bailing sand;

(4) Pressure surveys;

(5) Swabbing;

(6) Scale or corrosion treatment;

(7) Caliper and gauge surveys;

(8) Removing or replacing subsurface pumps, packers, or screening pipe;

(9) Running well logs;

(10) Fishing objects from the wellbore that must be recovered before work can proceed; and

(11) Minor casing repairs.

Sales phase means that period of time or mode of operation during which you remove crude oil or condensate from storage facilities for sale, transportation or other purposes.

Seal means a uniquely numbered device that completely secures either a valve or those components of a measuring system that affect the quality or quantity of the liquid being measured.

Secondary element means the equipment necessary to convert the pressure drop created by the primary element into a flowrate and a flow volume. More specifically—

(1) For chart recorders, this includes the meter manifold, pressure lines, differential pressure unit, static pressure element, temperature element, and chart recorder; or

(2) For electric flow computers (EFC), this includes the meter manifold, pressure lines, differential pressure, static pressure, and temperature transducers and flow computer.

Secretary means the Secretary of the Interior or the authorized representative of that office.

Shut-in with respect to wells, means any well capable of producing in paying quantities or capable of service use, but not currently producing or not being used.

Spacing means regulating the number and location of wells in a field or area.

Stipulation means additional specific terms and conditions in the lease that

change the manner in which you may conduct operations or that may otherwise modify the standard lease terms.

Surface management agency means any agency, other than BLM, with jurisdiction over the surface overlying Federal or Indian owned minerals.

Suspension means temporary relief of a lessee's obligation to perform specific functions stipulated in Federal oil and gas lease terms, laws, and regulations.

Tagging the plug means running in the hole with a string of tubing or drill pipe and placing sufficient weight on the plug to ensure its integrity.

Temporarily abandoned with respect to wells, means a well not in use.

Toxic constituents means substances in produced water in toxic concentration specified by Federal or State regulations that have harmful effects on plant or animal life. These substances include, but are not limited to, arsenic (As), barium (Ba), cadmium (Cd), hexavalent chromium (bCr), total chromium (tQr), lead (Pb), mercury (Hg), zinc (Zn), selenium (Se), benzene, toluene, ethyl benzene, and xylenes, as defined in 40 CFR part 261.

Transfer means any conveyance of an interest in a lease by assignment, sublease or otherwise. The definition includes the terms assignment and sublease.

Unavoidably lost with respect to production, means—

(1) Gas vapors that are vented from storage tanks or other low-pressure production vessels, unless BLM determines that you must retain or recover those vapors;

(2) Oil or gas lost because of line failures, equipment malfunctions, blowouts, fires, or otherwise, when BLM determines that the loss did not result from your negligence or failure to take all reasonable measures to prevent or control the loss;

(3) Gas you vent or flare during emergencies, short-term well tests, short-term production tests, or otherwise with BLM's prior written approval; and

(4) Oil which you may dispose without incurring a royalty obligation when BLM has first determined it to be waste oil and to have no economic value.

Underground injection control (UIC) program means a program the Environmental Protection Agency, primacy State, or Indian Tribe administers under the Safe Drinking Water Act (42 U.S.C. 300f *et seq.*), to ensure that subsurface injection does not endanger underground sources of drinking water.

Unit agreement means a BLM-approved agreement to cooperatively explore, develop, operate and share production of all or part of an oil or gas pool, field or like area, including at least one Federal lease, without regard to lease boundaries and ownership.

Unit area means all committed leases, other committed tracts and unleased Federal lands included in a BLM-approved unit. The unit area excludes any uncommitted tracts within the external boundaries of the unit.

Unit operator means the person who has stated in writing to BLM that the interest owners of the committed leases have designated it as operator for the unit area.

Unitized substances means all oil and gas production that meets productivity criteria or all oil and gas production from established participating areas.

Usable water means water that contains less than 10,000 parts per million (ppm) of total dissolved solids.

Variance means a BLM-approved alternative that meets the intent of, and allows you to comply with, a provision or standard of parts 3100 through 3190.

Waiver means a BLM-granted permanent exemption from a lease stipulation, condition of approval, order, lease term for the entire leasehold, or area covered by the original order or condition of approval.

Waste means your act or failure to act that is not sanctioned by BLM as necessary for proper development and production and that results in—

(1) A reduction in the quantity or quality of oil and gas ultimately producible from a reservoir under prudent and proper operations;

(2) Avoidable surface loss of oil or gas; or (3) An avoidable change in the quality or quantity of produced oil or gas which may result in a reduced value of such production.

Waste oil means oil or condensate that BLM determines has no economic value because it is of such poor quality that it cannot be treated and placed in a marketable condition with existing or modified lease facilities or portable equipment and cannot be profitably sold to a reclaimer.

Workover means operations you conduct to maintain, restore, or increase production or serviceability of a well in its present completion interval.

Zones known to contain hydrogen sulfide (H_2S) means a geological formation in a field where prior drilling, logging, coring, testing, or producing operations have confirmed that H_2S-bearing zones will be encountered that contain 100 ppm or more of H_2S in the gas stream; and Zones reasonably expected to contain H_2S means geological formations in the area which have not had prior drilling, but prior drilling to the same formations in similar field(s) within the same geologic basin indicates there is potential for 100 ppm or more of H_2S in the gas stream.

§ 3101.8 Reference material.

(a) *Matter incorporated by reference.* There are industry publications in part 3100 that are incorporated by reference. These publications are not specifically set out in the regulatory text but only referenced. The referenced material is part of the regulations in parts 3100 through 3190 and you must comply with it. BLM considers cited American Petroleum Institute (API) recommended practices to be mandatory. Material is incorporated as it exists in the specific document cited and BLM will publish a notice of any change in the material in the **Federal Register.** This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(b) *Accessibility of materials.* You may purchase copies of the referenced materials from the American Petroleum Institute, Order Desk, 1220 L Street, N.W., Washington, D.C., 20005. Certain out-of-print or withdrawn API publications may be purchased from Global Engineering Documents, 15 Inverness Way East, P.O. Box 1154, Englewood, Colorado, 80150–1154. You may inspect copies at the Bureau of Land Management, Regulatory Affairs Group, Room 401, 1620 L Street, N.W. Washington, D.C. 20036 or at the Office of the Federal Register, 800 North Capitol St., N.W., Suite 700, Washington, D.C.

(c) *Table of material incorporated by reference.* The following table sets out publications that are incorporated by reference. The first column sets out the name of the publication and where you may purchase it. The second column lists the section(s) of these regulations in which the publication is referenced. The second column is for information only and may not be all inclusive.

Name of material (vendor)	43 CFR section where the material is incorporated
(1) API RP 55, ''Recommended Practices for Conducting Oil and Gas Producing and Gas Processing Plant Operations involving Hydrogen Sulfide'', Second Edition, February 15, 1995 (API Documents).	3151.23 (b) and (d).
(2) API RP 12R1, ''Recommended Practice for Setting, Maintenance, Inspection, Operation and Repair of Tanks in Production Service'', Fifth Edition, August 1997 (API Documents).	3153.20(a).
(3) API Manual of Petroleum Measurement Standards (MPMS), Chapter 3.1A, ''Standard Practice for the Manual Gauging of Petroleum and Petroleum Products'', First Edition, December 1994 or API MPMS Chapter 3.1 B, ''Standard Practice for Level Measurement of Liquid Hydrocarbons in Stationary Tanks by Automatic Tank Gauging'', First Edition, April 1992 (Reaffirmed January 1997). (API Documents).	3153.20(e).
(4) API MPMS, Chapter 2.2A, ''Measurement and Calibration of Upright Cylindrical Tanks by the Manual Tank Strapping Method'', First Edition, February 1995 (API Documents).	3153.20(b).
(5) API MPMS, Chapter 2.2B, ''Calibration of Upright Cylindrical Tanks Using the Optical Reference Line Method'', First Edition, March 1989 (Reaffirmed May 1996) (API Documents).	3153.20(b).
(6) API MPMS, Chapter 18.1, ''Measurement Procedures for Crude Oil Gathering from Small Tanks by Truck'', Second Edition, April 1997 (API Documents).	3153.20(c).
(7) API MPMS, Chapter 8.1, ''Standard Practice for Manual Sampling of Petroleum and Petroleum Products'', Third Edition, October 1995, (ASTM D4057), or Chapter 8.2, ''Sampling of Liquid Petroleum and Petroleum Products'', Second Edition, October 1995 (ANSI/ASTM D4177) (API Documents).	3153.20(d).
(8) API MPMS, Chapter 9.1, ''Hydrometer Test Method for Density, Relative Density (Specific Gravity), or API Gravity of Crude Petroleum and Liquid Petroleum Products'', (ANSI/ASTM D1298), June 1981 (Reaffirmed October 1992) (API Documents).	3153.20(f) and 3153.31.
(9) API MPMS, Chapter 7.1, ''Static Temperature Determination Using Mercury-In-Glass Tank Thermometers'', First Edition, February 1991. (Reaffirmed November 1996) (API Documents).	3153.20(g).
(10) API MPMS, Chapter 10.4, ''Determination of Sediment and Water in Crude Oil by the Centrifuge Method (Field Procedure)'', Second Edition, May 1988 (ASTM D96–88) (Reaffirmed May 1998) (API Documents).	3153.20(h) and 3153.31.
(11) API Specification 11N, ''Specification for Lease Automatic Custody Transfer (LACT) Equipment'', Fourth Edition, November 1, 1994 (API Documents).	3153.30(b)(1).
(12) API MPMS, Chapter 6.1, ''Lease Automatic Custody Transfer (LACT) Systems'', Second Edition, May 1991 (Reaffirmed July 1996) (API Documents).	3153.30 (a), (b)(2) and 3153.32(a).
(13) API MPMS, Chapter 12.2, ''Calculation of Liquid Petroleum Quantities Measured by Turbine or Displacement Meters'', First Edition, September 1981 (Reaffirmed May 1996) (API Documents).	3153.32(d)(1) and 3153.37(b)(1).
(14) API MPMS, Chapter 11.1, Volume I, ''Table 5A—Generalized Crude Oils and JP–4, Correction of Observed API Gravity to API Gravity at 60 °F.'' ''Table 6A—Generalized Crude Oils and JP–4, Correction of Volume to 60 °F Against API Gravity at 60 °F.'' (ANSI/ASTM D 1250–80), (IP 200) (API Standard 2540) August 1980 (Reaffirmed October 1993) (API Documents or ASTM Documents).	3153.32(d)(2).
(15) API MPMS, Chapter 11.2.1, ''Compressibility Factors for Hydrocarbons: 0–90° API Gravity Range'', First Edition, August 1984 (Reaffirmed May 1996) (API Documents).	3153.32(d)(3).
(16) API MPMS, Chapter 14.3, ''Orifice Metering of Natural Gas and Other related Hydrocarbon Fluids'', Second Edition, September 1985 (ANSI/API 2530) (Global Documents).	3154.20(a)(1).
(17) API MPMS, Chapter 14.3, Part 2, ''Specification and Installation Requirements'', Third Edition, February 1991, Reaffirmed May 1996 (ANSI/API 2530, Part 2, 1991) (API Documents).	3154.20(a)(2) and 3154.40(a)(1).
(18) API MPMS, Chapter 14.3, Part 3, ''Natural Gas Applications'', Third Edition, August 1992 (API Documents).	3154.21.
(19) API MPMS, Chapter 20.1, ''Allocation Measurement'', First Edition, September 1993 (API Documents).	3154.32 (a) and (b).
(20) API MPMS Chapter 14.1 ''Collecting and Handling of Natural Gas Samples for Custody Transfer, Fourth Edition, August 1993'' (API Documents).	3154.70(c).
(21) API Bulletin E3, ''Well Abandonment and Inactive Well Practices for U.S. Exploration and Production Operations, Environmental Guidance Document'', First Edition, January 1993 (Section 2) (API Documents).	3159.22(a).
(22) API RP 49, ''Recommended Practices For Safe Drilling of Wells Containing Hydrogen Sulfide'', Second Edition, April 15, 1987 (Global Documents).	3145.41(a), 3145.44 (a) and (d).
(23) API RP 53, ''Recommended Practice for Blowout Prevention Equipment Systems for Drilling Wells'', Third Edition, March 1997 (API Documents).	3145.30(c) and 3145.33(a)(2).
(24) API RP 54, ''Recommended Practice for Occupational Safety for Oil and Gas Well Drilling and Servicing Operations,'' Second Edition, May 1, 1992 (API Documents).	3145.31 and 3145.34(a).

§ 3101.10 What do the regulations in parts 3100 through 3190 cover?

(a) These regulations apply to the leasing of Federal lands for oil and gas. These regulations also provide the operational requirements associated with the exploration, development and production of oil or gas on both Federal and Indian lands.

(b) The regulations relating to site security, measurement, reports of operation activities, and assessments or penalties for noncompliance with the requirements apply to your wells or facilities on State or privately-owned mineral lands committed to an agreement approved by the Department of Interior, such as a unit or communitization agreement, in which Federal lands or Indian lands share in production.

(c) Notwithstanding the regulations in title 25 of the CFR concerning oil and gas operations on Indian leaseholds, the regulations in this part govern with respect to your conduct of oil and gas

operations, acts of noncompliance, and BLM's jurisdiction and authority.

(d) These regulations do not apply to Osage Indian lands.

§ 3101.11 Who must comply with the lease terms, regulations, orders and Notices to Lessees (NTL's) BLM issues?

Interest owners and operators must comply with the lease terms, regulations and BLM's orders and NTL's. Their agents, contractors or subcontractors must also comply. The interest owner and operator are responsible if they do not comply.

§ 3101.12 As a record title owner, what are my obligations?

(a) You are responsible for all performance on the lease, including paying any rent and royalty due. If there is more than one record title or operating rights owner, each of you is jointly and severally liable for nonmonetary lease obligations, including the obligation to protect the lease from drainage and to pay compensatory royalty that may be owed. You also are jointly and severally liable for plugging and abandonment obligations that accrue while you hold your record title interest. This means that if you own a 50 percent record title interest in the lease, BLM may hold you responsible for 100 percent of the lease obligations if your joint owner(s) defaults. However, for monetary obligations, such as paying rent and royalty, your obligation is proportionate to your interest. Therefore, if you own 25 percent of the record title interest, you are liable for only 25 percent of the rental and royalty on production.

(b) You are ultimately responsible for compliance with the lease terms and conditions regardless of who conducts actual lease operations.

§ 3101.13 As an operating rights owner, what are my rights and obligations?

(a) You have the right to enter the leased lands to conduct drilling and related operations including producing oil or gas, according to the lease terms.

(b) You have the right to authorize another party to conduct operations on the lease.

(c) You are jointly and severally liable with the other record title or operating rights holders in the lease for all nonmonetary lease obligations pertaining to that portion of the lease subject to your operating rights, and proportionately liable for monetary obligations with other operating rights holders for that portion of the lease subject to your operating rights.

§ 3101.14 Does BLM warrant title to the oil and gas deposits when it issues a lease or approves subsequent lease actions or lease operations?

If BLM issues a Federal oil and gas lease or approves your application under parts 3100 through 3190, the United States—

(a) Does not make any warranty of title, either express or implied, to the oil and gas deposits;

(b) Is under no obligation to you to either discover or dispose of any other person's claims to the oil and gas deposits or assume any obligation to defend the oil and gas lease against any claims; and

(c) Does not warrant or certify that you hold legal or equitable title to your leases which would entitle you to conduct drilling operations.

§ 3101.15 Must I give BLM information and documentation about my lease?

You must give BLM any information or documentation that BLM requests to properly administer your lease or to determine your compliance with applicable laws and regulations. This information may include, but is not limited to, information about your lease operations or production.

§ 3101.16 What requirements must I follow in addition to the regulations in parts 3100 through 3190?

BLM may—

(a) Include lease stipulations to minimize the impacts or interference that oil and gas operations may cause to other resource values, land uses or users. BLM will provide notice of the stipulations on oil and gas lease parcels before any of the lands are offered for lease. You agree to the stipulations attached to the parcel offered for lease when you bid on a competitive lease parcel or file a noncompetitive lease offer. Stipulations become a part of the terms of your lease and replace any inconsistent provisions of the standard lease form at the time of lease issuance. You must comply with the stipulations for all actions you take on the lease. Some examples of common stipulation types include—

(1) Limitations on when you may conduct operations;

(2) No surface occupancy;

(3) Other surface use restrictions; and

(4) Requirements to join an approved agreement.

(b) Impose conditions of approval on the granting of required permits or authorizations that are reasonable and necessary for the protection of resources and other uses of the land and which are consistent with lease rights;

(c) Issue NTL's to provide information or explanation as to how the regulations in this part apply to your lease operations, or to provide alternative methods to meet the requirements of these regulations;

(d) Issue written or oral orders to you for specific lease operations. BLM will confirm an oral order in writing;

(e) Require tests and surveys to—

(1) Determine the presence, quantity, and quality of oil, gas, other minerals, or the presence or quality of water;

(2) Determine the amount and/or direction of deviation of any well from the vertical;

(3) Determine the relevant characteristics of the oil and gas reservoirs penetrated; and

(4) Demonstrate the mechanical integrity of the downhole equipment; and

(f) Require you to provide other information required for proper administration of your lease.

§ 3101.17 May BLM establish development and production requirements for my lease?

(a) BLM may direct you to drill and produce wells that will reasonably and timely develop your lease in accordance with good economic practices.

(b) After you receive written notice from BLM, you must drill and produce all wells BLM determines necessary to diligently develop your lease.

§ 3101.18 Will I be responsible for compensating the United States or Indian lessor if my lease is being drained of oil and gas by wells on adjacent tracts?

You are responsible for protecting the United States or Indian lessor from losses of royalty due to drainage if it would be economic to drill a protective well, as further provided in § [to be specified in the final rule].

§ 3101.19 May I obtain relief from the requirements of the regulations in parts 3100 through 3190 or other requirements BLM developed?

(a) BLM may grant you a variance to these regulations if your proposal meets or exceeds the objectives of the regulations involved. BLM may not waive statutory requirements.

(b) BLM may waive, except or modify stipulations, conditions of approval, orders, or terms of the lease if you submit a written request and if—

(1) BLM determines the reason for the stipulation, condition of approval, order, or term of the lease is no longer valid; or

(2) You propose an alternative that meets or exceeds the intent of the stipulation, condition of approval, order, or term of the lease.

(c) If BLM determines that a waiver, exception or modification to a lease stipulation is an issue of major public

concern, BLM will post the change for at least 30 days to allow public review. BLM will post the change in the BLM office with jurisdiction over the land in the lease and make it available for posting in the local surface management agency office before approval.

(d) BLM will not waive, modify or grant exceptions to stipulations to a lease covering lands managed by another Federal agency without that agency's concurrence.

(e) BLM will not process requests for exceptions to lease stipulations, conditions of approval or orders that concern surface use on National Forest System (NFS) lands. You must submit requests for these exceptions to the Forest Service (FS).

§ 3101.20 When will BLM consider a document filed?

BLM considers any document required by law, regulation or decision to be timely filed —

(a) When the BLM office where it must be filed receives it on or before the date it is due during regular business hours; or

(b) If the BLM office is officially closed on the due date, the next day the office is open to the public. BLM State Offices and the lands they administer are identified in 43 CFR 1821.2.

§ 3101.21 Are there other requirements that affect oil and gas operations on Federal or Indian lands?

You will find most of the requirements that affect oil and gas leasing (for Federal lands) and operations (for Federal and Indian lands) in this part. However, some BLM requirements are covered under other sections of title 43 of the CFR. The following table lists some, but not all, of the other regulations that may apply to your lease—

Rights-of-way across BLM managed surface	43 CFR part 2800
Production and royalty reporting requirements, and late payments—Minerals Management Service (MMS).	30 CFR parts 200 through 243.
Indian oil and gas leasing—Bureau of Indian Affairs	25 CFR parts 211, 212, 213, 225 and 227.
Proprietary or confidential information and Freedom of Information Act requests	43 CFR part 2.
BLM land use planning	43 CFR part 1600.
Surface use plans—FS	36 CFR part 228.
Special Use Authorizations—FS. (in lieu of Rights of Way)	36 CFR parts 212 and 251.
Release of hazardous substances—Environmental Protection Agency (EPA)	40 CFR part 302.
Underground Injection Control permits—EPA	40 CFR parts 144 and 146.
Spill Prevention Control and Countermeasure plan—EPA	40 CFR part 112.
Worker safety—Occupational Safety and Health Administration	29 CFR part 1910.
Late payments—MMS	30 CFR part 202.
Procedures for Tribes to request payment under cooperative agreements	43 CFR part 12, subparts A and C.
Disposal of reserved minerals under the Act of July 17, 1914 and Stockraising Homestead Act	43 CFR parts 3813 and 3814.
National Environmental Policy Act	40 CFR part 1500.
Appeal BLM decisions	43 CFR parts 4 and 1840.
Appeal FS decisions	36 CFR parts 215, 217 and 251.

§ 3101.22 May I appeal BLM's decisions under parts 3100 through 3190?

Any person adversely affected by a BLM decision under parts 3100 through 3190 may appeal the decision under 43 CFR parts 4 and 1840.

Subpart 3102—Recordkeeping

Recordkeeping

§ 3102.10 What records must I keep?

(a) You must keep accurate and complete records on all lease operations, such as, drilling, testing, producing, redrilling, deepening, repairing, plugging back, and abandoning wells, and other matters pertaining to well operations. For facilities and equipment, also keep required schematic diagrams. You must keep any records related to production accountability BLM may require.

(b) You must submit or make available complete and accurate records to BLM when we request you to do so. Whenever you submit data, information or notification to BLM, you are certifying that it is accurate.

§ 3102.11 How long must I keep records?

(a) If you are a record title owner, an operating rights owner, or a designee for a Federal lease, you must keep accurate and complete records that pertain to all Federal lease operations, for seven years from the date you generated the record unless the time is extended under 30 CFR 212.50.

(b) If you are the lessee, operator, revenue payor, or other person under 30 U.S.C. 1713(a) for Indian leases, you must keep all records that pertain to Indian lands for six years from the date you generated them, or such longer period authorized under the Federal Oil and Gas Royalty Management Act of 1982, as amended (FOGRMA) (30 U.S.C. 1701 *et seq.*).

Subpart 3103—Reports, Submissions, and Notifications

Reports, Submissions and Notifications

§ 3103.10 What reports and notifications must I submit to BLM?

The following table includes the most common records you must keep, reports you must submit, notifications you must provide BLM, and when you must submit them. The local BLM office may adjust notification and submittal times. When a specific form is required, BLM may approve alternative methods of data submission. The records that do not require a specific BLM form, but that you still must submit, are marked ''None.'' You also may be required to submit other records, reports and notifications not listed in the following table, but that are required by the regulations in this part.

Record	When to submit	On form	See
(a) Bond	Within 30 calendar days of filing an Applications for Permits to Drill (APD). Until an accepted bond is in place, your APD cannot be approved.	3000–4	§§ 3107.12, 3107.40 and 3107.56.

Record	When to submit	On form	See
(b) Bond or rider to State or nationwide bond.	Within five business days of filing a Notice of Intent (NOI) or Permit Application to Conduct Geophysical Exploration Operations. Your NOI cannot be approved without an accepted bond or rider to an existing accepted bond.	3000–4a .. 3104–8a	§§ 3108.10 and 3108.13.
(c) Terms and conditions for conducting geophysical exploration operations.	Return it to the BLM office having jurisdiction over the land in the application prior to starting operations.	3150–4a ..	§ 3112.11.
(d) Geophysical exploration completion report.	Within 30 calendar days after you complete geophysical operations, including reclamation activities.	3150–5	§§ 3112.20 and 3113.40.
(e) Competitive lease bid	On the day of the sale for each parcel that you were the winning bidder.	3000–2	§ 3122.15.
(f) Offer to lease	Within a reasonable time from the date of execution by the offeror or official representative.	3100–11 ..	§ 3123.20.
(g) Assignment of record title interest.	Within 90 calendar days of execution by the assignor. Filing it later can lead to unnecessary delays while BLM requests additional information.	3000–3	§ 3129.30
(h) Transfer of operating rights interest (sublease).	Within 90 calendar days of execution by the transferor. Filing it later can lead to unnecessary delays while BLM requests additional information.	3000–3a ..	§ 3129.30.
(i) Construction start-up notice	At least 48 hours before you start construction	Orally	Subpart 3145.
(j) Spud notice	At least 24 hours before spudding	Orally	Subpart 3145.
(k) Electric and other logs run on your well.	Within 30 calendar days after you run logs	None	§§ 3145.22 and 3145.54.
(l) Completion or Recompletion report.	Within 30 calendar days after you complete or recomplete your well.	3160–4	§§ 3145.22 and 3145.54.
(m) Running surface casing and BOP test notice.	At least 12 hours before you run surface casing and before conducting BOP tests.	Orally	§§ 3145.30 and 3145.33.
(n) Drill Stem Tests or other tests	Within 30 calendar days after you conduct tests	None	§ 3145.22.
(o) Removal of drilling fluids before reserve pit closure notice.	At least 24 hours before you remove fluids from the reserve pit.	Orally	Subpart 3145.
(p) Action to correct or contain an emergency.	Within 48 hours after the emergency occurs	None	§ 3145.52.
(q) Subsequent report of additional well operations.	Within 30 calendar days after you alter an existing well bore. Within 30 calendar days after you complete approved actions when BLM requests a report.	3160–5	§ 3145.54.
(r) Production start-up notice	Not later than five business days after you begin production, or resume production after shutting in your well for 90 calendar days or more.	3160–5	§ 3151.12.
(s) H_2S concentrations at production facilities.	Within five calendar days whenever tests reveal a concentration of 20 ppm, or greater (unless previously reported). Within five business days whenever the H_2S concentration changes by 5 percent or more from a previously reported test.	3160–5	§ 3151.20.
(t) H_2S Public Protection Plan	Within 60 calendar days after the criteria of § 3151.23(d) apply.	None	§ 3151.23.
(u) Site security plans	Within five business days after BLM requests a plan	None	§ 3152.50.
(v) Seal numbers, where the seals were used, date and reason for installation and removal.	Within five business days after BLM requests a report	None	§ 3152.50.
(w) Site facility diagrams	Within 60 calendar days after you complete construction, first produce, or include a well on committed non-Federal lands in a Federally supervised unit or communitization agreement, whichever happens first.	None	§ 3152.51.
(x) Reports of theft or mishandling production.	Within 24 hours after you discover the theft or mishandling.	Orally	§ 3152.80.
(y) Tank or strapping tables	Within five business days after BLM requests a copy	None	§ 3153.20.
(z) Notice of LACT Meter Proving	At least five business days before proving sales or allocation meters.	Orally	§ 3153.32.
(aa) LACT meter proving report ..	Within 10 business days after you prove the LACT meter	None	§ 3153.37.
(bb) Run tickets, gas charts	Within five business days after BLM requests a copy	None	§§ 3153.40 and 3154.30.
(cc) Records on installation, maintenance, repair, inspection, and testing of metering systems.	Within five business days after BLM requests a copy	None	Subparts 3153 and 3154.
(dd) Notice of gas meter proving or calibration schedule.	At least 10 business days before you conduct the proving or first scheduled calibration.	None	§ 3154.32.
(ee) Leak detection system notice	At least two business days before you install a produced water pit liner.	Orally	§ 3155.15.
(ff) Produced water pit completion notice.	At least two business days before you use a produced water pit.	Orally	§§ 3155.15 and 3155.16.
(gg) Spill or accident reports	Within 24 hours after the accident or spill	Orally	§ 3156.11.
(hh) Spill or accident reports	In writing within 10 business days after the spill or accident occurs.	None	§ 3156.12.
(ii) Well abandonment notice.	At least 24 hours before you start approved plugging operations. BLM may grant oral approval if you request it..	Orally	§ 3159.21.

Record	When to submit	On form	See
(jj) Encountering concentrations of 100 ppm or more of H_2S not anticipated.	Within 24 hours of the occurrence	3000–3 .... Orally	§ 3129.30. § 3145.43.

Form Description:

Form 3000–4 is an Oil and Gas or Geothermal Lease Bond.

Form 3000–4a is an Oil and Gas or Geothermal Exploration Bond.

Form 3104–8a is a State or Nationwide Oil and Gas Lease Bond Rider.

Form 3150–4a is a Terms and Conditions for Notice of Intent to Conduct Oil and Gas Geophysical Exploration Operations.

Form 3150–5 is a Notice of Completion of Oil and Gas Exploration Operations.

Form 3000–2 is a Competitive Oil and Gas or Geothermal Resources Lease Bid.

Form 3100–11 is an Offer to Lease and Lease for Oil and Gas.

Form 3000–3 is an Assignment of Record Title Interest in a Lease for Oil and Gas or Geothermal Resources.

Form 3000–3a is a Transfer of Operating Rights (sublease) in a Lease for Oil and Gas or Geothermal Resources.

Form 3160–4 is a Well Completion or Recompletion Report and Log.

Form 3160–5 is a Sundry Notices and Reports on Wells.

§ 3103.11 If I am the record title or operating rights interest owner, what must be filed with BLM to authorize someone else to conduct operations on my lease?

(a) The person you authorize to conduct operations on your lease must notify BLM in writing that it is the new operator. The new operator must identify, by number, the bond that will cover its operations.

(b) The operator may provide bond coverage on its own behalf or the operator may be covered by the lessee's bond.

Subpart 3104—Environment and Safety

Environment and Safety

§ 3104.10 How may I use the surface and subsurface of my lease to develop oil and gas?

(a) For a Federal lease, you have the right to use as much of your lease site as you reasonably need to explore, drill, mine, extract, remove and dispose of the leased resources. However, your lease may include stipulations that restrict your use of the surface or other lease areas.

(b) BLM may restrict your use of a lease with conditions of approval (COA) after lease issuance. These restrictions may include COA's pertaining to—

(1) Environmental quality and resources;

(2) Threatened and endangered species;

(3) Cultural or historic resources; and

(4) Private or other rights where the surface is either not owned by the United States or not managed by BLM.

(c) For Indian leases, see Title 25 of the CFR for rights to surface use.

(d) When the surface is privately owned or held in trust for an Indian Tribe or allottee, or managed by an agency other than BLM, you must make access arrangements with the private surface owner, agency other than BLM, or BIA and Indian mineral owner before you enter the lands to survey, stake or conduct inventories.

§ 3104.11 May BLM take measures to minimize adverse impacts to resource values, land uses or users not addressed in the lease stipulations and not required by statutes or regulations?

BLM may develop conditions of approval, consistent with your lease rights, to reduce adverse impacts to other resource values, land uses or users or to avoid unnecessary and undue degradation. These measures may include, but are not limited to—

(a) Modifying the location or design of proposed operations;

(b) Restricting the time that surface disturbance is allowed; and

(c) Specifying interim and final reclamation measures.

§ 3104.12 What measures may BLM take that are always consistent with my lease rights?

Measures that BLM may require consistent with your lease rights include, but are not limited to—

(a) Relocating proposed operations up to 660 feet, unless this would place operations off of the lease;

(b) Prohibiting new surface disturbing operations for a period up to 60 calendar days in each lease year; and

(c) Specifying reclamation measures to prevent unnecessary and undue degradation of public lands or resources.

§ 3104.13 May anyone other than BLM impose lease stipulations?

(a) When Federal oil and gas lie beneath surface that a Federal agency other than BLM manages, BLM will contact that agency to determine whether the surface management agency will impose stipulations on the lease.

(b) BLM will lease the following Federal lands only if the surface management agency agrees to leasing. BLM will include in the issued lease any stipulations the surface management agency has required as a condition of its consent to leasing—

(1) Acquired lands;

(2) Public domain lands, if the statute requires surface management agency consent or a decision that it has no objection to leasing;

(3) Lands managed by the Department of Defense; and

(4) National Forest System lands.

(c) BLM will only lease public domain lands withdrawn for the use of another Department of the Interior agency after consulting with the surface management agency. BLM may adopt recommended stipulations or decide not to lease the parcel.

(d) Where the United States has conveyed control of the surface of lands to any State, local or tribal government or agency, or educational or religious organization and reserved the oil and gas rights, BLM will give the entity holding the surface rights an opportunity to suggest stipulations necessary to protect existing surface improvements or uses. BLM may adopt or modify recommended stipulations, add stipulations, or decide not to lease the parcel.

(e) When a surface management agency has agreed that BLM may lease lands under its jurisdiction, BLM retains the right to make the final determination whether to offer the lands for lease.

§ 3104.14 What must I do to protect the environment and ensure safety when I conduct operations to develop Federal and Indian lands, or geophysical operations on Federal lands?

You must—

(a) Plan and conduct your operations and develop contingency plans that —

(1) Protect the environment;

(2) Avoid contaminating lands and waters on and adjacent to your lease; and

(3) Ensure safe field operations;

(b) Conduct your operations with care and diligence and in a safe manner to—

(1) Avoid unreasonable damage to surface or subsurface resources and surface improvements; and

(2) Protect public health and safety;

(c) Maintain your equipment and facilities to—

(1) Provide adequate protection for public health and safety and the protection of property; and

(2) Avoid accidents and spills;

(d) Report, control and clean up spills and accidents; and

(e) Properly plug and abandon your wells and reclaim all lands and waters that you disturb or contaminate.

Subpart 3105—Lessee Qualifications

Lessee Qualifications

§ 3105.10 Who may hold a lease?

You may acquire and hold a lease or lease interests if you are—

(a) A citizen of the United States;

(b) An association (including a partnership or trust) of United States citizens;

(c) A corporation organized under the laws of the United States or of any State or Territory of the United States; or

(d) A municipality.

§ 3105.11 If I am not a United States citizen, may I acquire or hold an interest in a lease?

If you are not a United States citizen you may—

(a) Not hold an interest in a lease directly or as a member of an association;

(b) If your country does not deny similar or like privileges to United States citizens because of nationality, hold —

(1) Stock in a corporation which holds a lease interest;

(2) Stock in a corporation which holds an interest in an association which holds a lease interest; or

(3) An interest in an association or stock in another corporation, which in turn holds stock in a corporation which holds a lease interest.

§ 3105.12 If I am not qualified to hold a lease, may I hold one anyway if I acquire it by descent, will, judgment or decree?

If you are not qualified to hold a lease for any reason, you may acquire or hold lease interests by descent, will, judgment or decree for no longer than two years from the time you acquire it. If you hold this interest for more than the two-year period allowed, it is subject to cancellation.

§ 3105.13 Under what circumstances may minors acquire or hold interest in a Federal oil and gas lease?

(a) Minors may not directly hold or acquire leases. Whether you are a minor is determined by the laws of the State where the leased lands are located.

(b) Leases may be acquired and held by legal guardians or trustees of minors. Legal guardians or trustees must be citizens of the United States and not in violation of any statute or regulation cited in § 3105.14.

§ 3105.14 Under what conditions will I be prohibited from acquiring a lease or interest in a lease?

You are prohibited from acquiring lease interests if you are in violation of—

(a) 43 CFR 3472.1–2(e)(1)(i), except for an assignment or transfer under subpart 3129;

(b) Section 41 of the Act, or have been subjected to criminal penalties or to a civil order prohibiting participation in exploration, leasing or development of Federal oil and gas;

(c) Section 17(g) of the Act (30 U.S.C. 226(g)), after notice and an opportunity to comply with such requirements or standards was given and you did not comply. This means that you must not be a person, association or corporation, or any subsidiary, affiliate or person controlled by or under common control with such person, association, or corporation, during any period in which you or any subsidiary, affiliate or person controlled by, or under common control with you, failed or refused to comply in any material respect with reclamation requirements or other standards established under Section 17 of the Act (30 U.S.C. 226); and

(d) Federal acreage limitation requirements (see § 3105.20).

§ 3105.15 What must I file with BLM to establish that I meet the qualifications to hold a lease?

When you sign and submit to BLM an application, lease offer, competitive bid, assignment or transfer form, you certify that you are in compliance with the provisions of this subpart.

§ 3105.16 May BLM require me to submit additional information to determine if I meet the qualification requirements to acquire or hold an interest in a lease?

BLM may require additional information from anyone seeking to acquire or currently holding a Federal lease interest.

Acreage Limitation

§ 3105.20 What is the acreage limitation for holding, owning or controlling oil and gas lease interests on public domain lands?

(a) Except for Alaska, you may not hold, own or control more than 246,080 acres of Federal oil and gas leases or operating rights, or 200,000 acres in options, in any one State at any one time.

(b) In Alaska, you may not hold, own or control more than 300,000 acres in the northern leasing district and 300,000 acres in the southern leasing district in options, leases or operating rights.

§ 3105.21 What is the boundary between the two leasing districts in Alaska?

The boundary between the two leasing districts in Alaska begins at the northeast corner of the Tetlin National Wildlife Refuge as established on December 2, 1980 (16 U.S.C. 3101), at a point on the boundary between the United States and Canada, then northwesterly along the northern boundary of the refuge to the left limit of the Tanana River (63° 9′ 38″ north latitude, 142° 20′ 52″ west longitude), then westerly along the left limit to the confluence of the Tanana and Yukon Rivers, and then along the left limit of the Yukon River from said confluence to its principal southern mouth.

§ 3105.22 What is the acreage limitation for holding, owning or controlling oil and gas lease interests on acquired lands?

The acreage limitations for holding, owning or controlling leases of acquired lands is the same as for public domain lands (see § 3105.20). Acquired lands acreage holdings are charged separately from public domain lands acreage holdings.

§ 3105.23 What is an option agreement?

An option agreement is a contractual arrangement between two or more persons that grants a right to acquire record title or operating rights interest in a lease(s) at some future date or occurrence.

§ 3105.24 Must I file my option agreement with BLM?

You are not required to automatically file option agreements. However, BLM may require you to furnish this information for acreage audit purposes.

§ 3105.25 What effect do options have on lease acreage holding limitations?

(a) You may not hold more than 200,000 acres under option in any one State or in each of the two leasing districts in Alaska.

(b) If you hold an option, BLM charges the acreage to you against the limits in §§ 3105.20 and 3105.22.

§ 3105.26 How will BLM charge acreage holdings on lands where the United States owns a fractional interest in the mineral resource?

If your lease includes lands where the United States owns only a fractional interest in the mineral resources of the lands, BLM will charge you only with the net mineral acres owned by the United States.

§ 3105.27 What lease interests are not chargeable against acreage limitations?

BLM does not include the following acreage or interests against acreage chargeability—

(a) Lease acreage held in leases issued under the Act of May 21, 1930;

(b) Acreage in a future interest lease until the mineral interest vests in the United States;

(c) Lease acreage committed to any BLM-approved cooperative or unit plan;

(d) Leases subject to an operating, drilling or development contract BLM approved; and

(e) Overriding royalty interests, net profits or production payments.

§ 3105.28 What if I exceed the acreage limitation?

(a) If the acreage you hold exceeds the statutory limit as a result of —

(1) The termination or contraction of a unit or cooperative plan or due to the elimination of a lease from an operating, drilling or development contract, you must reduce your holdings to the prescribed limitation within 90 calendar days from the date you first held excess acreage and provide BLM proof of the reduction; or

(2) A merger or the purchase of the controlling interest in a corporation, you must reduce your holdings to the prescribed limitation within 180 calendar days from the date you first held excess acreage and provide BLM proof of the reduction. If you require additional time to complete the divestiture of the excess acreage, you may petition the BLM office with jurisdiction over the subject leases for additional time.

(b) If BLM finds that you hold chargeable acreage in violation of the provisions of the regulations in this part and you do not voluntarily reduce your acreage holdings to the amount of acreage allowed, BLM may seek a court order to cancel or require you to forfeit lease(s) or interests in inverse order of acquisition, until sufficient acreage has been eliminated to comply with the acreage limitation. This means that the last leases you acquired will be the first leases BLM will ask the court to cancel or require you to forfeit.

§ 3105.29 How does BLM compute chargeable acreage?

(a) BLM will aggregate all record title, operating rights and lease options you hold, own or control to determine whether you exceed the acreage limitations. If you —

(1) Own 100 percent of the record title, operating rights or options in a lease, you are charged for all of the acreage in the lease;

(2) Own an undivided interest in the record title, operating rights or options in a lease, you are charged for your proportionate part of the lease acreage;

(3) Own or control more than 10 percent of the stock of a corporation, or of the instruments of ownership or control of an association, that holds the record title, operating rights or options in a lease, you are accountable for your proportionate part of the lease acreage held by the corporation or association. If you are a corporation, you are not charged for the acreage owned by your stockholders; or

(4) Are part of a group that is not an association, and that holds, owns or controls record title, operating rights or options in a lease, you are charged proportionately.

(b) Any group of persons who holds, owns or controls a lease or leases in common may not exceed the acreage that the law allows persons to hold.

§ 3105.30 May BLM require me to provide information with respect to my acreage holdings?

BLM may require you to file a statement indicating the lease interests you hold as of a specified date by serial number, date of issuance and number of acres for each lease in any State.

Subpart 3106—Fees, Rentals and Royalties

Fees and Rentals

§ 3106.10 What form of payment will BLM accept?

BLM will accept payments by—

(a) Personal, cashier and certified checks;

(b) Money orders;

(c) Electronic funds transfers; or

(d) Credit cards when BLM authorizes it.

§ 3106.11 Who should I pay?

Your payment must be made payable to the Department of the Interior, Bureau of Land Management (BLM) or to the Minerals Management Service (MMS), as appropriate.

§ 3106.12 Where should I submit my payments?

Submit your payments according to the following chart—

Type of payment	Submit to
(a) Filing fees for offers, transfers, first year rentals and bonus bids.	The BLM State Office with jurisdiction over the lands in your lease.
(b) Second year and subsequent rentals.	MMS.
(c)(1) Royalties and minimum royalties;.	MMS.
(2) Compensatory royalty assessments on leases;	
(3) Payments due on drainage agreements; and	
(4) Subsurface storage agreement payments.	

§ 3106.13 What are the rental rates for Federal leases?

The rental rates for Federal leases are as follows—

Types of leases	Rental rate per acre or fraction of an acre
(a) Offers filed and leases issued after December 22, 1987	$1.50 for the first five years and $2 for the sixth and succeeding years.
(b) Leases issued from offers filed before December 22, 1987, except those leases identified in paragraphs (c) through (h) of this table.	Rental as stated in the lease or in regulations in effect at the time the offer was filed.
(c) Leases issued under the simultaneous leasing regulations, 43 CFR part 3100, subpart 3112 (contained in the 43 CFR, parts 1000 to 3199, edition revised as of October 1, 1981 and amended at 47 FR 2864 (January 20, 1982)), on or after February 19, 1982.	$1 for the first five years and $2 for the sixth and succeeding years.
(d) Exchange (30 U.S.C. 226(i)) and Renewal Leases issued under Sections 13 and 14 of the original Mineral Leasing Act of 1920.	$2.
(e) Leases issued under the 1930 Right-of-Way Leasing Act (30 U.S.C. 301–306)	$1.50 for the first five years and $2 the sixth and succeeding years.

Types of leases	Rental rate per acre or fraction of an acre
(f) Terminated leases originally issued noncompetitively and reinstated under subpart 3142 (Class II reinstatement regulations) beginning with the termination date.	$5. Each succeeding reinstatement will increase the rental by $5 per acre or fraction of an acre.
(g) Terminated leases originally issued under subpart 3142 (Class III reinstatement provisions for conversion of unpatented oil placer claims) beginning with the termination date.	$5. Each succeeding reinstatement under subpart 3142 (Class II) will increase the rental by $5 per acre or fraction of an acre.
(h) Terminated leases originally issued competitively and reinstated under § 3142.8 (Class II reinstatement regulations) beginning with the termination date.	$10. Each succeeding reinstatement will increase the rental by $10 per acre or fraction of an acre.

§ 3106.14 How does BLM calculate the rental due on my lease?

Rental is calculated on a per acre or fraction of an acre basis. For example, if your lease contains 640.32 acres and the rental is $2 per acre, you should round the acreage up to 641.00 and multiply by $2. Your annual rental would be $1,282.00.

§ 3106.15 If BLM assessed my nonproducing lease compensatory royalty, must I also pay rental?

You must pay rental in addition to any compensatory royalty.

§ 3106.16 What if I do not submit enough rental with my lease offer?

BLM determines the rental you filed as the total amount of money you submitted minus the required filing fee. BLM will accept your lease offer, without loss of priority, if your rental payment is deficient by not more than the lesser of—

(a) Ten percent of the total rental due; or

(b) $200.

§ 3106.17 When must I pay the balance of a rental deficiency on my lease offer?

You must pay the balance to BLM within 30 calendar days from the date you receive BLM's notice of rental deficiency.

§ 3106.18 What if I do not pay the balance of the rental due within the time allowed?

BLM will—

(a) Reject your lease offer; or

(b) Cancel your lease if it has been issued.

§ 3106.19 What if I base my deficient rental payment on an incorrect acreage advertised in the Notice of Competitive Lease Sale?

You must pay the additional rental within the time stated in BLM's deficiency notice, without loss of priority to your offer.

§ 3106.20 If the United States owns less than 100 percent of the mineral rights in my lease, must I pay rental on the gross acreage or on the net acreage?

You must pay rental on the entire lease, even if the United States owns less than 100 percent of the mineral rights in your lease.

§ 3106.21 When should I pay the second and succeeding rental payments after BLM issues my lease?

The MMS must receive your second and succeeding rental payments on or before the anniversary date of lease issuance each year.

§ 3106.22 Must I pay a full year's rental if less than a full year is left in my lease term?

If less than a full year remains in your lease term, you must pay a full year's rental.

§ 3106.23 What if MMS receives my rental payment after the date it is due?

(a) If your rental payment is late, your lease automatically terminates by operation of law. BLM will send you a termination notice.

(b) Refer to subpart 3142 for more information on terminations and reinstatements.

§ 3106.24 What if the MMS office is closed on the date that my rental payment is due?

If the MMS office is closed on the date your rental payment is due, payment it receives on the next day the office is open to the public is considered timely.

§ 3106.25 What if I incorrectly mail my second or succeeding rental payment to BLM instead of MMS?

BLM will return the rental payment to you if you incorrectly mailed your second or succeeding advance rental payment to BLM instead of MMS. If MMS does not receive your payment timely, see § 3106.23.

§ 3106.26 What will BLM do if I mail a payment due to BLM to the wrong BLM office?

If you mail any payment due to BLM to the wrong BLM office, BLM will return the payment to you. It is your responsibility to timely make your payment to the BLM office with jurisdiction over the lease(s) or lands for which you are making payment.

Royalties

§ 3106.30 What royalty must I pay after I establish production?

You must pay royalty according to the following chart—

Type of lease	Royalty rate
(a) Leases issued after December 22, 1987, including: (1) Competitive; (2) Noncompetitive; (3) Exchange; (4) Renewal; and (5) Leases issued in lieu of unpatented oil placer mining claims under subpart 3142.	12½ percent.
(b) Railroad Right-of-Way	At a minimum 12½ percent, subject to competitive bidding.
(c) Leases issued after December 22, 1987, resulting from offers or bids filed on or before December 22, 1987.	The rates identified in the lease terms or in regulations in effect on December 22, 1987
(d) Leases issued on or before December 22, 1987	The rates identified in the lease terms or in regulations in effect at the time of lease issuance.
(e) Reinstated Noncompetitive Leases.	16⅔ percent plus an additional 2 percent for each succeeding reinstatement.
(f) Reinstated Competitive leases	Not less than 4 percent above the existing royalty rate, plus an additional 2 percent for each succeeding reinstatement.

Type of lease	Royalty rate
(g) Deposits determined by BLM to be a new deposit and discovered on leases after May 27, 1941 (30 U.S.C. 226(c)), by a well drilled on a lease or committed to a unit agreement or proposed for unitization at the time of discovery.	12½ percent.
(h) Lands not believed to be within the productive limits of any producing oil and gas deposit found by the Secretary to exist on August 8, 1946, under the Act of that date (30 U.S.C. 226(c)).	12½ percent.

§ 3106.31 What is minimum royalty?

Minimum royalty is the minimum amount of money you must pay following the date you establish production in paying quantities. You must pay the minimum royalty or the royalty due for the actual production, whichever is greater.

§ 3106.32 When must I pay the minimum royalty due on my lease?

You must pay minimum royalty at the end of each lease year after you discover oil or gas in paying quantities.

§ 3106.33 What minimum royalty must I pay on Federal leases?

You must pay minimum royalty according to the following chart—

Type of lease	Minimum royalty
(a) Leases issued on or after August 8, 1946 (excluding leases issued from offers filed after December 22, 1987).	$1 per acre or fraction of an acre in lieu of rental.
(b) Leases issued before August 8, 1946, if the lessee files an election under Section 15 of the Act of August 8, 1946.	$1 per acre or fraction of an acre in lieu of rental.
(c) Leases issued from offers filed after December 22, 1987	Not less than the amount of rental required for the lease.
(d) Reinstated lease	The minimum royalty indicated in paragraphs (a), (b), or (c), depending on when the lease was issued.

§ 3106.34 How does BLM determine royalty and minimum royalty if the United States owns less than a 100 percent mineral interest?

The royalty and minimum royalty is based on net acreage. Net acreage is determined as follows: Net acreage = number of acres in the lease x the percent of U.S. mineral interest.

§ 3106.35 How do I pay royalty and rental if my lease is committed to a unit agreement?

(a) If your lease is committed to a unit agreement, you must pay royalty on any production from or attributable to your lease based on the royalty terms of your lease.

(b) You must pay rental for leased lands outside the participating area, unless there is a non-unit well subject to royalty or minimum royalty.

Waiver/Suspension/Reduction of Rental/Royalty/Minimum Royalty

§ 3106.40 Will BLM waive, suspend, or reduce the rental, royalty, or minimum royalty if I cannot successfully operate my lease?

You may ask BLM to waive, suspend, or reduce your rental, royalty, or minimum royalty requirements if it is necessary to promote development. Your application must describe the relief you are requesting and include—

(a) The lease serial number;

(b) The names of the operating rights owners for each lease;

(c) The names of the operators for each lease;

(d) A description of the relief you are requesting;

(e) The number, location, and status of each well drilled;

(f) A statement that shows the aggregate amount of oil or gas subject to royalty for each month covering a period of at least six months immediately before the date you filed the application;

(g) The number of wells counted as producing each month and the average production per well per day;

(h) A detailed statement of expenses and costs of operating the entire lease;

(i) The income from the sale of any production;

(j) All facts tending to show whether the wells can be successfully operated under the lease royalty or rental; and

(k) The percentage of production dedicated to paying outstanding overriding royalty and payments out of production or similar interests. To receive a royalty reduction, you must reduce royalties or similar payments from your lease to an aggregate not greater than one-half the royalties due the United States.

Royalty on Oil: Sliding-Scale and Step-Scale Leases

§ 3106.50 How do I determine my royalty rate on oil I produce from a lease with a sliding-scale or step-scale royalty rate?

(a) Calculate your average daily oil production per well for your Federal lease, communitization or unit agreement, or unit participating area during the production month in accordance with §§ 3106.51 through 3106.54. The production rate you calculate for an agreement or participating area must be used for the Federal lease(s) to which you allocate production.

(b) Refer to the lease royalty schedule attached to your lease to find the oil royalty rate that corresponds to the average daily oil production you calculated. This royalty rate becomes the royalty rate you must pay on oil you produced from or that was allocated to your lease for the month.

§ 3106.51 How do I calculate average daily oil production per well for my sliding-scale or step-scale lease?

Calculate the average daily oil production per well by dividing the gross oil production from all wells you produce on your lease, communitization or unit agreement in a calendar month by the total well-days for eligible wells on your lease, communitization or unit agreement as reported on Form MMS–3160.

§ 3106.52 What wells do I include in the calculation of average daily oil production in determining the royalty rate?

(a) To calculate average daily oil production, the wells must be—

(1) Paying oil wells;

(2) Injection wells that you use to recover oil; or

(3) Paying gas wells that produce oil.

(b) All wells you use must be—

(1) Integral to production during the month; and

(2) Operated and produced as a result of routine business on your property for that month.

§ 3106.53 What is a well-day?

A well-day is any day or part of a day you use a well to produce oil or for injection purposes to recover oil.

§ 3106.54 What royalty rate must I pay on oil I carry in inventory when I sell it?

When you sell oil that was placed in inventory, you must use the royalty rate that was determined for the month in which the oil was produced. You must use a first-in-first-out approach to determine what royalty rate you apply to oil you sell from inventory.

Stripper Oil Property Royalty Reduction

§ 3106.60 What is a stripper oil property?

(a) A stripper oil property is any Federal lease or agreement that produces an average of less than 15 barrels of oil per eligible well, per well-day, for the qualifying period, determined in accordance with §§ 3106.61 through 3106.64.

(b) To determine if you have a stripper oil property, you must consider only wells that you operate on the property. If there are other operators producing wells on the same lease or agreement as you, they must make a separate stripper oil property determination based on the wells they operate.

§ 3106.61 What is an eligible well?

(a) An eligible well is—

(1) A producing oil well;

(2) An injection well that injects a fluid, including gas, for secondary or enhanced oil recovery, including reservoir pressure maintenance operations; or

(3) A gas well that produces oil and less than an average of 60 Mcf of gas per day during the qualifying period under § 3106.62.

(b) All eligible wells must be operated and produced as a result of routine business for that period and for your property. You must not manipulate production to obtain a royalty reduction.

§ 3106.62 What is the qualifying period?

(a) The initial qualifying period was from August 1, 1990 through July 31, 1991.

(b) The current qualifying period is the first consecutive 12-month period in which your property qualifies as a stripper oil property.

(c) If all wells on your property were shut-in for 12 consecutive months or longer, the qualifying period is the 12-month production period immediately before the shut-in.

§ 3106.63 What is considered oil for determining whether or not I have a stripper oil property?

(a) For purposes of determining if you have a stripper oil property you must include only—

(1) Hydrocarbon liquids you produce with an API gravity of 45° or lower, regardless of the color of the liquid; and

(2) Hydrocarbon liquids you produce with an API gravity more than 45° but less than 50° which are not light, neutral, or straw colored in appearance, unless BLM determines the liquids to be produced from an oil reservoir.

(b) All other hydrocarbon liquids you produce that do not meet the characteristics described in paragraph (a) of this section are condensate and must not be used to determine average daily oil production.

§ 3106.64 How do I calculate the average daily production rate for my property?

(a) Divide the total oil you produced from eligible wells for the 12-month qualifying period as reported on Form MMS–3160 or MMS–4054 by the total number of well days determined under § 3106.53 for those eligible wells for the same 12-month period;

(b) Round the result down to the nearest whole number (e.g., 6.7 becomes 6);

(c) If the production rate you calculate is less than 15 barrels per day, the 12-month period you used for the calculation in paragraph (a) of this section is a qualifying period and your Federal lease is eligible for a reduced royalty rate; and

(d) If your stripper oil property is in a Federal agreement, the average daily production rate you determine for the agreement is then used to determine the stripper royalty rate for the Federal lease(s) to which you allocate oil production.

§ 3106.65 What will be my royalty rate if my property qualifies as a stripper oil property?

(a) A reduced royalty rate will not relieve you of your obligation to meet the minimum royalty requirements of your lease.

(b) Once you have determined your average daily production rate for your property, use this table to determine your royalty rate—

Average barrels per day	Reduced royalty rate (percent)
0	0.5
1	1.3
2	2.1
3	2.9
4	3.7
5	4.5
6	5.3
7	6.1
8	6.9
9	7.7
10	8.5
11	9.3
12	10.1
13	10.9
14	11.7

§ 3106.66 How do I apply for a stripper royalty rate?

To apply for a stripper royalty rate—

(a) Submit Form MMS–4377 to MMS for verification.

(b) When you submit Form MMS–4377 to MMS, you certify that you—

(1) Did not manipulate your production rate for the qualifying and later 12-month periods to obtain the royalty rate reduction; and

(2) Calculated the royalty rate using the instructions and procedures in the regulations in this part.

§ 3106.67 When may I start using the stripper royalty rate for my lease and how long will it be in effect?

(a) You may begin using the reduced royalty rate for your lease on the first day of the month after MMS receives your Form MMS–4377.

(b) The reduced royalty rate that you calculate for your initial qualifying period will be the maximum rate for your lease as long as the stripper oil property program is in effect.

§ 3106.68 Does the stripper royalty rate apply to condensate, gas or gas plant products?

The stripper royalty rate applies only to oil produced on your property.

§ 3106.69 How do I determine my royalty rate if my production varies?

(a) Your stripper royalty rate may vary as your production varies, but it will never go above your initial qualifying rate for the life of the stripper oil property program.

(b) At the end of each 12-month period, you must calculate a new daily production rate using the methods prescribed in § 3106.64 and the oil production and well days from eligible wells for the claim year you have just

completed to determine if your property is eligible for a royalty rate lower than your initial qualifying rate.

§ 3106.70 How do I apply for a lower royalty rate?

(a) To apply for a lower stripper royalty rate, before the end of each claim year, submit Form MMS–4377 to notify MMS of your lower royalty rate. Use §§ 3106.61 through 3106.65 to determine your new royalty rate based on the production data from the last claim year.

(b) Your lower royalty rate will be effective for one year starting with production on the first day of the month after the month in which MMS receives your notice.

(c) If you do not submit a completed Form MMS–4377 to MMS within 60 calendar days after the end of the last claim year, the royalty rate for your property will revert back to the initial qualifying period royalty rate.

(d) Even if you determine that your royalty rate for the next claim year did not change from the previous claim year, you must notify MMS using Form MMS–4377 that your royalty rate is unchanged; otherwise your royalty rate will revert back to the initial qualifying period rate.

§ 3106.71 What happens to my royalty rate if I commit my lease to a Federal agreement after I qualify for a reduced royalty on a lease basis?

If your lease qualified for a reduced stripper royalty rate, and after qualifying you commit your lease to an agreement—

(a) The royalty rate for production from or allocable to your lease under the agreement will not exceed the stripper royalty rate from your qualifying period as long as at least one of the wells on which the lease rate was calculated moves to the agreement;

(b) You must submit Form MMS–4377 under this section to continue to receive the reduced stripper royalty rate for your lease committed to the agreement; and (c) For periods beginning after the date you commit your lease to the agreement, unless the agreement qualifies as a stripper oil property under §§ 3106.60 through 3106.71, you will not be allowed to calculate a reduced royalty rate for production from or allocable to your lease under the agreement. However, as provided in paragraph (a) of this section, the royalty rate for your lease will not exceed the stripper royalty rate from your qualifying period. Any further reduction in the royalty rate for your lease under the agreement will be due to the agreement qualifying for a lower rate at the agreement level.

§ 3106.72 What if I make an error when I calculate the stripper royalty rate for my lease?

If you make an error calculating your stripper royalty rate, MMS will calculate the correct rate for your lease and inform you of the change. Any additional royalties due are payable immediately. Late payment or underpayment charges will be assessed in accordance with 30 CFR 218.102.

§ 3106.73 What happens if I manipulate production to get a stripper royalty rate?

(a) If BLM determines that you manipulated production to obtain a stripper royalty rate, BLM will terminate your royalty rate reduction retroactively to its effective date. You may also be subject to civil or criminal penalties.

(b) You must pay the difference in royalty between the manipulated rate and the unmanipulated rate as well as any interest and underpayment charges.

§ 3106.74 How long will the stripper oil property program be in effect?

(a) BLM may terminate your reduced royalty rate if—

(1) The posted price for West Texas Intermediate crude (WTI), adjusted for inflation by BLM and MMS, remains on average above $28 per barrel for six consecutive months; or

(2) The Secretary determines that royalty reductions under this program should terminate.

(b) BLM must give you six months notice of the termination of the program by publishing a notice in the **Federal Register**.

Heavy Oil Property Royalty Reduction

§ 3106.80 What is a heavy oil property?

A heavy oil property is any Federal lease or agreement that produces crude oil with a weighted average gravity of less than 20 degrees as measured on the American Petroleum Institute (API) scale.

§ 3106.81 What wells can I include when I calculate a weighted average gravity?

You can include a well that you operate if—

(a) The energy equivalent of the oil produced exceeds the energy equivalent of the gas produced (including entrained liquefiable hydrocarbons); or

(b) It produces oil and less than 60 Mcf of gas per day.

§ 3106.82 How do I calculate a weighted average gravity for a property?

(a) Calculate the weighted average gravity for a property by averaging (adjusted to rate of production) the API gravities reported on your Purchaser's Statement (sales receipts).

(b) Use Purchaser's Statements for the last three calendar months before you intend to notify BLM that you want a royalty rate reduction, during each of which you had at least one sale. For example, if you make a request for a royalty reduction in October 1996 and your property—

(1) Had oil sales every month, you must use Purchaser's Statements for July, August, and September 1996;

(2) Had oil sales only once every six months in the months of March and September, you must use Purchaser's Statements for September 1995, and March and September 1996; or (3) Had multiple sales each month, you must use Purchaser's Statements for every sale during July, August, and September 1996.

(c) You must use the following equation to calculate the weighted average gravity for your property:

$$\frac{(V_1 \times G_1) + (V_2 \times G_2) + (V_n \times G_n)}{V_1 + V_2 + V_n} = \text{Weighted Average API gravity for a property}$$

Where:

V_1 = Average Production (bbls) of Well #1 over the last three calendar months of sales

V_2 = Average Production (bbls) of Well #2 over the last three calendar months of sales

V_n = Average Production (bbls) of each additional well (V_3, V_4, etc.) over the last three calendar months of sales

G_1 = Average Gravity (degrees) of oil produced from Well #1 over the last three calendar months of sales

G_2 = Average Gravity (degrees) of oil produced from Well #2 over the last three calendar months of sales

G_n = Average Gravity (degrees) of each additional well (G_3, G_4, etc.) over the last three calendar months of sales

§ 3106.83 What will be my royalty rate if my property qualifies as a heavy oil property?

Use your weighted average gravity for your property, rounded down to the nearest whole degree (e.g., 11.7° API becomes 11° API) and use the following table to determine your royalty rate—

Weighted average gravity (degrees API)	Royalty Rate (percent)
6	0.5
7	1.4
8	2.2
9	3.1
10	3.9
11	4.8
12	5.6
13	6.5
14	7.4
15	8.2
16	9.1
17	9.9
18	10.8
19	11.6
20	12.5

§ 3106.84 How do I apply to make a heavy oil reduced royalty rate effective on my Federal lease?

You must notify BLM in writing that you want a heavy oil royalty rate reduction and provide—

(a) The BLM case number of the Federal lease for which you want a reduced rate;

(b) The BLM case number of any communitization or unit agreement that allocates production to the lease;

(c) Names of all operators on the lease;

(d) The reduced royalty rate that you have determined for your lease; and

(e) Copies of the Purchaser's Statements that document your calculations of weighted average gravity.

§ 3106.85 When will the initial heavy oil reduced royalty rate be in effect on my Federal lease?

The heavy oil reduced royalty rate will be in effect on the first day of the second month after you notify BLM as required in § 3106.84.

§ 3106.86 How long will the initial heavy oil reduced royalty rate be in effect on my Federal lease?

(a) The reduced royalty rate will apply to all oil you produce from your lease for the next 12 months after the reduced rate becomes effective.

(b) The reduced royalty rate will also apply for two months following the end of the initial 12-month period while you determine what your royalty rate will be for the next period under § 3106.87.

§ 3106.87 How do I determine my royalty rate after the initial reduced royalty rate period expires?

(a) Within two months after the end of the initial 12-month period, you must—

(1) Calculate the weighted average oil gravity for your property for that initial 12-month period just concluded, using the formula in § 3106.82;

(2) Determine your royalty rate from the table in § 3106.83; and

(3) Notify BLM in writing, providing the information required in § 3106.84.

(b) If you do not notify BLM as required in paragraph (a) of this section within two months after the end of any 12-month period for which you received a reduced royalty rate, the royalty rate will return to the rate in the terms of your Federal lease.

§ 3106.88 When will subsequent royalty rate reductions become effective on my Federal lease?

Any heavy oil royalty rate reductions after the initial 12-month period will become effective for oil you produce in the third month after the prior 12-month royalty reduction period ends. For example: On September 30, 1997, at the end of a 12-month royalty reduction period, you determine the weighted average API oil gravity for your property for that period just ended. You then determine your new heavy oil royalty rate by using the table in this section and notify BLM within two months. The new royalty rate would be effective December 1, 1997 through January 31, 1999. Between December 1, 1998 and January 31, 1999, you would calculate the next royalty rate based on production from December 1, 1997 through November 30, 1998, that would be effective February 1, 1999 through March 31, 2000.

§ 3106.89 What provisions apply when I begin paying royalty at a reduced rate?

(a) The reduced royalty rate applies only to oil that is produced from or which is allocated to your Federal lease.

(b) You may not intentionally manipulate the API gravity to obtain a reduced royalty rate.

(c) You continue to be subject to the minimum royalty provisions of your lease.

(d) You may be eligible for both a stripper royalty rate reduction and a heavy oil royalty rate reduction. If you are eligible for both the stripper royalty rate reduction and the heavy oil royalty rate reduction, use the lower of the two royalty rates.

§ 3106.90 What happens if I make a mistake when I calculate the reduced heavy oil royalty rate for my lease?

If you made an error calculating the heavy oil royalty rate, BLM will determine the correct rate for your lease and notify you in writing of the change. You must adjust your royalty reports and payments to MMS accordingly.

§ 3106.91 What happens if I manipulate production from my heavy oil property in order to get a reduced royalty rate?

(a) If BLM determines that you manipulated production to obtain a heavy oil royalty rate reduction, BLM will terminate your royalty rate reduction retroactively to its effective date. You may also be subject to civil or criminal penalties.

(b) You must pay the difference in royalty between the manipulated rate and the unmanipulated rate as well as any interest and underpayment charges.

§ 3106.92 How long will the heavy oil property royalty reduction program be in effect?

(a) BLM may suspend or terminate your heavy oil property royalty reductions if—

(1) The average oil price has remained above $24 per barrel over a period of six consecutive months (based on the WTI Crude average posted prices and adjusted for inflation using the implicit price deflator for gross national product with 1991 as the base year); or

(2) After September 10, 1999, the Secretary determines that the heavy oil royalty reductions are not reducing the loss of otherwise recoverable reserves, the Secretary may terminate heavy oil royalty reductions granted under the program.

(b) BLM must give you six months notice of the termination of the program by publishing a notice in the **Federal Register**.

Subpart 3107—Lease, Surety and Personal Bonds

General Information

§ 3107.10 Who may file an oil and gas lease bond?

Either the record title owner, operating rights owner or operator may file a bond. The bond must guarantee the compliance of all record title owners, operating rights owners and operators for the lease.

§ 3107.11 Who must a bond cover?

The bond must cover all record title owners (lessees), operating rights owners and operators and anyone who conducts operations on your lease, unless any one of those persons provides its own bond.

§ 3107.12 When must I file a bond?

BLM must have a bond, under this subpart, before it will approve—

(a) An Application for Permit to Drill;

(b) Surface disturbing activities; or

(c) A transfer of record title or operating rights on a lease which has outstanding obligations, including reclamation.

§ 3107.13 What must my bond cover?

Your bond must guarantee performance and compliance with the lease terms and cover all liabilities arising from or related to drilling operations on a Federal lease including the following obligations—

(a) Complete and timely plugging of well(s);

(b) Reclamation of the lease area;

(c) Restoration of any lands or surface waters adversely affected by lease development;

(d) Payments owed to the United States Government such as royalties, rentals, civil penalties, fines and assessments;

(e) Compensatory royalties assessed to compensate for drainage; and

(f) Other requirements related to operations and compliance with all lease terms and conditions, regulations, orders and notices to lessees.

§ 3107.14 What are the dollar amounts for bonds?

(a) Bonds covering a single lease must be $20,000;

(b) Bonds covering all of your leases in one State must be $75,000;

(c) Bonds covering all of your leases in all States must be $150,000; and

(d) BLM may adjust the bond amounts in paragraphs (a) through (c) under § 3107.50.

§ 3107.15 What kinds of bonds will BLM accept?

BLM will accept—

(a) Surety bonds, provided that the surety company is approved by the Department of Treasury (See Department of the Treasury Circular No. 570); and

(b) Personal bonds, which are pledges of cashier's checks, certified checks, certificates of deposit, irrevocable letters of credit, or negotiable Treasury securities.

§ 3107.16 Will BLM accept cash for personal bonds?

BLM will not accept cash for personal bonds.

§ 3107.17 Is there a special bond form I must use?

You must use a current bond form (Form 3000–4 or 3000–4a) approved by BLM's Director.

§ 3107.18 Is there any other documentation that I must file with a surety bond?

You must include a power of attorney or other proof of an agent's authority to sign on behalf of the surety. BLM will accept copies of powers of attorney.

§ 3107.19 Where must I file my bond?

(a) File a signed original of the bond instrument in the BLM State Office with jurisdiction over your lease or operations. BLM will not accept copies.

(b) File your nationwide bond in any BLM State Office.

§ 3107.20 How do I modify the terms and conditions of my bond?

(a) Modify the terms and conditions of your bond or adjust the bond amount by filing a rider with BLM. No special form is required;

(b) If your bond is a surety bond, any rider must also be signed by your surety's agent and filed with a power of attorney for that agent; and

(c) You must file bond riders for BLM approval in the BLM State Office where your bond is located.

Certificates of Deposit, Letters of Credit and Negotiable Treasury Securities

§ 3107.30 What may I use to back my personal bond?

BLM accepts negotiable treasury securities, certificates of deposit and irrevocable letters of credit issued by Federally-insured financial institutions authorized to do business in the United States to back a personal bond.

§ 3107.31 Are there special terms that must be included in a certificate of deposit to use it to back my bond?

If you use a certificate of deposit to back your bond, it must indicate on its face that Secretarial approval is required prior to redemption by any party.

§ 3107.32 Are there special terms that must be included in an irrevocable letter of credit to use it to back my bond?

Your irrevocable letter of credit (LOC) used to back a bond must include a clause that grants the Secretary authority to demand immediate payment if you default or fail to replace the LOC within 30 calendar days from its expiration date. The LOC must be—

(a) Payable to the Department of the Interior, BLM;

(b) Irrevocable during its term and have an initial expiration date of not less than one year following the date BLM receives it; and

(c) Automatically renewable for a period of not less than one year, unless the issuing financial institution provides BLM with written notice at least 90 calendar days before the letter of credit's expiration date that it will not be renewed.

§ 3107.33 What special requirements are there for negotiable treasury securities?

(a) Negotiable treasury securities used to back a bond must—

(1) Have a market value equal to the bond amount; and

(2) Be accompanied by a statement granting full authority to the Secretary to sell such securities in case of a default of the terms of the lease.

(b) You must monitor their value and provide additional security if their market value falls below the required bond amount.

Bonding and Lease Transfers or Operations

§ 3107.40 What are BLM's bonding requirements when a lease interest is transferred to another party?

(a) If the existing operator is providing the bond and there will be no change in operator, BLM will not require the transferee of a lease interest to file a bond. BLM may require a statement confirming there will be no change in operator.

(b) If lease interests are transferred and there will be a change in operator, the new operator must provide a bond or furnish evidence that the new lessee will cover the operator with a bond.

Bond Adjustments

§ 3107.50 May BLM adjust my bond amount?

(a) BLM may increase your bond amount.

(b) BLM may decrease your bond amount if it determines that your obligations under your bond are less than the existing bond amount.

§ 3107.51 What factors will BLM use to determine whether my bond will be adjusted?

Factors BLM uses to determine your bond amount include, but are not limited to, your—

(a) Record of previous violations;

(b) Uncollected royalties; and

(c) Plugging and reclamation costs.

§ 3107.52 When will BLM increase my bond amount?

BLM will increase your bond amount if—

(a) You file an Application for Permit to Drill and within the five previous years BLM has made a claim against your bond because you failed to properly plug a well or completely reclaim any areas of surface associated with lease operations;

(b) You have a well classified as inactive under § 3107.55; or

(c) It determines an increase is necessary to satisfy your obligations under the bond.

§ 3107.53 When will BLM decrease my bond amount?

BLM will decrease your bond amount if—

(a) You apply to BLM and request a decrease in bond amount; and

(b) BLM approves your application.

§ 3107.54 To what amount may BLM adjust my bond?

BLM may adjust your bond to an amount that does not exceed the total of—

(a) Estimated costs to have BLM plug and reclaim all wells and areas of surface use associated with lease operations;

(b) Uncollected royalties due; and

(c) Outstanding monies due from previous violations.

§ 3107.55 What is an inactive well?

For the purposes of §§ 3107.52 and 3107.56 only, an inactive well is any well that for the last 12 months has not—

(a) Produced oil or gas;

(b) Been actively used as a service or water source well; or

(c) Been actively drilled or reworked.

§ 3107.56 What additional security must I provide for an inactive well?

Within 30 calendar days after your well becomes inactive you must—

(a) Submit to BLM additional bonding, either as a rider to your existing BLM bond or as a separate bond, in an amount equal to $2.00 per foot of total depth or plugged-back total depth of your inactive well. Each inactive well you maintain is subject to a bond increase unless you demonstrate to BLM that your existing bond exceeds the maximum bond amount under § 3107.51;

(b) Submit to BLM a $100 nonrefundable payment for each inactive well. You must submit the $100 payment for each 12-consecutive month period that your well remains inactive. This option is available to you only for the first six years your well is inactive. After six years of inactive status, you must file the additional bonding set out in paragraph (a) of this section, in lieu of this payment; or

(c) Comply with the requirements of § 3145.23.

Bond Collection After you Default

§ 3107.60 Under what circumstances will BLM demand performance or payment under my bond?

BLM will demand performance or payment under your bond for noncompliance with the lease terms, governing regulations or BLM orders including—

(a) Well plugging and abandonment;

(b) Reclamation of the lease area;

(c) Royalty payments and related interest or penalties that have accrued;

(d) Assessed royalties to compensate for drainage; or

(e) Payment of penalties or assessments for violations.

§ 3107.61 As the principal on the bond, may BLM require me to restore the face amount of my bond or require me to replace my bond after BLM makes demand against it?

After the bond is reduced by the amount required to remedy noncompliance, you must either—

(a) Post a new bond of equal value to the original bond within 60 calendar days after BLM notified you that the bond is deficient; or

(b) Restore the existing bond(s) to the amount previously held within 60 calendar days after BLM notifies you that the bond is deficient.

§ 3107.62 What if I do not restore the face amount or file a new bond within 60 calendar days after BLM notifies me?

If you do not restore the face amount of the bond on file, or file a new bond after BLM notifies you that your bond is deficient—

(a) BLM will require you to shut down operations; or

(b) Your leases covered by the bond are subject to cancellation under subpart 3144.

Bond Cancellation

§ 3107.70 After I fulfill all of the lease terms and conditions, will BLM cancel my bond?

BLM will cancel your bond after you have—

(a) Fulfilled all of the lease terms and conditions;

(b) Completed all plugging and reclamation requirements of subpart 3159 for the wells covered by your bond; and

(c) Paid all outstanding rents, royalties, interest, assessments, or penalties due to noncompliance.

§ 3107.71 Will BLM cancel my bond if I transferred all of my lease interests or operations to another bonded party?

BLM will cancel your bond following approval of the transfer of your lease interests or a change of operator if that party provides a bond that assumes all of your existing liabilities.

§ 3107.72 When will BLM release the collateral backing my personal bond?

BLM will release the collateral backing your personal bond when we cancel it.

Subpart 3108—Geophysical Exploration Bond Requirements

Geophysical Exploration Bonds

§ 3108.10 Must I file a bond before starting an exploration project?

You must file a bond with the BLM State office with jurisdiction over the lands before each planned exploration project.

§ 3108.11 What are the dollar amounts for geophysical bonds?

Bonds covering—

(a) A single exploration operation must be $5,000.

(b) Your exploration operations in one State must be $25,000;

(c) Your exploration operations in all States must be $50,000; and

(d) BLM may adjust the bond amounts under § 3108.14.

§ 3108.12 Is there a special bond form I must use?

You must use a current bond form approved by BLM's Director for either a surety bond or a personal bond.

§ 3108.13 May I use an oil and gas lease bond to cover exploration operations?

(a) If you hold an individual, statewide or nationwide oil and gas lease bond, you may conduct exploration on leases in which you hold an interest without further bonding.

(b) If you hold a statewide or nationwide bond and intend to conduct exploration on lands that you do not have under lease, you must obtain a rider, subject to BLM approval, to include such oil and gas exploration operations under the bond.

§ 3108.14 Will BLM increase my bond amount?

BLM may increase your bond amount if it determines that additional coverage is necessary to protect the lands or resources.

§ 3108.15 When will BLM cancel my geophysical bond?

If you request it, BLM will cancel your bond after you—

(a) Satisfy the terms and conditions of your notice(s) of intent or permit(s) to conduct geophysical exploration operations; and

(b) Complete any additional reclamation BLM or the surface management agency requires after you file a notice of completion.

§ 3108.16 What will happen if I do not complete additional reclamation that BLM requests?

If you do not complete reclamation, BLM will—

(a) Demand performance or payment under your bond to cover the costs of reclamation; and

(b) Initiate judicial action to compel performance or to recover the costs of reclamation.

2. Revise part 3110—Noncompetitive Leases to read as follows:

PART 3110—OIL AND GAS GEOPHYSICAL EXPLORATION

Subpart 3110—Onshore Oil and Gas Geophysical Exploration

General Provisions

Sec.

Subpart 3112—Geophysical Exploration Outside of Alaska

Notice of Intent

Notice of Completion

Subpart 3113—Geophysical Exploration In Alaska (Outside the Arctic National Wildlife Refuge)

Exploration Permit Application

Exploration Permit

Data and Inforamtion Obligations

Completion Report

Authority: 16 U.S.C. 3150(b) and 668dd; 30 U.S.C. 189 and 359; 42 U.S.C. 6508; and 43 U.S.C. 1201, 1732(b), 1733, 1734 and 1740.

Subpart 3110—Onshore Oil and Gas Geophysical Exploration

General Provisions

§ 3110.10 When must I have BLM authorization to conduct geophysical exploration operations?

(a) You must obtain BLM authorization before you conduct geophysical exploration—

(1) On public lands, if BLM manages the surface;

(2) On unleased public lands managed by another agency, if that agency and BLM agree for BLM to process your application to conduct geophysical exploration operations according to the regulations in this part; and

(3) Under the rights granted by any Federal oil and gas lease, unless the Forest Service manages the surface.

(b) If you conduct geophysical exploration outside of the rights granted by a Federal oil and gas lease on lands where BLM does not manage the surface, you may need authorization from the surface management agency or surface owner.

§ 3110.11 When would the requirements of this subpart not apply to my activities?

The requirements of this subpart do not apply to—

(a) Casual use activities. Gravity or magnetic surveys, the placement of recording equipment, and activities that do not involve vehicle operations that would cause significant compaction or rutting are generally considered casual use; and

(b) Operations you conduct on private surface overlying Federal minerals, unless you conduct operations under the rights granted by a Federal oil and gas lease.

§ 3110.12 When may BLM suspend or cancel my right to conduct geophysical exploration?

(a) If BLM determines that you have violated any of the terms or conditions of your subpart 3112 Notice of Intent to conduct oil and gas geophysical operations or of your exploration permit in Alaska under subpart 3113, BLM may suspend or cancel your right to conduct exploration. BLM will provide notice to you before it suspends or cancels your right to conduct exploration.

(b) BLM may order an immediate temporary suspension of your geophysical activities until a hearing or final administrative finding, if it determines that a suspension is necessary to protect public health and safety or the environment.

§ 3110.13 What is the fee to use BLM lands to conduct geophysical exploration operations?

BLM will—

(a) Determine the fair market value fee (FMV) for your use of public lands for each notice of intent or exploration permit, if BLM manages the surface;

(b) Base the FMV on the size of the area physically affected; and

(c) Not charge a FMV for portions of your geophysical exploration operation you are conducting on your Federal lease or on behalf of the Federal lessee.

Subpart 3112—Geophysical Exploration Outside of Alaska

Notice of Intent

§ 3112.10 What must I file to conduct oil and gas geophysical exploration operations?

Before you conduct oil and gas geophysical exploration, you must submit a Notice of Intent (NOI) to Conduct Oil and Gas Geophysical Exploration Operations, Form 3150–4, and provide BLM information to determine a FMV according to § 3110.13.

§ 3112.11 When must I file my NOI and what action will BLM take?

(a) You must file a NOI at least 14 business days before you plan to start operations and BLM will review and process it according to—

(1) BLM land use planning decisions for geophysical exploration in the area where you plan to conduct operations; or

(2) Your lease terms, if you conduct geophysical exploration under the rights granted by your lease and the lease was issued before the effective date of the applicable land use plan.

(b) BLM will give you a copy of the Terms and Conditions for Notice of Intent to Conduct Geophysical Exploration, Form 3150–4a, and other conditions which you must sign and follow to—

(1) Protect the public lands from unnecessary and undue degradation; and

(2) Assure compliance with applicable laws for the protection of the environment;

(c) BLM will notify you—

(1) If it cannot process your NOI and why; or

(2) Why processing will be delayed and when you can expect BLM to complete processing.

(d) BLM will not authorize your NOI until you pay the required FMV.

§ 3112.12 May BLM require that I participate in a field review as a part of the filing process?

BLM may require you to participate in a field review of your proposal to conduct geophysical operations. The purpose of this review is to complete development of the terms and conditions of your NOI.

Notice of Completion

§ 3112.20 When must I file a notice of completion of operations?

You must submit a Notice of Completion of Oil and Gas Exploration Operations, Form 3150–5, to BLM 30 calendar days after completing operations, including reclamation activities.

§ 3112.21 What action will BLM take on my notice of completion?

After you file Form 3150–5, BLM will notify you whether your reclamation is satisfactory or whether you must perform additional reclamation, specifying the nature and extent of further actions you must take.

Subpart 3113—Geophysical Exploration In Alaska (Outside the Arctic National Wildlife Refuge)

Exploration Permit Application

§ 3113.10 How do I apply for an oil and gas geophysical exploration permit?

If you plan to conduct oil and gas geophysical exploration operations in Alaska, you must—

(a) Complete an application for an oil and gas geophysical exploration permit that fully describes and illustrates your plans for conducting exploration operations;

(b) Provide evidence that you have bond coverage according to the requirements of subpart 3108; and

(c) Provide BLM information to determine a FMV according to § 3110.13. BLM will not approve your permit until you pay the required FMV.

§ 3113.11 What action will BLM take on my permit application?

(a) BLM will—

(1) Review your application and approve or disapprove it; or

(2) Notify you if processing will be delayed, why it will be delayed, and when BLM will complete processing.

(b) BLM will only authorize exploration for lands subject to section 1008 of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3148), after it determines that you can conduct exploration activities in a manner consistent with BLM's management of the affected area.

§ 3113.12 What terms and conditions will BLM include in my permit?

BLM will include—

(a) Terms and conditions necessary to protect mineral and nonmineral resources;

(b) Terms to insure that your operations are consistent with BLM's management of the affected area, if your proposal occurs on lands subject to section 1008 of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3148); and

(c) Reasonable conditions, restrictions and prohibitions, if you plan to conduct geophysical operations within the National Petroleum Reserve in Alaska, to—

(1) Mitigate adverse effects upon the surface resources of the reserve; and

(2) Satisfy the requirement of section 104(b) of the Naval Petroleum Reserves Production Act of 1976 (42 U.S.C. 6504).

Exploration Permit

§ 3113.20 When is my exploration permit effective and what is its duration?

(a) An exploration permit is valid for one year after the effective date specified by BLM; and

(b) BLM may renew your exploration permit for an additional year if you submit a written request.

§ 3113.21 May I relinquish my exploration permit?

You may relinquish all or part of your exploration permit by filing a request for relinquishment with BLM. BLM will approve the relinquishment, provided you and your surety comply with the terms and conditions of your exploration permit and the regulations in this part.

§ 3113.22 Can my exploration permit be modified?

(a) BLM may approve your proposal to modify your exploration permit; and

(b) BLM may, after consulting with you, require you to modify your exploration permit.

Data and Information Obligations

§ 3113.30 Must I collect and submit all data which I obtain while performing exploration operations under the permit?

You must collect and submit to BLM all data which you obtain while conducting exploration operations.

§ 3113.31 When may BLM disclose such data?

BLM will manage this data according to the Freedom of Information Act and 43 CFR part 2.

Completion Report

§ 3113.40 What does BLM require after I complete operations under my exploration permit?

Within 30 calendar days after completing all operations under the permit you must submit a completion report that describes and illustrates the work that you performed and any reclamation activity completed or planned. BLM will review the completion report and notify you of any additional measures which you must perform to correct damage to the lands and resources.

§ 3113.50 What if my exploration operation is on unleased lands managed by the Department of Defense (DOD)?

If the DOD refers your geophysical exploration permit application to BLM for issuance—

(a) BLM will follow the provisions of subpart 3113 to process your permit; and

(b) DOD must consent to BLM issuance of your permit and may impose terms and conditions on your permit.

3. Revise part 3120—Competitive Leases to read as follows:

PART 3120—OIL AND GAS LEASING

Subpart 3120—Leasing (General)

Leasing: General

Sec.

National Wildlife Refuge System Lands

Coordination Lands

Authority: 16 U.S.C. 3150(b) and 668dd; 30 U.S.C. 189, 306 and 359; 43 U.S.C. 1733, 1734 and 1740; and 10 U.S.C.A. 7439.

Subpart 3120—Leasing (General)

Leasing: General

§ 3120.10 What public lands may BLM lease for oil and gas under this subpart?

This subpart applies to public domain and acquired minerals subject to leasing under the Mineral Leasing Act, as amended (30 U.S.C. 181 *et seq.*) and the Mineral Leasing Act for Acquired Lands (30 U.S.C. 351 *et seq.*). This subpart does not apply to leasing minerals in—

(a) National Parks and the following units of the National Park System except as provided at § 3120.11;

(b) National monuments;

(c) Incorporated cities, towns and villages;

(d) National Petroleum Reserve-Alaska and Naval petroleum and oil shale reserves, except Naval Oil Shale Reserves 1 and 3;

(e) Lands recommended for wilderness allocation by the surface management agency;

(f) Lands within BLM wilderness study areas;

(g) Lands designated by Congress as wilderness study areas, except where oil and gas leasing is specifically allowed to continue by the statute designating the study area;

(h) Lands within areas allocated for wilderness or further planning in Executive Communication 1504, Ninety-Sixth Congress (House Document numbered 96–119), unless the lands are allocated to uses other than wilderness by a land and resource management plan or have been released to uses other than wilderness by an Act of Congress;

(i) Lands within the National Wilderness Preservation System, subject to valid existing rights under section 4(d)(3) of the Wilderness Act established before midnight, December 31, 1983;

(j) Lands north of 68 degrees north latitude and east of the western boundary of the National Petroleum Reserve-Alaska;

(k) Arctic National Wildlife Refuge in Alaska;

(l) Any other lands withdrawn from leasing;

(m) Tidelands or submerged coastal lands within the continental shelf adjacent or littoral to lands within the jurisdiction of the United States; and

(n) Lands acquired by the United States for development of helium, fissionable material deposits or other minerals essential to the defense of the country, except oil, gas, and other minerals subject to leasing under the Act.

§ 3120.11 What units of the National Park System are subject to oil and gas leasing?

(a) The Secretary may allow oil and gas leasing in units of the National Park System listed in paragraph (b) of this section if leasing those lands would not have significant adverse effects on the administration of the area and if lease operations can be conducted in a manner that will preserve the scenic, scientific and historic features contributing to public enjoyment of the area;

(b) BLM may lease oil and gas in—

(1) Lake Mead National Recreation Area as portrayed on the map identified as ''boundary map'' 8360–80013B, revised February 1986;

(2) Whiskeytown Unit of the Whiskeytown-Shasta-Trinity National Recreation Area as portrayed on the map identified as ''Proposed Whiskeytown-Shasta-Trinity National Recreation Area,'' numbered BOR–WST 1004, dated July 1963. BLM may lease lands within the recreation area under the jurisdiction of the Secretary of Agriculture under the Mineral Leasing Act of 1920, as amended, or the Acquired Lands Mineral Leasing Act of 1947, if disposition would not have significant adverse effects on the purpose of the Central Valley Project or the administration of the recreation area;

(3) Glen Canyon National Recreation Areas as portrayed on the map identified as ''boundary map, Glen Canyon National Recreation Area,'' numbered GLC–91,006, dated August 1972; and

(4) Any other units of the National Park Service where Congress authorizes leasing;

(c) BLM may not lease oil and gas in the—

(1) Lake Mead National Recreation Area—

(i) All waters of Lakes Mead and Mohave and all lands within 300 feet of those lakes measured horizontally from the shoreline at maximum surface elevation; and

(ii) All lands within the unit of supervision of the Bureau of Reclamation around Hoover and Davis Dams and all lands outside of resource utilization zones as designated by the Superintendent on the map (602–2291B., dated October 1987) of Lake Mead National Recreation Area which is available for inspection in the Office of the Superintendent;

(2) Whiskeytown Unit of the Whiskeytown-Shasta-Trinity National Recreation Area—

(i) All waters of the Whiskeytown Lake and all lands within 1 mile of that lake measured from the shoreline at maximum surface elevation;

(ii) All lands classified as high density recreation, general outdoor recreation, outstanding natural and historic, as shown on the map numbered 611–20,004B, dated April 1979, entitled ''Land Classification, Whiskeytown Unit, Whiskeytown-Shasta-Trinity National Recreation Area.'' This map is available for public inspection in the Office of the Superintendent; and

(iii) All lands within section 34 of Township 33 North, Range 7 West, Mt. Diablo Meridian; or

(3) Glen Canyon National Recreation Area—Those units closed to mineral disposition within the natural zone, development zone, cultural zone and portions of the recreation and resource utilization zone as shown on the map numbered 80,022A, dated March 1980, entitled ''Mineral Management Plan—Glen Canyon National Recreation Area.'' This map is available for public

inspection in the Office of the Superintendent and the offices of the State Directors, Bureau of Land Management, Arizona and Utah.

§ 3120.12 May BLM lease minerals under the jurisdiction of an agency outside of the Department of the Interior?

If minerals are under the jurisdiction of an agency outside the Department of the Interior, BLM may lease—

(a) Acquired lands only after BLM receives consent from the surface management agency;

(b) Public domain lands only after BLM has consulted with the surface management agency; and

(c) National Forest System lands and lands withdrawn for use by the Department of Defense, whether acquired or public domain, only with the written consent of the surface management agency.

National Wildlife Refuge System Lands

§ 3120.20 What are National Wildlife Refuge System lands?

National Wildlife Refuge System lands are those lands under the jurisdiction of the United States Fish and Wildlife Service included within a withdrawal of public domain and acquired lands for the protection of all species of wildlife within a particular area.

§ 3120.21 May BLM lease lands that are within the National Wildlife Refuge System?

BLM may lease National Wildlife Refuge System lands only—

(a) If it is necessary to protect those lands from drainage; or

(b) Where there are valid existing rights.

Coordination Lands

§ 3120.30 What are coordination lands?

Coordination lands are those lands withdrawn or acquired by the United States and made available to the States by—

(a) Cooperative agreements entered into between the Fish and Wildlife Service and the game commissions of the various States, in accordance with the Act of March 10, 1934 (48 Stat. 401), as amended by the Act of August 14, 1946 (60 Stat. 1080); or

(b) Long-term leases or agreements between the Department of Agriculture and the game commissions of the various States pursuant to the Bankhead-Jones Farm Tenant Act (50 Stat. 525), as amended, where such lands were subsequently transferred to the Department of the Interior, with the Fish and Wildlife Service as the custodial agency of the United States.

§ 3120.31 May BLM lease coordination lands?

BLM may lease coordination lands (not closed to oil and gas leasing) only after it has—

(a) Consulted with the applicable State Game Commission and the Fish and Wildlife Service; and

(b) Obtained any lease stipulations necessary to protect the lands proposed for lease.

§ 3120.32 May BLM lease lands within a wildlife refuge in Alaska?

Lands within a wildlife refuge in Alaska, except the Arctic National Wildlife Refuge, are open to oil and gas leasing after the Fish and Wildlife Service has completed a favorable compatibility determination.

§ 3120.33 May BLM lease lands within Recreation and Public Purposes leases or patents?

Recreation and Public Purposes Act leases and patents authorized under 43 U.S.C. 869 *et seq.* are subject to oil and gas leasing under the regulations in this part, subject to any conditions or stipulations that the Secretary considers appropriate.

§ 3120.34 May a lease contain both acquired and public domain minerals?

A lease may not contain both public domain and acquired minerals.

Oil and Gas Lease Administration

§ 3120.40 For Federal lands, what types of leases does BLM issue or administer?

BLM issues or administers the following types of leases—

(a) Competitive;

(b) Noncompetitive;

(c) Future Interest (Competitive/Noncompetitive);

(d) Right-of-Way;

(e) Renewal;

(f) Exchange;

(g) Combined Hydrocarbon; and

(h) Private.

§ 3120.41 For each type of lease, what is the primary lease term, maximum lease size, administrative filing fee, and advance annual rental rate?

The following chart describes the terms for each type of lease BLM issues—

Type of lease	Primary lease term	Maximum lease size	Administrative filing fee	Rental rate per acre or fraction of an acre
(a) Competitive	10 years	2,560 acres for lower 48 States and 5,760 acres in Alaska.	$75	$1.50 for the first five years; $2.00 the sixth and succeeding years.
(b) Noncompetitive	10 years	2,560 acres for lower 48 States and 5,760 acres in Alaska.	75	See Competitive.
(c) Future Interest	10 years	2,560 acres for lower 48 States and 5,760 acres in Alaska.	75	See Competitive.
(d) Right-of-Way Leasing	20 years	N/A	75	See Competitive.
(e) Renewal Leases	20 years	N/A	75	$2.
(f) Exchange Leases	5 years	N/A	75	$2.
(g) Combined Hydrocarbon Leases	10 years	5,120 acres	75	$2.
(h) Private Leases	Subject to private lease terms.	N/A	None	Subject to private lease terms.

Subpart 3121—Competitive Leasing

Notice of Competitive Lease Sale

§ 3121.10 How does BLM provide notice of what lands are available for competitive oil and gas leasing?

BLM will—

(a) Post a Notice of Competitive Lease Sale in the public room of the BLM State Office with jurisdiction over the lands available for lease for a minimum of 45 calendar days before the sale date; and

(b) Make the notice available for posting at the offices of all appropriate surface management agencies with jurisdiction over any of the parcels included in the sale notice for at least 45 calendar days before the sale date.

§ 3121.11 What information will BLM include in the Notice of Competitive Lease Sale?

In the Notice of Competitive Lease Sale, BLM will include—

(a) The time, date, and place of the sale;

(b) A description of the lands available for sale;

(c) Stipulations or lease conditions that apply to each sale parcel; and

(d) Any special requirements that apply to a parcel such as communitization or unit agreement joinder requirements, or any plugging, bonding, or surface reclamation requirements for existing wells.

§ 3121.12 How does BLM decide which lands to include in a Notice of Competitive Lease Sale?

BLM includes lands in a Notice of Competitive Lease Sale as a result of a—

(a) Letter of nomination from the public;

(b) BLM recommendation; or

(c) Request from a surface management agency.

§ 3121.13 What types of lands may I include in my letter of nomination?

You may include the following types of lands in your letter of nomination for competitive leasing—

(a) Lands available for leasing under § 3120.10, including—

(1) Lands in oil and gas leases that have terminated, expired, been canceled or relinquished;

(2) Interests forfeited to the United States;

(3) Lands that have never been leased;

(b) Lands which are otherwise unavailable for leasing but are subject to drainage (protective leasing); and

(c) Lands in gas storage agreements that also meet the requirements of paragraph (a) or (b) of this section.

Legal Descriptions

§ 3121.20 How should I describe the lands in my letter of nomination?

If—	Then you must describe the lands—
(a) The public lands have been surveyed under the public land rectangular survey system or the acquired lands lie within and conform to the rectangular system of public land surveys and constitute either all or a portion of the tract acquired by the United States.	By township, range, meridian, section and legal subdivision.
(b) The public lands have *not* been surveyed under the public land rectangular survey system or the acquired lands do not conform to the rectangular system of public land surveys, but lie within an area of the public land surveys and constitute the entire tract acquired by the United States.	By metes and bounds, giving courses and distances between the successive angle points on the boundary of the tract, and connected by courses and distances connected to an official corner of the public land surveys, or furnish a copy of the deed or other conveyance document by which the United States acquired title to the lands.
(c) The acquired lands do not conform to the rectangular system of public land surveys, but lie within an area of the public land surveys and constitute less than the entire tract acquired by the United States.	By metes and bounds, giving courses and distances between the successive angle points with appropriate ties to the nearest official survey corner. If a portion of the boundary of the lands requested coincides with the boundary in the deed or other conveyance document, you don't have to redescribe the boundary if a copy of the deed or other conveyance document is attached to your nomination. Any portion of the lands nominated that does not coincide with the boundary in the deed or other conveyance document must be tied by courses and distances between successive angle points into the description in the deed or other conveyance document.
(d) The acquired lands lie outside an area of the public land surveys and constitute the entire tract acquired by the United States.	Either as shown in the deed or other conveyance document by which the United States acquired title to the lands, or attach a copy of the document to your nomination.
(e) The acquired lands lie outside an area of the public land surveys and constitute less than the entire tract acquired by the United States.	By metes and bounds, giving courses and distances between successive angle points tying by courses and distances into the description in the deed or other conveyance document. If a portion of the boundary of the lands requested coincides with the boundary in the deed or other conveyance document, you don't have to redescribe the boundary if a copy of the deed or other conveyance document is attached to your nomination. Any portion of the lands nominated that does not coincide with the boundary in the deed or other conveyance document must be tied by courses and distances between successive angle points into the description in the deed or other conveyance document.
(f) The acquired lands do not conform to the rectangular survey system of public land surveys.	By filing three copies of a map upon which the location of the lands are clearly marked with respect to the administrative unit or project of which they are a part.
(g) The acquired lands have been assigned an acquisition or tract number by the acquiring agency.	By the acquisition or tract number together with the identity of the State and county where the lands are located.
(h) The public lands have a protracted survey that has been approved and the effective date published in the FEDERAL REGISTER.	By legal subdivision, section, township, range and meridian. However, the smallest legal subdivision for which you may apply is a full section for the lower 48 states and four full contiguous sections for Alaska.
(i) The lands are accreted	By metes and bounds giving courses and distances between the successive angle points on the boundary of the tract, and connected by courses and distances to an angle point on the perimeter of the tract to which the accretions apply.

§ 3121.21 What other rules must I follow when I submit my nomination letter?

(a) You must not combine public domain and acquired minerals in the same parcel nominated.

(b) Each parcel nominated must not exceed 2,560 acres for the lower 48 states or 5,760 acres for Alaska.

(c) The lands within each parcel nominated must be within a six square mile area, unless you show BLM that a larger area is necessary.

Future Interest Leasing

§ 3121.30 May I submit a nomination letter for mineral interests that will vest in the United States in the future and how will BLM offer them?

(a) You may submit a nomination letter for future mineral interests; and

(b) BLM will offer eligible future mineral interests at a competitive lease sale.

Subpart 3122—Competitive Lease Sale

General

§ 3122.10 How often must each BLM State Office hold competitive lease sales?

Each BLM State Office must hold competitive lease sales at least quarterly if lands are eligible and available for competitive leasing.

§ 3122.11 How are competitive oil and gas lease sales conducted?

(a) Competitive lease sales are conducted by oral bidding.

(b) If you make the highest bid at the sale, you are committed to execute the lease under § 3122.15 and to pay the amounts required under §§ 3122.17 and 3122.20.

(c) If you are the highest bidder and you fail to complete the requirements to obtain your lease under this subpart, BLM considers your bid rejected.

§ 3122.12 Is there a minimum per-acre amount that I must bid on a parcel?

The minimum acceptable bid is $2.00 per acre or fraction of an acre, calculated on the gross acreage in the parcel.

§ 3122.13 If the United States owns a fractional interest (less than 100 percent of the mineral interest in a parcel) is the minimum bid per acre prorated?

The minimum acceptable bid will not be prorated for any lands in which the United States owns a fractional interest. Your bid per acre must be calculated on the gross acreage in the parcel.

§ 3122.14 How does BLM determine the winning bid?

The winning bid is the highest oral bid on a parcel that equals or exceeds the minimum acceptable bid.

§ 3122.15 What documents must I submit on the day of the sale if I am the winning bidder of a parcel?

(a) On the day of the sale, you must submit a signed BLM-approved lease bid form for each parcel on which BLM determines you are the winning bidder.

(b) Your signature on a BLM-approved lease bid form binds you to the lease agreement and constitutes acceptance of the lease terms and conditions.

§ 3122.16 May I withdraw my bid?

You may not withdraw your bid.

§ 3122.17 What must I pay per parcel at the sale if I am the winning bidder?

(a) If you are the winning bidder of a parcel, on the day of the sale you must pay—

(1) A nonrefundable $75 administrative fee;

(2) The first year's advance annual rental of $1.50 per acre or fraction of an acre calculated on the gross acreage in the parcel; and

(3) The minimum bonus bid of $2.00 per acre or fraction of an acre calculated on the gross acreage in the parcel.

(b) The BLM State Office with jurisdiction over the parcels in the sale notice must receive your payment by the close of official business hours on the day of the sale, or other time specified in the Notice of Competitive Lease Sale, or BLM considers your bid rejected.

§ 3122.18 If I am the winning bidder for a future interest lease, what payments must I make on the day of the sale?

If you are the winning bidder on a future interest lease, you do not have to pay the first year's advance rental until the mineral interest vests in the United States. Other payments are due in accordance with § 3122.17.

Balance of Bonus Bid

§ 3122.20 When is the balance of my bonus bid due?

You must submit the balance of your bonus bid within 10 business days after the date of the sale.

§ 3122.21 What happens if BLM does not receive the balance of my bonus bid within 10 business days following the date of the sale?

If BLM does not receive your bonus bid within 10 business days following the date of the sale, you forfeit all monies paid on the day of the sale and you lose all rights to the lease, unless the envelope containing your payment is postmarked by the United States Postal Service, or is dated as received at a courier or other delivery service, on or before the tenth business day.

Rejection of Bid

§ 3122.30 Under what circumstances will BLM reject my bid?

BLM will reject your bid if—

(a) You do not submit the balance of bonus bid within 10 business days from the date of the sale as provided in § 3122.21;

(b) You do not comply with the requirements of this part, such as furnishing BLM with evidence required under subpart 3130 that you will commit your lease to the unit;

(c) BLM determines you are not qualified to hold Federal mineral leases; or

(d) Your payment is returned to BLM by your bank for insufficient funds.

§ 3122.31 Are parcels for which BLM rejected bids available for noncompetitive leasing during the two years after the sale?

Parcels for which BLM rejected bids are not available for noncompetitive leasing. BLM will offer the parcels at a future competitive sale.

Parcels That Receive No Bid at Oral Auction

§ 3122.40 If a parcel receives no bid at the competitive lease sale, is it available for noncompetitive leasing?

(a) Except as provided in paragraph (b) of this section, a parcel for which BLM receives no bid at the competitive lease sale is available for noncompetitive leasing.

(b) BLM may withdraw the following parcels from noncompetitive leasing and lease those parcels through a process BLM considers appropriate—

(1) Land reported as excess under the Federal Property and Administrative Services Act of 1949. BLM leases these General Services Administration surplus lands only through the competitive process.

(2) An interest in an existing lease that has been canceled or forfeited. The specific lease interest in the parcel will be available for lease beginning the first day after the sale to the first qualified applicant that submits a bonus bid of $75.

(3) An area closed to leasing that is subject to drainage (protective leasing). BLM leases these lands only through the competitive process.

(c) Notwithstanding the provisions of subpart 3123, BLM may reject any noncompetitive lease offer under paragraph (b) of this section that is not as favorable to the United States as any other offer BLM receives for a parcel. Also, for parcels subject to paragraph (b)(2), the noncompetitive offer may not be less than required under § 3122.12.

Subpart 3123—Noncompetitive Leasing

Parcels Available for Noncompetitive Lease Offers

§ 3123.10 What parcels are available for noncompetitive lease offers?

The only parcels available for noncompetitive lease offers are parcels that received no bid at the competitive sale.

§ 3123.11 When do parcels that received no bid at the competitive sale become available for noncompetitive leasing?

Parcels offered for bid that received no bid at the competitive lease sale are available for noncompetitive leasing on the first business day after the sale. These parcels are available for noncompetitive bid for a period of two years, unless they are withdrawn.

Priority of Noncompetitive Lease Offers

§ 3123.20 What if more than one noncompetitive offer is filed for the same parcel?

(a) If more than one noncompetitive offer is filed for the same parcel on the day after the sale, BLM considers the offers simultaneously filed and holds a public drawing to determine priority.

(b) If BLM receives more than one noncompetitive offer for the same parcel after the first day, your noncompetitive offer will receive priority according to the date and time you filed it in the BLM State Office with jurisdiction over the parcel for which you applied.

(c) If you properly filed your noncompetitive offer the day after the sale, but BLM erroneously excluded the offer from the drawing for priority, BLM will hold a new public drawing to include your offer.

§ 3123.21 If my noncompetitive offer requires a correction, under what circumstances does it retain priority?

(a) Your noncompetitive offer must be complete when you file it or BLM will reject it. However, BLM will accept your noncompetitive offer and allow it to retain its priority under § 3123.20 if —

(1) You filed your noncompetitive offer on an obsolete form;

(2) You submitted only one copy of your noncompetitive offer form;

(3) You failed to sign or date your noncompetitive offer form;

(4) Your bank erroneously returned your remittance for the first year's advance rental, required under § 3123.41, for insufficient funds;

(5) You submitted copies of the offer which were not exact reproductions, except where BLM cannot determine which parcels you included;

(6) Someone other than yourself signed your offer and, in response to BLM's request, you timely provide BLM a description of your relationship to the person who signed the offer;

(7) Your rental payment, under § 3123.40, is deficient by not more than 10 percent or $200, whichever is less, and you make your payment to correct the deficiency to BLM within 30 calendar days from your receipt of the notification of deficiency; or

(8) Your offer contains public domain and acquired mineral parcels. Your offer retains priority for the type of lands you have indicated in the upper portion of the offer form. Your offer for the other lands will be rejected.

(b) You must correct the errors in paragraphs (a)(1) through (a)(6) of this section within 10 business days after BLM's notice.

Description of Lands in Noncompetitive Lease Offer

§ 3123.30 How do I describe the lands in my offer I file the day after the competitive lease sale?

Your noncompetitive lease offer must describe the lands by the parcel number indicated in the Notice of Competitive Lease Sale.

§ 3123.31 How do I describe the lands in my noncompetitive offer for public domain or acquired minerals that I file within the two years after the sale?

(a) Your noncompetitive lease offer must describe the lands by the parcel number indicated in the Notice of Competitive Lease Sale.

(b) You may combine more than one parcel from more than one sale notice on an offer, but your lease offer must—

(1) Include entire parcels;

(2) Be within a six square mile area, unless you show BLM that a larger area is necessary; and

(3) Not exceed 2,560 acres for the lower 48 states and 5,760 acres for Alaska.

Requirements of a Noncompetitive Lease Offer

§ 3123.40 How do I file a noncompetitive offer?

To file a noncompetitive lease offer—

(a) File it in duplicate (an original and one copy) on a form approved by the Director. BLM will accept a reproduction of the form if it includes no additions, omissions, other changes, or advertising;

(b) File a form that is typewritten or printed plainly in ink, signed in ink and dated by you or your authorized agent;

(c) Include a nonrefundable $75 filing fee; and

(d) Except for noncompetitive future interest lease offers, include the first year's advance rental at $1.50 per acre or fraction of an acre.

§ 3123.41 If I file a noncompetitive future interest offer, when must I pay the first year's advance rental?

You must pay the first year's advance rental when the mineral interest vests in the United States.

§ 3123.42 What happens to my noncompetitive offer if an earlier offeror is entitled to a lease, either as a result of priority of the offer, or a pending lease reinstatement?

BLM will not reject your noncompetitive offer until we take final action on the earlier offer or pending reinstatement.

§ 3123.43 May I amend my noncompetitive lease offer before BLM issues the lease?

You may not amend your noncompetitive lease offer. However, you should notify BLM of any insignificant errors in your offer that BLM should correct before it issues your lease.

§ 3123.44 May I withdraw my noncompetitive lease offer?

You may not withdraw your noncompetitive offer in whole or in part until 60 calendar days have elapsed from the date the offer was filed in the BLM State Office with jurisdiction over the lands. BLM will refund only your first year's advance rental. You may not withdraw your offer under any circumstance after BLM issues the lease.

Subpart 3124—Lease Administration and Renewals

Dating of Leases

§ 3124.10 What is the effective date of my lease?

(a) Your lease is effective the first day of the month following the date BLM signs it. BLM will issue the lease effective the first day of the month in which it is signed if you request it in writing.

(b) BLM will issue your future interest lease effective the date the mineral interest vests in the United States.

(c) If the United States owns both a present fractional interest and a future fractional interest of the minerals in the same parcel, BLM will issue your lease to cover both the present fractional interest and future fractional interest. The effective date and primary term of your present fractional interest lease is unaffected by the vesting of the future fractional interest in the United States.

(d) Your renewal lease is effective the first day of the month following the month the original lease expired.

(e) The effective date of your consolidated lease is that of the oldest lease in the consolidation.

Leases Within Unit Agreements

§ 3124.20 What if the lands I am leasing are within an existing unit agreement?

If the lands you are leasing are within an existing unit agreement, before BLM issues your lease, you must file—

(a) Evidence that you will commit your lease to the unit; or

(b) Your reasons for not joining the unit. If BLM accepts the reasons, you will be permitted to operate independently. If BLM rejects the reasons, you must commit the lease to the unit, or BLM will reject your lease offer.

§ 3124.21 What effect does the commitment to a unit have on my lease offer or lease?

(a) If your lease offer contains lands partly within and partly outside the unit boundary, BLM will issue separate leases, one for the lands within the unit boundary and one for the lands outside the unit boundary.

(b) BLM will segregate the lease and issue a new lease for the lands outside the unit, which is effective on the effective date of unitization. See § 3137.16, which explains when a unit is effective.

Lease Consolidation

§ 3124.30 May I consolidate leases?

(a) BLM may approve your request to consolidate your leases if they are producing, have the same lease terms and rental and royalty rates, and record title owners of all the lands are the same. You may only consolidate leases, with BLM's approval, that have at least one point as a common boundary and that were issued under the same statutory authority.

(b) The effective date of the consolidated leases is the earliest effective date of the several leases that were consolidated.

§ 3124.31 What information must I include in my application for lease consolidation?

As record title owner(s), your application for lease consolidation must show, in addition to the requirements in § 3124.30—

(a) That the lease consolidation promotes conservation of the oil or gas resource that cannot be achieved through either unitization or communitization;

(b) The location of the leases you plan to consolidate;

(c) That the leases you plan to consolidate are in a producing status;

(d) What nonproducing acreage within the leases you plan to consolidate and that which you will relinquish;

(e) How record title to the leases you plan to consolidate is held; and

(f) That the proposed consolidated lease would not exceed the maximum lease size under § 3120.41.

§ 3124.32 How many copies of my application must I file and where must I file it?

You must file an original and a duplicate of your application for lease consolidation in the BLM State Office with jurisdiction over the lands in your application. Consolidation is not effective until the date BLM approves the application.

Lease Renewals

§ 3124.40 For how many years will BLM renew my lease?

If you have a lease issued under Section 14 of the Mineral Leasing Act (MLA) (30 U.S.C. 223), it will continue in effect for so long as you produce oil or gas in paying quantities or your lease is committed to a producing communitization agreement. If your lease was committed to a unit after August 8, 1946, then only the portion of your lease in the unit is extended by commitment to the unit. If any portion of your lease was committed to the unit before that date, your entire lease is extended by commitment.

§ 3124.41 For how many years will BLM renew my lease if it was not issued under Section 14 of the Mineral Leasing Act?

(a) If you have a lease that BLM originally issued with an initial 20 year lease term under any section of the MLA other than section 14, BLM will automatically renew it for successive 10 year periods.

(b) All other leases BLM issues are not subject to renewal. However, the original lease term may be extended under the provisions of subpart 3140.

§ 3124.42 If my lease is committed to a unit agreement may I file a renewal lease application?

If your 20-year lease is—

(a) Committed to a unit agreement, BLM will not renew it, except as provided in paragraph (b). Your lease continues in force until it expires, the unit terminates, or your lease is eliminated from the unit, whichever occurs last.

(b) In a 10-year renewal term, and is committed to and then eliminated from a unit before the renewal term expires, BLM will renew it.

§ 3124.43 Who may file a renewal lease application?

The lessees of record or the operating rights owners may file a lease renewal application.

§ 3124.44 How must I file my renewal lease application?

You must file your renewal lease application—

(a) In the BLM State Office with jurisdiction over the lands;

(b) At least 90 calendar days before your lease expires; and

(c) With a nonrefundable $75 filing fee.

Subpart 3125—Exchange Leases

Exchange Leases

§ 3125.10 May I exchange my existing oil and gas lease for a new lease?

If the existing lease is a renewal of a twenty-year lease, the lessee of record, with the concurrence of the operating rights owner, may exchange it for a new lease for the same lands with a primary term of five years. See §§ 3106.30 and 3120.41 for the royalty and rental rates that apply to your exchange lease.

§ 3125.11 How must I file an exchange lease application?

The lessee of record or operating rights owner must—

(a) File the exchange lease application in duplicate in the BLM State Office with jurisdiction over the lands in the application; and

(b) Include a nonrefundable $75 filing fee.

Subpart 3126—Railroad Right-of-Way Leases

Railroad Right-of-Way Leases

§ 3126.10 To which rights of way does this subpart apply?

(a) This subpart applies to—

(1) Railroad rights-of-way and easements issued under the Act of March 3, 1875 (43 U.S.C. 934 *et seq.*) and earlier right-of-way statutes; or

(2) Rights-of-way and easements issued under the Act of March 3, 1891 (43 U.S.C. 946 *et seq.*).

(b) Oil and gas leases for other rights-of-ways are leased under subparts 3121 and 3122.

§ 3126.11 Who may lease the oil or gas deposits underlying a railroad right-of-way?

(a) You may file an application to lease the oil and gas underlying a right-of-way subject to this subpart if you—

(1) Own the right-of-way; or

(2) Acquired the right to apply for a lease from the owner of the right-of-way.

(b) If you are an owner or lessee of the oil or gas rights adjoining the right-of-way (see § 3126.15(b)), you may enter into an agreement with the United States under which you agree to compensate the United States for any drainage of the oil or gas underlying the right-of-way.

§ 3126.12 How must I file a lease application under this subpart?

(a) No approved form is required for a right-of-way lease, but you must—

(1) File an application to lease in duplicate in the BLM State Office with jurisdiction over the lands; and

(2) Include a nonrefundable $75 filing fee.

(b) If you are not the owner of the right-of-way, but acquired the right to file for a lease from the owner, you must submit a copy of the document granting you that right.

§ 3126.13 What information must my application include?

In your application, you must—

(a) Show that you have the right to lease the oil and gas under the right-of-way;

(b) Describe the development of oil or gas on adjacent or nearby lands, the location and depth of the well, and the production and probability of drainage of the deposits in the right-of-way;

(c) Describe each legal subdivision through which the right-of-way extends in the area you propose to lease. You are not required to describe the lands by metes and bounds;

(d) Furnish a plat or map of the area showing the location and acreage of the right-of-way in the area you propose to lease;

(e) Provide the names and addresses of all mineral owners or lessees of oil and gas interests in the lands adjoining the right-of-way in the area you propose to lease; and

(f) Include the amount of compensation (not less than 12½ percent of the value of production) you are willing to pay.

§ 3126.14 Who must BLM notify that I filed an application to lease the oil and gas under the right-of-way?

BLM must—

(a) Notify the owner or lessee of the oil and gas interests in lands adjoining the area you propose to lease; and

(b) Tell the persons notified how long they have to submit a bid for the amount of compensation they are willing to pay the Federal Government for extracting the oil and gas underlying the right-of-way through wells on its adjoining lands, under § 3126.15.

§ 3126.15 Who may submit a bid for compensation?

If you are the owner or lessee of oil and gas interests adjoining the right-of-way, you may submit a proposal to enter into an agreement with the United States under which you agree to compensate the United States for draining of oil or gas underlying the right-of-way.

§ 3126.16 What must I include in my bid for compensation?

(a) Provide the same information required for a lease application in § 3126.13(b), (c), (d) and (e). Also provide the amount of compensation you are offering to pay the United States, including at least 12½ percent in the amount or value of production; and

(b) File the bid for compensation in the BLM office with jurisdiction over the right-of-way.

§ 3126.17 Who must BLM notify that I have filed an application for compensation?

(a) BLM will notify the holder of the right-of-way that a bid for compensation has been filed. BLM also will require the holder to either provide notice to any person who acquired the owner's right to lease the oil and gas underlying the right-of-way, or tell BLM who that person is, so BLM may provide notice.

(b) BLM will also notify all other owners or lessees of oil and gas interest in lands adjoining the right-of-way in the area subject to your bid.

(c) BLM will tell the persons notified how long they have to submit a lease application or a bid for compensation under this subpart.

§ 3126.18 May BLM request offers to lease or for compensation?

BLM may request offers to lease or offer compensation for oil and gas underlying a right-of-way subject to this subpart. BLM will provide notice under §§ 3126.14 and 3126.17(a).

§ 3126.19 Who will receive the rights to the oil and gas underlying the right-of-way?

BLM will evaluate all lease applications and compensation agreements it receives. BLM will issue a lease or enter into a compensation agreement with the person whose offer is most advantageous to the United States.

§ 3126.20 What is the term of my lease or agreement?

The term of your lease or agreement is 20 years.

Subpart 3129—Record Title, Operating Rights and Estate Transfers, Name Changes and Mergers

General

§ 3129.10 What is a transfer?

A transfer is a conveyance of either record title or operating rights in a lease.

§ 3129.11 When must I file a transfer with BLM?

You must file a transfer with BLM when—

(a) You convey a lease interest;

(b) An interest holder dies;

(c) There is a corporate merger or name change; or

(d) A court orders a transfer.

§ 3129.12 Who may receive a transfer of lease interests?

You may receive a transfer of lease interests only if you are qualified to hold a lease under subpart 3105.

§ 3129.13 What must I include in my transfer application?

Your transfer application must be complete. See § 3129.30 for the form you need.

§ 3129.14 When is my transfer effective?

BLM approves transfers effective the first day of the month following the date—

(a) BLM determines your transfer had no defects; or

(b) BLM determines you cured all defects in the transfer. Common examples of defects are—

(1) No signature;

(2) No original signatures;

(3) No date(s);

(4) Insufficient number of copies;

(5) Incorrect legal descriptions;

(6) Legal descriptions of less than a legal subdivision;

(7) Incorrect description of the lease interest(s);

(8) The transferor has no interest in the lease or the incorrect interest is shown on the transfer because an intervening transfer has not been filed;

(9) The transfer conveys only oil or only gas; and

(10) The transfer of record title attempts to convey only specific formations.

§ 3129.15 May I withdraw my transfer?

You may withdraw your transfer if BLM has not approved it. Your request to withdraw the transfer must be in writing and signed by both the transferor and transferee.

§ 3129.16 May I file a record title transfer limited to a specific depth, formation, zone or defined deposit or fluid mineral?

Unless your lease was issued limited horizontally, you may not file a record title transfer limited to a specific depth, formation, zone or defined deposit or limited to only oil or only gas.

§ 3129.17 May I file my operating rights transfer to a specific depth?

You may convey operating rights limited to a specific depth. For example, you may convey a 100 percent operating rights interest from the surface to 2,000 feet and retain the interest in the depths below 2,000 feet.

§ 3129.18 How do transfers of interest affect future transfers?

When BLM issues you a lease, you receive both the record title and operating rights interest in the lease. As the lessee, you may transfer the operating rights without assigning record title interest in the lease. If you transfer only operating rights interests in the lease, the record title and operating rights are split. After those rights are split, the respective owners of such rights must file transfers of operating rights separately from transfers of record title.

§ 3129.19 When will BLM segregate a lease as a result of a transfer?

(a) If you transfer 100 percent record title interest in a described portion of the lands in the lease, BLM will segregate the lease into two separate leases (see § 3140.70).

(b) If you transfer 100 percent operating rights interest in a described portion of the lands in the lease, BLM will not segregate the lease.

§ 3129.20 What is a mass transfer?

A mass transfer occurs when a transferor transfers interests of any type in multiple Federal leases to the same transferee.

§ 3129.21 May I file a mass transfer?

You may file a mass transfer. However, you must file three signed originals of the record title or operating rights transfer forms for each affected lease. Each lease is a separate transfer. BLM will not accept copies of these signed documents.

§ 3129.22 Does BLM's approval of a transfer certify that title is clear?

BLM's approval of a transfer does not warrant or certify that parties to a transfer hold legal or equitable title to a lease.

Forms, Fees and Filing Requirements

§ 3129.30 What forms must I use to transfer lease interests, how many copies must I file, what is the filing fee per lease or document, and where must I file them?

To transfer an interest, you must file in each BLM State Office with jurisdiction over the lands involved (except as provided in § 3129.37) according to the following chart—

Type of transfer	Form required	Form number	Number of copies required	Filing fee
(a) Record Title	Yes	3000–3	Three	$25 per interest transferred.
(b) Operating Rights	Yes	3000–3a	Three	$25 per interest transferred.
(c) Estate	No	N/A	One (Include a list of all leases affected)	None.
(d) Mergers	No	N/A	One (Include a list of all leases affected)	None.
(e) Name Changes	No	N/A	One (Include a list of all leases affected)	None.

§ 3129.31 Are filing fees refundable?

Filing fees are not refundable. However BLM will refund filing fees that exceed the amount required by the regulations in parts 3100 through 3190.

§ 3129.32 How do I describe the lands on Form 3000–3 for my record title transfer?

If you are transferring—

(a) All of the lands in a lease, you do not need to include a legal land description; or

(b) A portion of the lands in a lease, you must describe those lands in the same manner as described in the lease document.

§ 3129.33 May I transfer less than a legal subdivision?

You may transfer less than a legal subdivision if those lands were originally described that way in the lease.

§ 3129.34 May I file a record title transfer containing less than 640 acres?

BLM will approve a record title transfer of less than 640 acres outside Alaska or 2,560 acres within Alaska only if—

(a) The transfer constitutes the entire lease; or

(b) You demonstrate that the transfer will further the development of oil or gas. Your signature on the transfer form certifies that the transfer will further the development of oil or gas. However, BLM may request additional information before approving the transfer.

§ 3129.35 What must I submit to BLM to transfer the rights or interests of a decedent to its heir, devisee or estate?

(a) To transfer the rights or interests of a decedent to its heir, devisee or estate, you must submit—

(1) If probate of the estate has been completed—

(i) A copy of the will or decree of distribution; and

(ii) A statement as to citizenship and acreage holdings in Federal oil and gas leases signed by each heir;

(2) If probate of the estate has not been completed, a statement signed by each heir as to citizenship and acreage holdings in Federal oil and gas leases and evidence—

(i) Of the authority of the executor or administrator to act on behalf of the estate; or

(ii) That the heirs or devisees are the only heirs or devisees of the deceased;

(3) If there is no will, and State law does not require probate proceedings, a statement signed by —

(i) The heirs that they are the only heirs of the deceased; and

(ii) Each heir as to citizenship and acreage holdings in Federal oil and gas leases.

(b) You must file a bond rider or a replacement bond under subpart 3107 for any bonds the decedent previously furnished.

§ 3129.36 What must I submit to BLM for a merger or name change?

For a merger or name change, you must file—

(a) Evidence that the State has acted on your request for a name change or merger;

(b) A list of all of the Federal lease serial numbers affected by the merger or name change; and

(c) Any bond rider or a replacement bond required under subpart 3107.

§ 3129.37 Where must I file documentation of estate, merger and name changes?

(a) If you maintain a bond, you must file documentation of estate, merger and name changes in the BLM State Office(s) that accepted your bond(s); or

(b) If you don't maintain a bond, you must file documentation of estate, merger and name changes in the BLM State Office with jurisdiction over any of the affected leases.

§ 3129.38 As the transferee, what should I file to show I am qualified to hold Federal lease interests?

By signing the Certification and Request for Approval, on Forms 3000–3 or 3000–3a, you certify that you meet the qualification requirements of subpart 3105.

§ 3129.39 When must I file transfers with BLM?

(a) You must file record title and operating rights transfers within 90 calendar days from the date the transferor signs the document. If you file a transfer more than 90 calendar days after the transferor signed the document, BLM will require the transferor to

certify that it still intends to transfer its interest.

(b) There is no timeframe for filing estate, merger and name change documents.

§ 3129.40 May I transfer an interest before BLM issues the lease?

You may file a transfer before a lease is issued, but BLM will not approve your transfer until we issue the lease.

Bonding, Obligations and Liabilities

§ 3129.50 When will BLM require a new bond for a transfer?

If the person that provided the existing bond no longer has responsibility for performance on the lease, the transferee or other person with an interest in the lease, or the operator, must provide a new bond before BLM will approve the transfer.

§ 3129.51 If I transfer my lease, when do my obligations under the lease end?

You are responsible for the performance of all obligations under the lease until the date BLM approves an assignment of your record title or transfer of your operating rights. You will continue to be responsible for obligations that accrued prior to the approval date, whether or not they were identified at the time of the assignment or transfer, including the payment of compensatory royalties for drainage. As the assignor or transferor, you remain responsible for plugging wells you drilled and abandoning facilities installed or used prior to the effective date of the assignment or transfer.

§ 3129.52 If I acquire a lease by an assignment or transfer, what obligations do I agree to assume?

If you acquire a Federal lease interest by assignment or transfer, you agree to comply with the terms of the original lease during your lease tenure, notwithstanding any terms of your assignment or sublease. Also, you must plug and abandon all unplugged wells, reclaim the lease site, and remedy all environmental problems in existence and knowable to a purchaser exercising reasonable diligence at the time you receive the assignment or transfer. You are also liable for any obligations you agreed to assume from the transferor as part of the transfer agreement. You must also maintain an adequate bond to ensure performance of these responsibilities.

Denial/Disapproval

§ 3129.60 When will BLM deny or disapprove a transfer to me?

(a) BLM will deny a transfer to you if you—

(1) Do not furnish a bond if one is required;

(2) Are not qualified to hold Federal lease interests;

(3) Are in violation of the reclamation requirements or other standards established under Section 17(g) of the Mineral Leasing Act, as amended; or

(4) Do not correct a defect in your transfer document.

(b) BLM will return your transfer unapproved if—

(1) The lease is no longer in effect (i.e., the lease has terminated, expired, been canceled or relinquished);

(2) The transfer is a duplicate of one which has already been filed; or

(3) The interest has previously been conveyed.

§ 3129.61 Must I file assignments of rights to production with BLM?

BLM will not accept assignments of rights to production that do not transfer record title or operating rights interests.

§ 3129.62 May I file a lien against a lease for monies owed me?

BLM will not accept liens against Federal leases. If you attempt to file a lien with BLM, we will return it and retain any filing fee you submitted.

§ 3129.63 Must I file transfers of overriding royalty interest, net profit or production payments with BLM?

BLM will not accept transfers of overriding royalty interest, net profit, or production payments. If you file any of these transfers with BLM, we will return them and retain any filing fee you submitted.

PART 3180—[REMOVED]

4. Remove part 3180.

5. Revise the authority citation for part 3130 as follows:

PART 3130—[AMENDED]

Authority: 42 U.S.C. 6508 and 43 U.S.C. 1732(b).

PART 3130—[REDESIGNATED AS PART 3180]

6. Redesignate part 3130—Oil and Gas Leasing: National Petroleum Reserve, Alaska as part 3180.

7. Add new part 3130 to read as follows:

Part 3130—Oil and Gas Agreements

Subpart 3130—Reservoir Management

Well Spacing

Sec.

Subpart 3132—Oil and Gas Agreements: General

General

Subpart 3133—Communitization Agreements

Communitization Agreements

Subpart 3134—Subsurface Storage Agreements

Subsurface Storage Agreements

Subpart 3135—Development Contracts

Development Contracts

Authority: 30 U.S.C. 189 and 226.

Subpart 3130—Reservoir Management

Well Spacing

§ 3130.10 Who establishes well spacing for Federal and Indian minerals?

BLM establishes well spacing to protect Federal or Indian mineral interests, promote orderly development, conserve oil and gas, and assure that each Federal or Indian tract and its lessees have the opportunity to participate in reservoir development. State spacing orders do not necessarily apply to Federal or Indian minerals. However—

(a) For Federal minerals, after independent review and evaluation, BLM will either—

(1) Concur with spacing set by an appropriate State authority, if the proposed spacing protects Federal interests; or

(2) Issue its own spacing order for the Federal minerals;

(b) For Indian minerals, BLM must approve spacing, except for Osage leases. In the case of Oklahoma Indian leases subject to district court approval, spacing orders of the Oklahoma Corporation Commission apply when approved by the Secretary.

§ 3130.11 Must I follow a spacing program when I drill a well on Federal or Indian lands?

(a) You must locate your well to conform with well spacing established under § 3130.10.

(b) BLM may waive spacing requirements on Federal and Indian lands.

§ 3130.12 What setback applies to a well I drill on a Federal or Indian lease or agreement?

(a) If your lease is not in an agreement, you must locate your wells so that the bottom hole location is not closer than 200 feet from the boundary of the lease, or if subject to spacing, then 200 feet from the spacing unit boundary.

(b) If your lease is in an agreement, you must locate your well so that the bottom hole location is not closer than 200 feet from an agreement boundary.

(c) BLM may approve a different location requirement in your Application for Permit to Drill or Reenter.

§ 3130.13 Must I follow State producing restrictions?

State producing restrictions do not apply to Federal or Indian minerals. However, on Federal or Indian lands, after independent review and evaluation, BLM may decide to apply production restrictions set by an appropriate State authority if the proposed restrictions protect or conserve Federal or Indian interests.

Subpart 3132—Oil and Gas Agreements: General

General

§ 3132.10 What agreements require BLM approval?

These agreements require BLM approval if they include one or more Federal leases—

(a) A communitization agreement when you want to join tracts within a single drilling or spacing unit. (See subpart 3133.)

(b) A subsurface storage agreement if you want to use a formation to store gas or oil for later production and sale. (See subpart 3134.)

(c) A development contract with an agreed rate or amount of exploration and development for areas that you may not otherwise explore or to provide for large scale development. (See subpart 3135.)

(d) A drainage compensation agreement where wells on adjacent lands are draining leased or unleased minerals. (See subpart 3136.)

(e) An exploratory unit agreement, so that drilling and production may proceed in an entire area or structure in the most efficient and economical manner. (See subpart 3137.)

(f) An enhanced recovery unit agreement, to produce hydrocarbons that cannot be recovered by primary methods. (See subpart 3137.)

§ 3132.11 What is BLM's role in agreements on Indian lands?

The Bureau of Indian Affairs (BIA) approves agreements that include Indian minerals but not Federal minerals. See 25 CFR 211.28 and 212.28. BLM approval is not required. In agreements covering both Federal and Indian minerals, BLM approves the agreement following BIA approval of the commitment of the Indian mineral interests. BLM regulates operations under the terms of agreements that include Indian minerals.

§ 3132.12 What benefits will I or my lease receive when I enter into an approved agreement?

The benefits of your agreement include those items in the following list that are checked in the table in this section for your specific type of agreement—

(a) The acreage committed to agreements is exempt from statewide statutory acreage limitations;

(b) Development or production on one tract within the agreement is considered full performance of obligations to develop and produce on each individual tract committed to the agreement;

(c) Production in paying quantities from any part of the lands committed to an agreement will extend all leases committed to the agreement. Production is not required to extend Federal leases in subsurface storage agreements;

(d) During the term of an agreement, and while Federal leases remain committed to the agreement, you do not need to obtain rights-of-way for roads, facilities, or other surface uses, on those Federal leases committed to the agreement;

(e) You may choose a drilling location without regard to certain lease restrictions, such as lease boundaries within the unit or spacing offsets, unless BLM has adopted State spacing restrictions for that area;

(f) You may consolidate operations and reporting requirements;

(g) You have no obligation to protect your lease from drainage resulting from production on committed tracts; or

(h) When Federal lease(s) are eliminated from the agreement, you are eligible for lease extensions. (See subpart 3140.)

Type of agreement	a	b	c	d	e	f	g	h
Communitization Agreements		✔	✔	✔		✔	✔	✔
Subsurface Storage Agreements		✔	✔	✔	✔	✔		
Development Contracts	✔							
Drainage Compensation Agreements			✔					✔
Exploratory and Enhanced Recovery Unit Agreements	✔	✔	✔	✔	✔	✔	✔	✔

§ 3132.13 Must I obtain rights-of-ways for roads, facilities, or other surface uses, for Federal lands excluded from an agreement by contraction or termination?

You must obtain a right-of-way for those roads and facilities located on Federal surface located outside the agreement boundaries after contraction or termination of the agreement.

§ 3132.14 May I include non-Federal oil and gas interests in an agreement?

You may include Indian, State or private minerals in an agreement with Federal minerals.

Subpart 3133—Communitization Agreements

Communitization Agreements

§ 3133.10 When will BLM approve my request to communitize oil and gas leases?

BLM will approve your request for a communitization agreement (CA) if—

(a) Your Federal lease or a portion of your Federal lease cannot be independently developed and operated within a single well spacing unit that includes other leased or unleased tracts; and

(b) You demonstrate that communitization is in the public interest under § 3133.13.

§ 3133.11 How do I apply for a CA?

You must—

(a) Submit a request to communitize to BLM and in it—

(1) Describe the separate tracts comprising the drilling or spacing unit and formation(s) you intend to commit to the CA;

(2) Identify the well(s) you drilled or plan to drill within the communitized area;

(3) Certify that all owners of mineral rights (leased or unleased) and lease interests (record title and operating rights) have committed or consented to the commitment of their interest in writing;

(4) Name who will be responsible for operations under the CA;

(5) Specify the date you propose to make the CA effective; and

(6) Include a schedule allocating production for each committed tract on a surface acreage basis.

(b) If BLM requests it, submit—

(1) A copy of any operating agreements between working interest owners; or

(2) Evidence of commitment required in paragraph (a)(3) of this section.

§ 3133.12 When is a CA effective and what is its term?

(a) BLM must approve a CA. Its effective date is the date BLM specifies in the approval which will be the earlier of—

(1) The completion date of a well drilled to a communitized formation;

(2) The effective date of a State pooling order involving lands you are communitizing; or

(3) A date specified by all parties to the agreement.

(b) All CA approvals under paragraph (a) of this section are provisional and become final only after you meet the public interest requirement under § 3133.13.

(c) The term of a CA is two years from the effective date. The term of the CA extends as long as there is a paying well within the communitized area, or you meet the requirements under § 3140.10.

§ 3133.13 When does a CA meet the public interest requirement?

A CA meets the public interest requirement when you—

(a) Test a communitized formation; or

(b) BLM agrees that further drilling of a well you began under paragraph (a) of this section is unwarranted or impracticable.

§ 3133.14 When does a CA terminate?

(a) A CA automatically terminates at the end of its fixed term unless you qualify for extension under § 3133.12(c).

(b) During the two-year term of the CA, you may apply for a termination. The CA terminates when BLM approves your request.

§ 3133.15 What is the effect of a CA on my lease term?

(a) If there is production from a well on the CA on the date your lease would have expired, your lease term extends until the CA terminates.

(b) Drilling on the CA over the expiration date of your lease will extend your lease term. (See § 3140.10.)

(c) If the CA terminates and you met the public interest requirement under § 3133.13, your lease continues until the later of—

(1) The expiration date of your lease; or

(2) Two years after the date the CA terminates.

(d) If you fail to meet the public interest requirement, the CA is invalid from the beginning and any Federal lease that was a part of the agreement is ineligible for any benefits of communitization. Therefore, if the expiration date of your lease has passed, your lease is terminated.

§ 3133.16 Will BLM allow more than one operator for a CA?

BLM will allow more than one operator for a CA if an application defines—

(a) Responsibilities of respective persons, including obtaining approvals, reporting, paying royalties and conducting operations;

(b) Which CA operator(s) is obligated to provide bond coverage; and

(c) The consequences if one or more CA operator defaults.

§ 3133.17 What are the requirements to change the CA operator?

(a) BLM will accept a new CA operator when the new operator—

(1) Furnishes BLM with evidence of bonding;

(2) States in writing to BLM that it accepts its CA obligations; and

(3) Certifies that all owners of mineral rights (leased or unleased) and lease interests (record title and operating rights) have consented to the change in CA operator.

(b) The effective date of the change is the date BLM accepts the new CA operator.

§ 3133.18 Who will BLM notify about requirements for the CA?

BLM will notify the person you named as responsible for operations, and will communicate directly with this party for any requirements related to the CA.

Subpart 3134—Subsurface Storage Agreements

Subsurface Storage Agreements

§ 3134.10 Will BLM allow subsurface storage agreements covering Federally-owned lands?

BLM will allow you to use either leased or unleased Federally-owned lands for the subsurface storage of oil and gas, whether or not the oil or gas you intend to store is produced from Federally-owned lands, if you demonstrate that storage is necessary to—

(a) Avoid waste; or

(b) Promote conservation of natural resources.

§ 3134.11 How do I apply for a subsurface storage agreement?

(a) You must submit an application to BLM for a subsurface storage agreement that includes—

(1) The reason for forming a subsurface storage agreement;

(2) A description of the area you plan to include in the subsurface storage agreement;

(3) A description of the formation you plan to use for storage;

(4) Proposed storage fees or rentals. The fees or rentals must be based on the appraised value of the subsurface storage, injection and withdrawal volumes, and rental income or other income generated by the operator for letting or subletting the storage facilities;

(5) The payment of royalty for native oil or gas (oil or gas that exists in the formation before injection and that is produced when the stored oil or gas is withdrawn);

(6) A description of how often and under what circumstances you and BLM intend to renegotiate fees and payments;

(7) The proposed effective date and term of the subsurface storage agreement;

(8) Certification that all owners of mineral rights (leased or unleased) and lease interests (record title and operating rights) have committed or consented to the commitment of their interest in writing;

(9) An ownership schedule showing lease or land status;

(10) A schedule showing the participation factor for all parties to the subsurface storage agreement; and

(11) Supporting data (geologic maps showing the storage formation, reservoir data, etc.) demonstrating the capability of the reservoir for storage.

(b) BLM will negotiate the terms of a subsurface storage agreement with you for the subsurface storage of oil and gas.

(c) BLM may request additional documentation.

§ 3134.12 What must I pay for storage?

You must pay any combination of storage fees, rentals or royalties to which you and BLM agree. The royalty you pay on production of native oil and gas from leased lands will be the royalty required by the underlying lease(s).

Subpart 3135—Development Contracts

Development Contracts

§ 3135.10 What is a development contract?

A development contract is an agreement among two or more persons, at least one of whom must be a Federal lessee. Under the contract, the parties agree to jointly explore and develop a large area when the cost of discovery, development, production and transportation would not justify the development of the resources on a lease or unit basis. BLM may not approve a development contract if it is more appropriate to unitize.

§ 3135.11 When will BLM approve a development contract?

(a) BLM will approve a development contract on Federal lands for exploration in areas that are less likely than other areas to be explored due to geologic or other factors, or to provide for large scale development. These contracts must—

(1) Promote conservation of natural resources;

(2) Serve Federal interests; or

(3) Be for the public convenience or necessity.

(b) In return for a commitment from the operator to explore and develop these leases at an agreed rate or cost, BLM will exempt this acreage from chargeability.

§ 3135.12 What lands may I include in a development contract?

Development contracts must be of sufficient size to justify the costs of exploration, development, production, or transportation of oil or gas. Boundaries of one development contract may overlap the boundaries of another development contract. Producing fields are excluded from development contracts, unless you are—

(a) Testing a new technology that can be applied to discover resources which are otherwise hidden; or

(b) Conducting operations based on a new geologic model which is untested within or below all other production.

§ 3135.13 How do I apply for a development contract?

Submit to BLM an application for a development contract and in it include—

(a) A map showing the total area subject to the contract;

(b) A list of all owners of mineral rights (leased or unleased) and lease interests (record title and operating rights) for all areas and leases in the contract;

(c) Your plan for exploration with timetables and the financial investment you will dedicate to that exploration. BLM will accept carryover provisions allowing the expenditures made in excess of the contract commitment for any year to be applied against the contract in any succeeding year or years;

(d) The effective date and term of the contract; and

(e) Penalty provisions for failure to adhere to the contract.

§ 3135.14 How many Federal lessees must enter into a development contract?

At least one Federal lessee must enter into the contract and provisions must be made to address performance obligations should any party default or withdraw from the contract.

§ 3135.15 May BLM be a party to the development contract?

BLM approves the development contract but may not be a party to it.

§ 3135.16 May existing development contracts be renegotiated?

Existing development contracts may be renegotiated if conditions warrant a change.

§ 3135.17 What must I do to satisfy my obligations under a development contract?

You must—

(a) Commit promised financial resources toward the exploration and development of an area;

(b) Explore the area in your exploration plan; and

(c) Provide BLM annually with information obtained from exploration and development during the preceding contract year.

§ 3135.18 What information in my proposal will be held confidentially?

A development contract proposal is public information as of the date you submit your application. However, your work and dollar commitments are considered financial information and BLM will hold them confidentially to the extent authorized by the Freedom of Information Act, as implemented by 43 CFR part 2.

§ 3135.19 When does a development contract terminate?

(a) A development contract terminates—

(1) Under the terms of the agreement; or

(2) At the end of any contract year, if the parties have not fulfilled their contract commitments, through work performed in that year together with carryover credits from prior years;

(b) Termination of a development contract triggers the provisions of § 3105.28(a)(1), which requires you to reduce your acreage holdings to the prescribed limitations within 90 calendar days after termination of the development contract.

Subpart 3136—Drainage Compensation Agreements

Drainage Compensation Agreements

§ 3136.10 What is a drainage compensation agreement?

A drainage compensation agreement is an agreement between BLM and any other person to pay BLM for oil and gas drained. If the—

(a) Federal oil or gas is drained from a Federal lease, the—

(1) Holders of record title or operating rights must be parties to the agreement;

(2) Lease term is extended for the period during which payments are received plus one year; and

(3) Payment to the United States cannot be less than what the lessee would owe as compensatory royalty under § [to be specified in the final rule].

(b) Oil and gas is drained from an unleased Federal tract—

(1) BLM and the person causing the drainage are the only parties to the agreement; and

(2) The payment to the United States for drainage will be negotiated between the parties; or

(c) BLM orders you to pay compensatory royalty under your lease terms, and you pay in accordance with that order, or if BLM makes any other determination that you owe compensatory royalty under your lease, your payment constitutes a drainage compensation agreement for the purposes of paragraph (a) of this section.

§ 3136.11 How are the terms of a drainage compensation agreement determined?

(a) BLM will negotiate the agreement with the other parties. The terms must include—

(1) A statement that identifies the well that is causing drainage;

(2) A map and legal description of the lands to be included; and

(3) The terms for compensation the United States will receive for the drainage.

(b) If the oil and gas is drained from a Federal lease, all record title owners and operating rights owners must consent to the agreement.

Subpart 3137—Unit Agreements

Application

§ 3137.10 What agreements does this subpart cover?

This subpart covers exploratory and enhanced recovery unit agreements.

(a) An exploratory unit agreement is a BLM-approved agreement—

(1) Among interest owners of Federal leases and owners of non-Federal mineral interests;

(2) That provides for orderly and cooperative development of all or part of an oil or gas pool, field or like area;

(3) That allocates production from wells in participating areas to all tracts in the participating area without regard to well location; and

(4) That provides Federal lessees with the benefits listed in § 3132.12.

(b) An enhanced recovery unit is a BLM approved agreement that—

(1) Has the same characteristics as paragraphs (a)(1), (a)(3) and (a)(4) of this section; and

(2) Provides for the introduction of an artificial drive or displacement mechanism into a reservoir underlying several tracts to produce hydrocarbons that cannot be recovered by primary methods.

§ 3137.11 How are the terms of an exploratory unit agreement determined?

BLM will negotiate with you on all terms of the proposed unit agreement before you submit an application. BLM will accept any unit agreement format as long as it protects the public interest and conforms with all applicable laws and regulations. BLM will determine whether the agreement protects the public interest and includes only terms permitted by this subpart.

§ 3137.12 How are the terms of an enhanced recovery unit agreement determined?

BLM will participate in the negotiation of terms in the proposed unit agreement before you submit an application. BLM will accept any unit agreement format as long as it protects the public interest and conforms with all applicable laws and regulations. Including BLM as part of the group you form to negotiate the participation and allocation formulae will expedite the approval process.

§ 3137.13 What must I include in a unitization application?

(a) Submit three copies of the unitization application and in it include—

(1) The proposed unit agreement;

(2) A map showing the unit area and committed leases and other tracts;

(3) A list of committed leases and other tracts;

(4) An allocation schedule for—

(i) A proposed exploratory unit that has existing production; or

(ii) A proposed enhanced recovery unit that identifies the basis for the allocation.

(b) You must also include a description of the lands you plan to include in the unit agreement. When you describe the lands, follow the principles of § 3121.20.

(c) Do not submit any other material with the application unless BLM requests it.

§ 3137.14 As the unit operator, what must I certify in my unitization application?

In the unitization application, as the unit operator you must certify—

(a) That you invited all owners of mineral rights (leased or unleased) and lease interests (record title and operating rights) for the area described in the application to join the unit;

(b) That there are sufficient leases or other tracts committed to the unit agreement for reasonable control of the unit area;

(c) The commitment status of all leases and other tracts within the area proposed for unitization; and

(d) That you accept unit obligations under § 3137.81.

§ 3137.15 As the unit operator, must I provide BLM with evidence of commitment status in my unitization application?

Do not submit documentation of commitment status with your unitization application. However, you or your designated agent must maintain documentation of results of invitations to join the unit. You must make the documentation available to BLM when we request it. The Bureau of Indian Affairs may require documentation of commitment status of Indian lands.

§ 3137.16 When is a unit agreement effective?

(a) BLM will provisionally approve exploratory and enhanced recovery unit agreements effective the date your application is complete.

(b) Final BLM approval is effective retroactive to the date of provisional approval, after you have fulfilled the public interest requirements in § 3137.51 or § 3137.53, as appropriate. If you do not meet the requirements of these sections, your unit agreement is not approved.

§ 3137.17 How will the parties to the unit know if BLM provisionally approves the unit agreement?

BLM will notify the unit operator in writing when we approve or disapprove the proposed unit agreement. The unit operator must notify all parties to the unit agreement.

§ 3137.18 Why would BLM reject a unitization application?

BLM will reject a unitization application that does not meet all of the requirements of this subpart.

Mandatory Provisions

§ 3137.20 What must an exploratory unit agreement include?

(a) An exploratory unit agreement must define the—

(1) Unit area;

(2) Initial and continuing development obligations; and

(3) Productivity criteria and participating areas.

(b) The exploratory unit agreement must include—

(1) A provision which grants BLM the ability to set or modify the quantity, rate and location of development and production; and

(2) Modifications to any or all terms and conditions of the proposed unit agreement to which the parties agreed during negotiations with BLM.

§ 3137.21 What must an enhanced recovery unit agreement include?

(a) The area in an enhanced recovery unit agreement must be fully developed at the time you propose the unit agreement. Fully developed means that the proposed unit area has been adequately drilled to reasonably delineate the boundaries of the reservoir(s). Therefore, an enhanced recovery unit agreement should not include terms related to initial and continuing development obligations and productivity criteria and participating area size. An enhanced recovery unit agreement must define—

(1) The unit area;

(2) Enhancement obligations;

(3) A formula allocating production throughout the entire unit area that may consider factors other than surface acreage; and

(4) The producing intervals covered.

(b) The enhanced recovery unit must include—

(1) A provision which grants BLM the ability to set or modify the quantity, rate and location of development and production; and

(2) Modifications to any or all terms and conditions of the proposed unit

agreement to which the parties agreed during negotiations with BLM.

§ 3137.22 Will BLM accept or approve other terms?

A unit agreement may include only terms identified in § 3137.20, § 3137.21 or § 3137.30. BLM will not approve an agreement including any other terms or provisions. Provisions not included in this subpart may be set out under separate agreements by the affected parties.

Optional Provisions

§ 3137.30 Are there any optional provisions that I may include in a unit agreement?

(a) Except as provided in paragraphs (b) and (c) of this section, the agreement covers all producing intervals, requires unanimous consent for modification, and allows for only one operator at a time.

(b) Your agreement may include provisions for multiple unit operators, limiting coverage to certain producing intervals, and authorizing modifications not requiring approval of all of the original parties to the unit agreement. BLM will approve these optional topics if they promote additional development or enhance production potential.

(c) You must specify the producing interval(s) covered by an enhanced recovery unit.

§ 3137.31 What are the requirements for multiple unit operators?

BLM permits multiple unit operators for exploratory units only if the unit agreement defines—

(a) The conditions under which additional unit operators are acceptable;

(b) The responsibilities of each operator, including obtaining approvals, reporting, paying royalties and conducting operations;

(c) The bonds covering the operations of each operator;

(d) The consequences if one or more unit operators default; and

(e) Which unit operator is responsible for unit obligations not specifically assigned in the unit agreement.

§ 3137.32 How can parties modify their unit agreement?

(a) The parties may modify their unit agreement if—

(1) All of the original parties to the unit agreement (or their successors) agree to the modification; or

(2) They meet the requirements of the modification provision in the unit agreement which specifies who is authorized to modify the unit agreement. That provision must identify which parties, and what percentage of each class of parties, must consent to each type of modification.

(b) The operator must certify that the necessary parties have agreed to the change.

(c) BLM must approve any proposed modifications to the unit agreement. BLM's approval is effective retroactive to the date your application for modification was complete. However, BLM may approve a different effective date if you request it and provide acceptable justification.

§ 3137.33 What must I submit to BLM if I propose to modify a unit area or change the commitment status of a lease?

If you propose to modify the unit area or change the commitment status of any lease under § 3137.32, you must submit to BLM a revised—

(a) Map showing the unit area and committed leases;

(b) List of committed leases; and

(c) Allocation schedule, including any change in the basis for allocation.

§ 3137.34 What effect do other BLM oil and gas agreements have on the unit agreement?

(a) No other BLM oil and gas agreement modifies any of the inconsistent terms and conditions of the unit agreement or relieves the unit operator of any right or obligation established under the unit agreement.

(b) In case of any inconsistency or conflict between the unit agreement and any other agreement, the unit agreement governs.

Size and Shape

§ 3137.40 What are the size and configuration requirements for a unit area?

(a) The unit area must consist of tracts that are contiguous at least at one point.

(b) Areas of noncommitted tracts totally within the exterior boundary of the unit (windows) are allowed.

(c) BLM may limit the size and shape of the unit considering the type, amount, rate, and location of the proposed development.

Development

§ 3137.50 What initial unit obligations must I define in an exploratory unit agreement?

In an exploratory unit agreement you must define—

(a) The number of wells necessary to determine the existence of oil and gas resources in the area of the proposed unit;

(b) A primary target(s) for each well to a depth necessary to penetrate anticipated producing intervals; and

(c) The time between the drilling of necessary wells to interpret drilling results and comply with lease restrictions.

§ 3137.51 What must I do to meet initial unit obligations and fulfill the public interest requirement in an exploratory unit?

On or before the time specified in your exploratory unit agreement, you must—

(a) Diligently drill the required well(s) to the primary target(s); or

(b) Have commenced drilling to a target and BLM agrees that further drilling of the well(s) you began under paragraph (a) of this section, or future well(s), is unwarranted or impracticable.

§ 3137.52 What enhancement obligations must I define in an enhanced recovery unit agreement?

Your enhanced recovery unit agreement must define as enhancement obligations—

(a) The amount and type of enhanced recovery operations; and

(b) The timeframe for completing the operations in paragraph (a) of this section.

§ 3137.53 What must I do to meet enhancement obligations and fulfill the public interest requirement in an enhanced recovery unit?

On or before the time specified in your enhanced recovery unit agreement to meet the enhancement obligations and fulfill the public interest requirement, you must—

(a) Diligently complete the work you defined as your enhancement obligation in § 3137.52; or

(b) Demonstrate to BLM's satisfaction that—

(1) Enhanced recovery operations have increased reservoir performance; or

(2) Further enhanced recovery operations are unwarranted, impracticable or uneconomical.

§ 3137.54 What happens if I do not meet initial unit obligations in an exploratory unit or enhancement obligations in an enhanced recovery unit?

If you do not meet the requirements of § 3137.51 or § 3137.53, the unit agreement is invalid from the beginning, will not receive final approval, and any Federal lease that was a part of the unit agreement is ineligible for any benefits from unitization described in § 3132.12. Therefore, for example, if the expiration date of your lease has passed, your lease is terminated.

§ 3137.55 What are continuing development obligations?

Continuing development obligations for an exploratory unit are a program of development or operations you must conduct—

(a) That exceeds the rate of development and operation that would have occurred in the area without unitization; and

(b) Which represents an investment commensurate with the size of the area of the unit agreement.

§ 3137.56 How must I define continuing development obligations in the unit agreement?

(a) Once you meet initial unit obligations prescribed in this subpart, you must perform additional development or operations (see § 3137.80) in the amount and frequency specified in your unit agreement. BLM will not consider work you did before unitization as meeting continuing development obligations.

(b) You must define in the agreement the time between when you start your first development or operations to the start of the next development or operation. You must define the same time-frames for subsequent development or operations.

§ 3137.57 Must I perform additional development outside established participating areas to fulfill continuing development obligations?

Your additional development may be either inside or outside of a participating area to fulfill your continuing development obligations, depending on the terms of the unit agreement.

§ 3137.58 What happens if I do not meet a continuing development obligation?

(a) The unit contracts when you do not meet a continuing development obligation. Only established participating areas, whether they are still productive or not, remain in the unit. BLM will eliminate all portions of the unit outside participating areas at the time of contraction. Contraction is effective the first day of the month in which the unit agreement required the operations to begin.

(b) BLM may suspend or extend a development obligation under §§ 3137.90 and 3137.91. BLM may also modify your development obligations under § 3137.32.

§ 3137.59 What must I submit to BLM after I meet a continuing development obligation?

Within 60 calendar days after you meet a continuing development obligation, you must certify to BLM that you met the obligation. BLM may require you to supply documentation supporting your certification. If you establish production in a well that does not meet the productivity criteria set out in the unit agreement, you must also certify to BLM that you will operate, produce and report the well on a lease basis, rather than as part of the unit.

Productivity Criteria and Participating Area

§ 3137.60 What are productivity criteria?

(a) Productivity criteria are characteristics of a well in an exploratory unit that warrant including a defined area surrounding the well in a participating area. The unit agreement must define these criteria for each separate producing interval. You must be able to determine whether you met the criteria when the well has been drilled and well testing completed.

(b) To meet the productivity criteria the well must—

(1) Indicate future production potential sufficient to pay for the costs of drilling, completing and operating the well on a unit basis; and

(2) Be physically ready to produce unitized substances.

§ 3137.61 What is a participating area and what is its function?

(a) A participating area is the area which shares in the production of unitized substances. Allocation to each committed lease or tract within the participating area is in the same proportion as that lease's surface acreage within the participating area.

(b) The approximate size and shape of all participating areas and revisions must be defined in the unit agreement.

§ 3137.62 What establishes a participating area?

The first well you drill after unitization that meets the productivity criteria establishes an initial participating area. When you establish that initial participating area, lands which contain previously existing wells that meet the productivity criteria will, in accordance with § 3137.63,—

(a) Be added to that initial participating area as a revision; or

(b) Become a separate participating area.

§ 3137.63 What happens to the participating area when new wells are drilled that meet the productivity criteria?

If a new well is—

(a) Inside a participating area boundary and completed in the same producing interval, the participating area will remain the same;

(b) Outside a participating area boundary and completed in the same producing interval as the well in an existing participating area, the participating area expands to include the new area; or

(c) In a different producing interval, inside or outside a participating area, a new participating area is established for the well. Participating areas for different producing intervals can overlap each other.

§ 3137.64 What must I submit to BLM when I establish a participating area or add to an existing participating area?

(a) When you establish a participating area under § 3137.62 or add to an existing participating area under § 3137.63, within 60 calendar days after you establish unitized production, you must submit to BLM—

(1) Certification that you established unitized production;

(2) A map showing the participating area and total acreage;

(3) A schedule showing the production allocation for each tract participating in production; and

(4) Any other information BLM may require.

(b) BLM will review your submission and determine if you have met the unit agreement terms for establishing a participating area.

§ 3137.65 Must additions to an existing participating area be the same size as the initial participating area?

Additions to an existing participating area involving the same producing interval must be approximately the same size as the initial participating area for that producing interval.

§ 3137.66 Must participating areas for different producing intervals be the same size?

Participating areas (both initial and additions) for different producing intervals may be different sizes (see § 3137.61) and may overlay or underlie other participating areas.

§ 3137.67 How do I allocate participating area production when there are unleased Federal lands in the participating area?

(a) For royalty purposes only, you must allocate production to unleased Federal lands in the participating area as if the acreage were committed to the participating area under § 3137.61. You must pay royalty in accordance with § 3137.111.

(b) For purposes other than royalty, apply § 3137.61, excluding unleased Federal lands.

§ 3137.68 What if unleased Federal lands are leased after the effective date of the unit agreement?

You must admit Federal tracts leased after the effective date of the unit agreement into the agreement on the date the lease is effective.

§ 3137.69 What happens when a well outside any participating area does not meet the productivity criteria?

If a well outside any of the established participating areas does not meet the productivity criteria, all operations on that well are non-unit operations. No participating area is expanded and you must notify BLM that non-unit operations have occurred. You must conduct non-unit operations under the terms of the underlying lease, CA, or drainage compensation agreement.

§ 3137.70 How does allocation of production occur from wells that do not meet the productivity criteria?

(a) If a well that does not meet the productivity criteria was drilled before the unit was formed, the production is allocated on a lease, communitization or drainage compensation agreement basis. Production from the well is not considered unitized substances and you must pay and report the royalties from any such well as specified in the underlying lease, CA or drainage compensation agreement.

(b) If a well was drilled after the unit was formed and the well is completed within an existing participating area, the production is added to and becomes a part of that participating area production. This paragraph applies whether or not the well meets the productivity criteria.

(c) If a well that does not meet the productivity criteria is outside a participating area, the production is allocated the same as under paragraph (a).

§ 3137.71 Who must operate wells that do not meet the productivity criteria?

(a) If a well that does not meet the productivity criteria was drilled before the unit was formed, the operator of the well at the time the unit was formed continues as operator. The unit operator is not required to operate the wells, but it may do so.

(b) As unit operator, you must operate wells drilled after unit formation that do not meet the established productivity criteria, until you change operators for that well.

§ 3137.72 May a well BLM previously determined to be a non-unit well establish or revise a participating area?

If you, as the unit operator, complete sufficient work so that a well BLM previously determined to be a non-unit well now meets the productivity criteria and you demonstrate this to BLM, you must then revise or establish a new participating area. When this occurs, you must notify BLM (see § 3137.64).

§ 3137.73 What is the effective date of an initial participating area or revision to an existing participating area?

The effective date of a participating area or its revision is the first day of the month in which a well is completed that causes the participating area to be formed or revised, but no earlier than the effective date of the unit.

§ 3137.74 How long does a participating area remain in effect?

(a) Until the unit contracts under § 3137.58, all participating areas remain in effect.

(b) After unit contraction, a participating area remains in effect until BLM notifies you that there is insufficient production to meet operating costs of the participating area. However, your participating area will not terminate if, after you receive notice, you demonstrate to BLM that—

(1) Operations to restore production or establish new production are—

(i) In progress within 60 calendar days of BLM notification;

(ii) Being diligently carried out to completion; and

(iii) Successful in restoring or establishing production sufficient to meet operating costs; or

(2) One or more wells within the participating area are capable of producing in quantities sufficient to meet operating costs.

Unit Operations

§ 3137.80 What is unit development or operations?

Any of the following are unit development or operations—

(a) Drilling additional wells that test the primary target or enhance production;

(b) Drilling additional wells that establish production of unitized substances;

(c) Well recompletions or operations that establish new unitized production or enhance existing production;

(d) Drilling existing wells to a deeper target; or

(e) Drilling, completing or recompleting wells that contribute to the productivity of the unit.

§ 3137.81 As unit operator, what are my obligations?

(a) As a unit operator, you must comply with the terms and conditions of the unit agreement, Federal laws and regulations, applicable lease terms and stipulations not expressly waived by BLM, and BLM orders.

(b) Once a unit is formed, you are responsible for all wells drilled on lands committed to the unit unless—

(1) BLM approves multiple unit operators under § 3137.31 and another unit operator drills that well; or

(2) A well does not meet the productivity criteria and is not operated as a unit well (see § 3137.71).

§ 3137.82 What must I file with BLM to change the unit operator?

To change unit operators, the new unit operator must file—

(a) Statements that—

(1) It accepts unit obligations; and

(2) The percentage of interest owners required by the agreement consented to a change of unit operator; and

(b) Evidence of acceptable bonding under subpart 3107.

§ 3137.83 When does my liability as unit operator end?

You are responsible for all duties and obligations of the unit agreement until BLM approves a new unit operator. The change of the unit operator does not release you from any liability for noncompliance with obligations that accrued before the effective date of the change.

§ 3137.84 As a unit operator, what must I do to prevent or compensate for drainage?

(a) You must take measures to prevent, or compensate for, drainage of oil and gas from unitized land by wells—

(1) On tracts not committed to the unit; or

(2) Not operated as unit wells.

(b) Acceptable measures to prevent, or compensate for, drainage include, but are not limited to, drilling a protective well, entering into a CA, or paying drainage compensation.

Suspensions and Extensions of Development

§ 3137.90 As the unit operator, what happens if I cannot meet unit requirements for reasons outside of my control?

BLM will suspend development obligations under the unit agreement if you are prevented from complying with unit requirements, despite the exercise of due care and diligence. BLM may approve suspensions of drilling operations for all unitized lands or specific lands within the unit.

§ 3137.91 Will BLM grant an extension of time to meet the initial or continuing development obligations?

Under limited circumstances, such as inclement weather, rig unavailability, or litigation, BLM may grant reasonable extensions of time to meet the development obligations of your unit agreement. This extension does not toll the running of any individual lease term. See subpart 3141 for Federal lease suspensions.

Unit Termination

§ 3137.100 Under what circumstances will BLM approve a voluntary unit termination?

BLM may approve the voluntary termination of the unit at any time—

(a) Before the unit operator discovers production sufficient to establish a participating area; and

(b) The unit operator certifies that at least 75 percent of the operating rights owners in the unit agreement, on a surface acreage basis, agree to the termination.

§ 3137.101 What if I do not meet a continuing development obligation before any participating area has been established in the unit?

If you do not meet a continuing development obligation before any participating area is established, the unit terminates automatically. Termination is effective the day after you failed to meet a continuing development obligation.

§ 3137.102 After participating areas are established, when does the unit terminate?

After participating areas are established, the unit terminates when the last participating area of the unit terminates.

Royalties

§ 3137.110 How is unit production from an exploratory unit agreement allocated?

Allocate production within participating areas of an exploratory unit agreement in proportion to each tract's share of the surface acreage within the participating area.

§ 3137.111 What is the royalty rate for unleased Federal lands in a participating area?

Whenever a participating area or enhanced recovery unit includes unleased Federal lands, you must pay a royalty to the United States based on a royalty rate not less than the highest royalty rate for any Federal lease committed to the unit. Payment accrues from the later of the dates—

(a) Committed leases in the participating area or enhanced recovery receive a production allocation; or

(b) The Federal lands become unleased.

§ 3137.112 What is average daily production for a Federal lease committed to a unit where the royalty rate depends on average daily production?

For a Federal lease on which the royalty rate depends on the average daily production per well (for example, sliding-scale or step-scale leases), the unit operator must determine average production according to subpart 3106, as though the participating area, or in the case of an enhanced recovery unit, the entire unit area, were a single Federal lease.

§ 3137.113 May the United States take an in-kind royalty share of unit production?

(a) For a Federal lease committed to a unit agreement, the United States may take its royalty in-kind at its election.

(b) The operator of the well from which the royalty is taken in-kind must store and make deliveries of such production according to applicable laws, lease terms and regulations.

Leases and Contracts Conformed and Extended

§ 3137.120 As the unit operator, must I develop and operate on every tract in the unit to comply with the development obligations of the underlying leases, contracts or agreements (other than unit agreements)?

When BLM approves a unit agreement, the terms, conditions and provisions of all committed Federal leases, subleases and other contracts are amended to the extent necessary to conform to the provisions of the unit agreement until the lease no longer is committed to the unit. In all other respects they remain in full force and effect. If you fully perform initial unit and continuing development obligations, you have fully performed the development obligations of the committed leases.

Change in Ownership

§ 3137.130 As a transferee of an interest in a unitized Federal lease, am I subject to the terms and conditions of the unit agreement?

Any interest in a Federal lease committed to a unit agreement that you acquire by transfer is subject to the terms and conditions of the unit agreement.

PART 3140—[AMENDED]

8. Revise the authority citation for part 3140 to read as follows:

Authority: 30 U.S.C. 189, 351–359 and 43 U.S.C. 1732(b).

PART 3140—[REDESIGNATED as 3170]

9. Redesignate part 3140—Combined Hydrocarbon Leasing as part 3170.

10. Add new part 3140 to read as follows:

PART 3140—OIL AND GAS LEASE ADMINISTRATION

Subpart 3140—Extensions

Lease Extensions and Drilling Extensions

Sec.

Continuation by Production

Unit or Communitization Agreement Production

Unit Segregations

Elimination from Agreements

Leases Segregated by Assignment

Payment of Compensatory Royalty

Leases Used for Surface Storage of Oil or Gas

Subpart 3141—Suspensions

Suspensions of Operations For Production

Authority: 16 U.S.C. 3150(b) and 668dd; 30 U.S.C. 189, 306 and 359; 43 U.S.C. 1733, 1734 and 1740; and 10 U.S.C.A. 7439.

Subpart 3140—Extensions

Lease Extensions and Drilling Extensions

§ 3140.10 Will BLM extend my lease if I drill before the lease expires?

(a) BLM will extend the primary term of your lease for two years if you are diligently conducting actual drilling operations described in § 3140.11 on the last day of the primary lease term and continue thereafter to a depth sufficient to penetrate at least one formation recognized in the area as potentially able to produce oil or gas. To meet this obligation if you are reentering a well, you must either drill it to a depth sufficient to penetrate at least one new and deeper formation recognized in the area as potentially able to produce, or use horizontal drilling to test any formation that is recognized as having a potential for oil and gas production.

(b) If BLM determines that you were unable to conduct actual drilling operations on the last day of your primary lease term, due to severe weather or other justifiable cause, your lease is extended under paragraph (a) of this section if you promptly resume and diligently continue your drilling operations to completion when the reason for the drilling cessation no longer exists.

(c) This section applies to leases committed to a unit or communitization agreement if you conduct actual drilling operations in the agreement area.

§ 3140.11 What are actual drilling operations?

Actual drilling operations are operations you conduct that are similar to those that anyone looking for oil or gas could be expected to conduct in that particular area, given the existing knowledge of geologic and other facts pertinent to drilling for oil and gas. The term includes the testing, completing, or equipping of the drill hole (casing, tubing, packers, pumps, etc.) so that it is capable of producing hydrocarbons.

Continuation by Production

§ 3140.20 Does my lease continue in effect if I establish production before the primary term expires?

If you establish production in paying quantities before the end of the primary lease term, your lease continues in effect for as long as you produce oil or gas in paying quantities.

§ 3140.21 If my lease is in its extended term and I stop producing, will it terminate?

Except as provided in § 3140.22, if your lease is in its extended term, it terminates when you stop producing unless, within 60 calendar days after you stop production, you restart production or you conduct reworking or commence drilling operations with reasonable diligence and restore the lease to production.

§ 3140.22 If my lease is in its extended term and capable of production, and is shut-in, will it terminate?

If your lease is in its extended term and is capable of production, but it is shut-in, your lease will not automatically terminate when you stop producing. However, if BLM notifies you in writing by registered or certified mail that you must resume production, you have 60 calendar days from receipt of the notification to resume production or your lease will terminate.

Unit or Communitization Agreement Production

§ 3140.30 Does my lease continue beyond its primary term if it is committed to a CA or unit agreement under which production in paying quantities has been established?

(a) If your lease is committed to a CA or unit agreement, your lease continues beyond its primary term by production established within the agreement area if—

(1) The CA or unit agreement contains a general provision for allocation of oil or gas; and

(2) You established production in paying quantities under the agreement before your lease expired.

(b) This section also applies to 20-year leases.

Unit Segregations

§ 3140.40 What is the status of my lease if only part of it is committed to a unit agreement?

BLM will segregate any lease committed to a unit agreement if part of the lands in the lease are outside the area covered by the agreement. BLM will segregate your lease into two leases, one covering lands committed to the agreement and the other covering lands outside the unit area.

§ 3140.41 What is the effective date of the segregation?

The effective date of lease segregation is the effective date of the unit agreement to which part of the lease is committed.

§ 3140.42 If my lease is segregated into two leases, is my segregated lease extended?

If your lease is segregated under § 3140.40, BLM will grant a two-year lease term extension for the lands outside the unit, if the original lease is due to expire less than two years from the effective date of segregation. The two-year extension begins with the effective date of segregation.

Elimination From Agreements

§ 3140.50 Will BLM extend my lease if it is eliminated from an agreement?

If your lease is eliminated from a unit agreement or CA, and if the term remaining in your lease is less than two years, BLM will grant a two-year lease term extension from the effective date of—

(a) Termination of an agreement to which your lease was committed; or

(b) Elimination of your lease from a unit agreement when it contracts.

Leases Segregated by Assignment

§ 3140.60 What is the term of my lease if it is segregated into two or more leases by a partial transfer?

(a) If a lease in its primary term is segregated into two or more leases as a result of a partial transfer of record title, the term of the original lease and the newly-designated leases is the term of the original lease, except as provided in paragraph (b) of this section.

(b) If BLM determines after segregation that oil and gas is discovered in paying quantities on either the original lease or the newly-designated leases, the term of the leases in paragraph (a) of this section cannot be less than two years after the date of BLM's determination.

(c) If a lease issued—

(1) After September 2, 1960, in its extended term under § 3140.20 is segregated into two or more leases as a result of a partial transfer of record title, the original lease and any newly-designated leases not held by production on the date of transfer are extended for two years after that date; or

(2) On or before September 2, 1960, is in its extended term for any reason, paragraph (c)(1) of this section applies.

(d) If BLM extends your lease and you establish production, your lease will continue so long as it is capable of production in paying quantities.

Payment of Compensatory Royalty

§ 3140.70 Will BLM extend my lease if I am paying compensatory royalty on the lease?

BLM will extend your lease for the period that BLM receives compensatory royalty under § 3136.10. Your lease also will be extended for one year from the date BLM determines you are no longer required to pay compensatory royalty.

Leases Used for Subsurface Storage of Oil or Gas

§ 3140.80 Will BLM extend my lease if I am using it to store oil or gas?

BLM will extend your lease during the period of storage under an approved subsurface oil or gas storage agreement. You must continue to pay rental for your lease during the extended period.

Subpart 3141—Suspensions

Suspensions of Operations or Production

§ 3141.10 Under what circumstances will BLM suspend operations or suspend production on my lease under 30 U.S.C. 226(i)?

(a) BLM will suspend operations or suspend production for your lease under 30 U.S.C. 226(i) if, despite the exercise of due care and diligence, you are prevented from operating or producing your lease due to circumstances beyond your control. BLM either may direct a suspension under this section or approve your request for a suspension.

(b) If BLM issues a suspension under paragraph (a) of this section, the suspension stops the running of your lease term and thereby extends it by the length of time the suspension is in effect. However, while the suspension is in effect, you are not relieved of your obligation to pay rent, royalty, or minimum royalty.

§ 3141.11 Under what circumstances will BLM approve my request under 30 U.S.C. 209 for a suspension of operations and production for my lease?

BLM will suspend operations and production for your lease under 30 U.S.C. 209, if BLM determines that it is in the interest of conservation. BLM either may direct a suspension under this section or approve your request for a suspension. If BLM suspends operations and production under this section, the suspension—

(a) Stops the running of your lease term and thereby extends it by the length of time the suspension is in effect;

(b) Relieves you of your obligation to pay rent or minimum royalty during the suspension; and

(c) Does not allow you to operate on, produce from, or have any other beneficial use of your lease during the suspension.

§ 3141.12 How do I apply for a suspension?

(a) To apply for a suspension, you must submit to BLM an application that—

(1) States what type of suspension you are applying for (whether you are applying for a suspension under § 3141.10 or § 3141.11); and

(2) Identifies the circumstances that prevent you from operating or producing your lease that are beyond your reasonable control or that justify a suspension in the interest of conservation.

(b) Your suspension application must be signed by—

(1) All operating rights owners; or

(2) The operator on behalf of the operating rights owners of the leases committed to an approved agreement.

(c) You must submit your application to BLM before your lease expires.

(d) Your application must be for your entire lease.

(e) If your suspension application relates to your ability to timely drill a new well or reenter an existing well, BLM will approve your application only if you submitted an Application for Permit to Drill or Reenter or Notice of Staking at least 31 calendar days before the lease expires.

§ 3141.13 When is a suspension effective?

A suspension is effective—

(a) The date BLM specifies in a directed suspension; or

(b) The first day of the month in which you file an application for suspension, unless BLM specifies a different date on the approval document.

§ 3141.14 When is my next rental or minimum royalty payment due after the effective date of my suspension of operations and production?

After BLM approves your suspension of operations and production under § 3141.11, the date your next rental or minimum royalty payment is due is

extended by the length of the suspension.

§ 3141.15 When will my suspension terminate?

Your suspension under § 3141.10 or § 3141.11 terminates the earlier of —

(a) The first day of the month in which you begin to produce on your lease in the case of a suspension of production;

(b) The first day of the month in which actual operations begin in the case of a suspension of operations; or

(c) A date BLM specifies.

§ 3141.16 What happens when my suspension terminates?

(a) Your lease term is extended by the length of time the suspension was in effect.

(b) Your obligation to pay rental, royalty or minimum royalty resumes the first day the termination of the suspension is effective.

Suspension or Waiver of Lease Rights

§ 3141.20 When may a suspension of my lease rights occur?

BLM may suspend your lease during a legal proceeding to cancel your lease or to require forfeiture or divestiture of your interests as a result of a violation of any of the provisions of the regulations in this title or the lease terms. This suspension may occur when BLM directs it or when you request it.

§ 3141.21 How do I request a suspension of lease rights?

(a) When you request a suspension of lease rights, you must file in the BLM State Office with jurisdiction over the lands, a waiver of your rights to—

(1) Drill under the lease; and

(2) Transfer your lease interests.

(b) All interest owners for a lease must sign the waiver request.

§ 3141.22 How will suspension under this subpart affect my lease?

A suspension under this subpart—

(a) Stops the running of your lease term. If your lease is not canceled, your lease term is extended by the length of the suspension;

(b) Suspends your obligation to pay rental or minimum royalties beginning the date the suspension is effective. The date your next rental or minimum royalty payment is due is extended by the length of the suspension;

(c) Prevents you from conducting any operations on the lease; and

(d) Prevents you from transferring your interest.

§ 3141.23 When will my lease suspension end?

The suspension of your lease under this subpart ends the first day of the month following—

(a) The final decision in the legal proceeding described in § 3141.20; or

(b) When BLM revokes your suspension.

Subpart 3142—Terminations and Reinstatements

Lease Terminations and Reinstatements

§ 3142.10 What happens if the Minerals Management Service (MMS) does not receive my advance annual rental payment on or before the anniversary date of my lease?

If MMS does not receive your rental payment on or before the anniversary date of your lease, your lease automatically terminates by operation of law unless the lease is committed to a producing unit agreement.

§ 3142.11 Will my lease terminate if my rental payment is deficient?

(a) Your lease will terminate if your rental payment to MMS is deficient unless—

(1) You paid your rental on or before its anniversary date, but the amount you paid is deficient by not more than 10 percent or $200, whichever is less;

(2) Your deficient payment was due to an incorrect billing statement; or

(3) Your deficient payment was due to a decision from BLM that contained an incorrect acreage or payment figure.

(b) You must submit the full balance due to MMS within 15 business days from the date you receive notice to correct the deficiency. If you do not correct the deficiency within the time allowed, your lease automatically terminates as of the anniversary date of the lease.

Class I Reinstatements

§ 3142.20 Under what circumstances will BLM reinstate my lease without an increase in royalties and rentals (Class I)?

(a) If MMS receives your rental payment after the due date, but the envelope MMS receives containing your payment is postmarked by the United States Postal Service, or is dated as received at a courier or other delivery service on or before the lease anniversary date, you may request BLM to reinstate your lease under the Class I reinstatement provisions.

(b) If your rental is not paid by the lease anniversary date, but is paid within 20 calendar days of the anniversary date, BLM may decide to reinstate your lease. You must provide BLM with documentation showing the late payment was justified or not due to a lack of reasonable diligence. Reasons include, but are not limited to —

(1) An Act of God or natural disaster;

(2) A documented illness, hospitalization, or death which caused the delay in payment; or

(3) A statement from your bank that nonpayment was due to bank error.

§ 3142.21 What must I do before BLM will reinstate my lease under Class I?

To request a lease reinstatement from BLM, submit to BLM a petition for reinstatement and a $25 filing fee. When petitioning under § 3142.20, you must provide BLM with documentation supporting your request for reinstatement.

Class II Reinstatements

§ 3142.30 Under what circumstances will BLM reinstate my lease with an increase in royalty rate and rentals (Class II)?

(a) BLM will grant a Class II reinstatement with an increased rental and royalty rate if you did not pay your rental within 20 calendar days of the anniversary date and your failure to pay was—

(1) Justifiable or not due to lack of reasonable diligence; or

(2) Due to inadvertence.

(b) Under paragraph (a) of this section, you must pay your rental within 60 calendar days from receipt of BLM's Termination Notice issued under § 3106.23, or if BLM does not send you a Termination Notice, you must pay within 15 months from the date of lease termination.

§ 3142.31 What must happen before BLM will reinstate my lease under Class II?

(a) You must submit to BLM by the dates required for payment under § 3142.30(b)—

(1) A petition for reinstatement along with a $500 nonrefundable administrative fee;

(2) Payment of back rentals and royalties and BLM's cost of publishing the proposed reinstatement in the **Federal Register** under § 3142.30(a); and

(3) An agreement to the new lease terms signed by all record title owners.

(b) BLM will publish in the **Federal Register** a notice that we propose to reinstate your lease under § 3142.30 at least 30 calendar days before we reinstate it.

§ 3142.32 How much are the rentals or royalties under a Class II reinstatement?

(a) After your first Class II reinstatement, rental for a noncompetitive lease is $5 per acre or fraction of an acre and for a competitive lease it is $10 per acre or fraction of an acre.

(b) For each subsequent reinstatement, BLM will increase rentals by an additional $5 per acre or fraction of an acre for noncompetitive leases and an additional $10 an acre or fraction of an acre for competitive leases.

(c) BLM will increase the royalty rate to 16⅔ percent on noncompetitive leases for the first reinstatement and two additional percentage points for each succeeding reinstatement.

(d) BLM will increase your royalty rate no less than four percentage points above the rate in the terms of competitive leases (i.e., not less than 16½ percent), and will add two percentage points for each succeeding reinstatement.

(e) The royalty rates required for reinstated leases under this section do not affect your right to a royalty rate reduction under subpart 3106.

§ 3142.33 Are there circumstances under which BLM will not consider my petition for reinstatement?

BLM will not consider your petition for reinstatement if—

(a) You do not file your petition timely under § 3142.30;

(b) BLM issues a valid lease to another person before you file a petition for reinstatement; or

(c) The oil and gas interests in the lands have been disposed of or are not available for leasing.

§ 3142.34 Will BLM extend the term of my lease if I do not have a reasonable opportunity to begin or continue operations following a reinstatement?

If BLM finds that the time remaining in your lease term after reinstatement will not give you a reasonable opportunity to begin or continue operations, BLM may extend the term. The extension will not exceed the greater of—

(a) The period equal to the unexpired portion of the lease, or any extension, remaining at the date of termination; or

(b) Two years beyond the date BLM reinstated the lease, if BLM granted the reinstatement after the lease expired.

Class III Conversions from Unpatented Mining Claims

§ 3142.40 Under what circumstances will BLM convert my unpatented oil placer mining claim to an oil and gas lease?

BLM will convert your unpatented oil placer mining claim to an oil and gas lease for the lands covered by the claim if—

(a) Your placer mining claim is currently producing or is capable of producing oil or gas;

(b) BLM determined that your placer mining claim was conclusively abandoned for failure to timely file the required instruments to record your claim as required by section 314 of the Federal Land Policy and Management Act (43 U.S.C. 1744, as amended and supplemented);

(c) You file a Class III conversion petition within 120 calendar days of receiving BLM's, or a court of competent jurisdiction's, final notification that the oil placer mining claim has been determined to be abandoned;

(d) You show to BLM's satisfaction that failure to timely file the required instruments was inadvertent, justifiable, or not due to lack of reasonable diligence on the part of the owner of the claim; and

(e) There is not a valid oil and gas lease affecting any of the covered lands.

§ 3142.41 What must I include with my Class III petition for issuance of a noncompetitive oil and gas lease?

Your petition for issuance of a noncompetitive oil and gas lease to replace your unpatented oil placer mining claim must include—

(a) A nonrefundable administrative fee of $500;

(b) The location notices of all unpatented oil placer mining claims and, if the petitioner is not the owner(s) of unpatented mining claims, a copy of a power of attorney on behalf of the owner(s);

(c) The required annual rental of $5 per acre or royalty of 12½ percent, or both, including any back rental or royalty, or both, accruing from the statutory date of abandonment of your claim; and

(d) A statement agreeing to reimburse BLM for the full costs incurred for publishing the notice of the proposed conversion of the oil placer mining claim to a noncompetitive oil and gas lease in the **Federal Register**.

Subpart 3143—Relinquishments

Relinquishments

§ 3143.10 May I relinquish all or part of my lease?

You may relinquish all of your lease or any legal subdivision of your lease. Identify the lands you do not want to retain by legal land description as in § 3121.20.

§ 3143.11 Where do I file a lease relinquishment?

You must file a lease relinquishment in the BLM State Office with jurisdiction over the lands in your lease.

§ 3143.12 Is there a filing fee or official form I must use?

There is no filing fee or official form for a relinquishment.

§ 3143.13 Does a relinquishment entitle me to a return of any rental payment on a pro rata monthly basis?

If you file your relinquishment—

(a) Before the next anniversary date of your lease, the Minerals Management Service (MMS) will refund any rental you paid for the next lease year; or

(b) After the anniversary date, MMS will not refund any rental for the current year.

§ 3143.14 Who must sign the relinquishment application?

All record title owners must sign the relinquishment. BLM requires original signatures.

§ 3143.15 If I own only part of the record title (a co-lessee), may I relinquish only my interest?

BLM will not approve relinquishment of part of the record title interest.

§ 3143.16 If I own all or part of the operating rights in a lease, but no record title, may I relinquish my operating rights to BLM?

You may not relinquish operating rights interests to BLM.

§ 3143.17 When is a relinquishment effective?

(a) If there are no defects in your relinquishment request, it is effective the date you file it at the BLM office with jurisdiction over the lands in your lease.

(b) If there are defects in your relinquishment request, it will be effective on the date you correct the defects.

§ 3143.18 What are my obligations after I file the relinquishment?

You must fulfill all obligations which accrued before you filed the relinquishment, other than an obligation to drill, including the obligations to—

(a) Pay all accrued rentals and royalties;

(b) Permanently plug and abandon all wells on the relinquished lands, unless BLM approves otherwise; and

(c) Complete reclamation of the relinquished lands and any other areas adversely affected by lease operations in a timely manner.

Subpart 3144—Cancellations

Cancellations

§ 3144.10 Under what circumstances will BLM cancel my lease?

BLM will cancel your lease if you do not comply with applicable law, regulations, or lease terms. If your lease is—

(a) Not producing, or does not contain a well capable of production in paying

quantities, or is not committed to an approved unit agreement or communitization agreement that contains a well capable of production in paying quantities, BLM will notify you in writing of the default or violation and give you 30 calendar days to comply. If you do not comply within the 30 calendar days, your lease is subject to cancellation under 30 U.S.C. 188(b); or

(b) Producing, or contains a well capable of producing oil or gas in paying quantities, or is committed to an approved unit agreement or communitization agreement that contains a well capable of production in paying quantities, BLM will initiate cancellation through judicial proceedings under 30 U.S.C. 188(a).

§ 3144.11 May BLM cancel my lease if it issued it improperly?

BLM may administratively cancel your lease if we issued it improperly.

§ 3144.12 If I own or control an interest in a lease in violation of the provisions of the Act, what will BLM do?

If you own or control any lease interests in violation of the Act, BLM may initiate judicial proceedings under 30 U.S.C. 184 to—

(a) Cancel or forfeit your lease interest; or

(b) Compel you to dispose of your lease interest.

Bona Fide Purchasers

§ 3144.20 What is a bona fide purchaser?

(a) A bona fide purchaser is a person who acquires a lease interest in good faith, for valuable consideration, and without notice that a violation of the regulations in parts 3100 through 3190 existed. To receive protection from cancellation, you must have paid the valuable consideration before you had notice of the violation.

(b) You do not qualify as a bona fide purchaser if you reasonably could have determined from BLM records that your seller held its lease interest in violation of the Act.

§ 3144.21 Will BLM cancel my lease if I am a bona fide purchaser and I purchased it from someone who acquired it in violation of the Act?

BLM will not cancel your lease interest if you are a bona fide purchaser who bought it from someone who held the lease interest in violation of the Act.

11. Add new part 3145—Oil and Gas Drilling to read as follows:

PART 3145—OIL AND GAS DRILLING

Subpart 3145—Drilling and Additional Well Operations

Application for Permit to Drill or Reenter

Technical Drilling Standards

Drilling Operations in a Hydrogen Sulfide (H_2S) Environment

Additional Well Operations

Authority: 25 U.S.C. 396d and 2107; 30 U.S.C. 189, 306, 359 and 1751; and 43 U.S.C. 1732(b), 1733 and 1740.

Subpart 3145—Drilling and Additional Well Operations

Application for Permit To Drill or Reenter

§ 3145.5 To what operations do the standards of this subpart apply?

You must conduct all operations on Federal and Indian leases, including those that do not require BLM approval, according to the surface use and drilling standards of this subpart.

§ 3145.10 What approval must I obtain from BLM to begin developing Federal or Indian leases or to drill through Federal or Indian mineral interests?

(a) For each new well you drill or abandoned well you reenter to develop Federal or Indian minerals, before you disturb the surface or begin drilling operations, BLM must approve your Application for Permit to Drill or Reenter (APD). For additional well operations that an APD does not cover, you must receive BLM approval under § 3145.53.

(b) You must file your APD in the BLM field office with jurisdiction over the lands. Forest Service (FS) requirements must be satisfied before BLM will approve your application for National Forest System lands.

§ 3145.11 What other approvals do I need for drilling or additional well operations that occur on lands managed by an agency other than BLM?

(a) On National Forest System (NFS) lands—

(1) The FS must approve surface use operations on lands it administers before BLM will approve your APD. You must obtain information on processing and requirements for your surface use

proposals on NFS lands from the FS (see 36 CFR part 228, subpart E). Submit surface use plans directly to the FS, along with an informational copy to BLM. On NFS lands, the FS will schedule and conduct predrill and other site inspections.

(2) The surface use plan is not part of the APD or application for additional well operations. The FS will make a decision on your surface use plans. The FS will determine when an approved surface use plan for NFS lands expires or whether it may be extended. BLM will make a decision on your APD and the portions of additional well operations that affect down-hole concerns.

(b) If the proposed well or additional well operations are on lands managed by an agency other than the FS, include a surface use plan with your APD or your application for other well operations. BLM will approve your surface use plan after we coordinate our review of your proposal with the surface management agency.

(c) You must obtain approval from the U.S. Fish and Wildlife Service (FWS) for surface use on land the FWS manages in Alaska. The FWS must approve the surface use plan before BLM makes a decision on your APD.

§ 3145.12 What must I submit to BLM in my APD?

In your APD, you must describe the procedures, equipment, and materials you will use in the proposed operations in sufficient detail to permit a complete review of the surface and subsurface effects associated with the proposed project, including—

(a) Form 3160–3, APD, for each new well you drill or abandoned well you reenter;

(b) Topographic maps and well plats that show the surveyed and staked areas of proposed construction activity, access routes, and areas of surface use. Well plats must be certified by a registered surveyor;

(c) A surface use plan, or on FS lands, an informational copy of the surface use plan you submitted to the FS, that completely describes the—

(1) Road and drill pad and production facility (if known);

(2) Construction methods and interim and final reclamation measures; and

(3) How you will contain and dispose of all waste material;

(d) A drilling plan that completely describes—

(1) Pressure control systems (including casing weights and grades and cement types and additives) and circulation mediums (including additives);

(2) Pertinent geologic data including usable water zones, hydrocarbon bearing zones, anticipated maximum pressures, and other potential hazards; and

(3) Testing and evaluation programs; and

(e) The bond coverage for your proposed activity.

§ 3145.13 What requirements must I comply with during operations?

During operations you must comply with lease terms, stipulations, and applicable Federal, State and local laws and regulations. Your APD (or your surface use plan for NFS lands) must show how you will—

(a) Provide adequate safeguards for surface and subsurface resources and uses, including impacts to adjacent lands and waters;

(b) Properly reclaim disturbed lands to a stable, revegetated state similar to adjacent undisturbed land;

(c) Complete recontouring and seedbed preparation in time to plant approved seed mixtures by the next available period for establishing vegetation;

(d) Protect and prevent waste of valuable hydrocarbons and other minerals;

(e) Protect riparian areas, flood plains and wetlands;

(f) Prevent degradation of surface waters and subsurface usable waters;

(g) Protect public health and safety, threatened, endangered, and sensitive species and their habitats, and cultural and historic resources, according to existing laws and regulations;

(h) Minimize the generation of wastes; and

(i) Properly contain, handle and dispose of solid and fluid wastes and hazardous materials.

§ 3145.14 What additional requirements apply to a well I propose to drill on privately-owned surface?

(a) If you propose to drill on privately-owned surface, you must certify that the surface owner agrees to your use of the surface as proposed in your APD and provide a copy of the surface owners agreement if BLM requests it; or

(b) If you are unable to reach an agreement with a private surface owner, BLM will make a final determination on surface use, considering the views of the surface owner. BLM will only approve the permit if—

(1) You demonstrate that you made a good faith effort to reach an agreement with the surface owner;

(2) Your bond is adequate to pay for required reclamation and damage to surface improvements, crops and other surface uses; and

(3) You certify that there are no legal obstacles to conducting operations without surface owner consent, including, but not limited to, restraining orders or pending lawsuits.

§ 3145.15 What additional requirements apply to a well I propose to drill on a Federal oil and gas lease if the surface is held in trust for an Indian tribe or an individual Indian?

If the wellsite or access road is proposed on split-estate lands where the surface is held in trust for an Indian tribe or an individual Indian and the mineral estate is Federal, you must obtain a surface use agreement with the tribe or an individual Indian surface owner(s). However—

(a) A surface use agreement is not necessary for allotted lands in Alaska under the Native Allotment Act of May 17, 1906, as amended (34 Stat. 197);

(b) You do not need a surface use agreement if your lease predates the transfer to Indian ownership or the land transfer document or legislation affords the United States access rights to exercise its mineral rights; or

(c) Except as provided in paragraph (b) of this section, if you are unable to reach an agreement with the surface owner(s), BLM will not approve your APD.

§ 3145.16 May I file a single plan for more than one well?

Your drilling plan or surface use plan may cover an individual well or multiple wells within areas of geological and environmental similarity. If you combine plans for multiple wells, you must submit Form 3160–3 to BLM for each well you propose to drill.

§ 3145.17 Must I submit an APD to BLM to start the APD process and the 30-day public posting period?

To start the APD process and the 30-day public posting period, you may file either an APD or a NOS under § 3145.18.

§ 3145.18 What is a Notice of Staking (NOS) and what must I do under the NOS process?

(a) A Notice of Staking (NOS) is a way you and BLM select an acceptable drilling location before you submit an APD. Under the NOS process, you must submit to BLM—

(1) Your, or your designated contact's, name, address, and telephone number;

(2) A topographical or other acceptable map showing location, access road, and lease boundaries;

(3) The name of the surface management agency, Indian or private surface owner;

(4) The well name and number, lease number, and legal description of the well location; and

(5) The well type, estimated well depth, and formation objectives.

(b) You must stake your well location and flag the access route before the predrill inspection required in § 3145.19(a)(4).

(c) You must submit an APD within 90 calendar days after the date of the predrill inspection.

§ 3145.19 What actions will BLM take after receiving my APD or NOS?

(a) BLM will—

(1) For Federal leases, post the NOS or APD for public inspection for 30 calendar days;

(2) Provide a copy of the NOS or APD to the appropriate Federal or State surface management agency, if other than BLM;

(3) Notify you whether—

(i) BLM will process your NOS or APD or whether BLM needs additional information to process your application; or

(ii) Whether you must contact another surface management agency; and

(4) Schedule and conduct an on-site predrill inspection. The purpose of the predrill inspection is to resolve on-site resource concerns that may affect size, location, or design of the pad, access road or facility. If necessary, BLM will recommend additional measures that you must address in your APD.

(b) BLM will return your NOS or your incomplete APD if you do not submit a complete APD within 90 calendar days of either the date of predrill inspection or the date you receive BLM's notice under paragraph (a)(3) of this section, whichever occurs last.

(c) Following receipt of a complete APD, and the posting period for Federal lands, BLM will either—

(1) Approve the APD as submitted or with appropriate modifications or conditions;

(2) Reject the APD and advise you in writing of the reasons; or

(3) Advise you in writing of the reasons why BLM will delay the decision and when you can expect a final decision.

§ 3145.20 When will my approved APD expire and may I extend the term of an approved APD?

(a) Your approved APD is valid for one year from the date of BLM's approval, or your lease expiration date, whichever is sooner.

(b) BLM may extend a drilling permit for up to two additional 12 month periods, if you request an extension before each approval expires, but not beyond the termination of the lease.

§ 3145.21 Must my APD describe all of my proposed operations connected to the well I intend to drill?

(a) You must include with your APD plans for access roads and other drilling, completion and production related activities, if known, that are on the same lease as your well proposal; and

(b) You must obtain a right-of-way (R/W) authorization for the use of BLM lands located off of your lease according to part 2800 of this chapter. You have the option of using the APD package to furnish the information BLM requires to process an R/W instead of filing a separate R/W plan of development. If you choose this option, the APD will serve as an R/W application, even though BLM will issue two separate approval documents (APD and R/W grant).

(c) If your proposal involves off-lease activities on surface managed by an agency other than BLM, or on private or Indian surface, you must include this information with your APD and contact the appropriate agency and/or surface owner for additional surface use authorization.

(d) If you do not include plans for production activities, including pipelines, storage facilities and measurement sites, with your APD, you must submit plans before construction and installation of these facilities, according to §§ 3145.50 through 3145.55.

§ 3145.22 What must I submit after I drill a well or suspend drilling operations?

Within 30 calendar days after you drill a well or suspend drilling operations, you must submit to BLM—

(a) Reports, well logs, and test data;

(b) A Well Completion Report, Form 3160–4; and

(c) Other information BLM requires.

§ 3145.23 What must I do when my well is an inactive well?

Within 30 calendar days after your well becomes inactive (see § 3107.52), you must—

(a) Put the well into production or service;

(b) Submit to BLM plans to conduct well-work to restore production or service;

(c) Submit plans to plug and abandon the well and reclaim areas disturbed or contaminated by your well operations; or

(d) Comply with the requirements of § 3107.56.

Technical Drilling Standards

§ 3145.30 What are the design and operational requirements for well control?

You must—

(a) Design your blowout prevention equipment system (BOP) to control known or anticipated pressures, taking into account the geologic conditions, accepted engineering practices, and the surface environment;

(b) Use a BOP with a working pressure that exceeds the maximum anticipated surface pressure, assuming a pressure gradient of 0.22 psi/foot for a wildcat well or the appropriate pressure gradient for known geologic environments;

(c) Configure and maintain your BOP according to the guidelines in the ''American Petroleum Institute (API) Recommended Practice 53, Recommended Practice for Blowout Prevention Equipment Systems for Drilling Wells'', Third Edition, March 1997 (RP 53);

(d) Use a BOP that can completely close the wellbore;

(e) Install and pressure test the BOP before you drill the surface casing shoe (unless BLM specifies otherwise) and before you perform other post-drilling well operations that require control of known or anticipated pressures;

(f) Unless BLM approves otherwise, pressure test the BOP to the recommended high pressure test standards in Section 17 of API RP 53, except you must not—

(1) Test the annular preventer in excess of 50 percent of its working pressure; or

(2) Expose the casing to pressures exceeding 70 percent of its minimum internal yield;

(g) Functionally test the pipe rams daily and the blind rams each time you pull the drill string to change the drill bit, but not more than once per day;

(h) Document all tests in the driller's log;

(i) Ensure that the wellbore is closed when it is unattended; and

(j) Take immediate steps to restore control of your well, when necessary.

§ 3145.31 What additional requirements apply when I drill using gas, air, or mist?

You must follow the standards for gas, air, or mist drilling operations contained in Section 17 of ''American Petroleum Institute (API) Recommended Practice 54, Recommended Practices for Occupational Safety for Oil and Gas Well Drilling and Servicing Operations'', Second Edition, May 1, 1992 (RP 54).

§ 3145.32 How must I design and drill my well?

Design and drill your well so that—

(a) The collapse, burst, and tensile strengths of the casing(s) are sufficient to withstand anticipated pressures;

(b) The surface casing is cemented along its entire length with centralizers located on at least the bottom three joints;

(c) The casing(s) is set in a competent formation(s) that will withstand anticipated pressure and is cemented so that all useable water and other minerals are protected;

(d) Cement placement procedures minimize contamination and maximize cement bonding;

(e) Cement is uniformly distributed around the casing(s) to ensure an adequate casing-to-formation bond;

(f) Cement curing time is adequate to ensure a minimum compressive strength of 500 psi or to maintain well bore integrity;

(g) The tubular steel properties are appropriate for the type of conditions (e.g., hydrogen sulfide, corrosives, temperature) in which it is used;

(h) Any geologic formations of concern are adequately isolated to prevent fluid or gas migration;

(i) The drilling circulation system is monitored and ensures well control; and

(j) Liners overlap at least 100 feet.

§ 3145.33 What integrity tests and corrective measures must I perform on my well?

(a) During drilling operations you must—

(1) Conduct a pressure test of all casing strings, including liner overlaps, below the conductor pipe before you set the next string of casing;

(2) Perform a mud weight equivalency test of each casing shoe before you drill 20 feet of new hole on all exploratory wells and on part of any well approved for a 5K BOP (as defined in Section 6, API RP 53) system or greater; and

(3) Correct pressure loss problems before you continue drilling operations, unless drilling ahead is necessary for well control.

(b) You must test all repairs and alterations of your wellbore to demonstrate mechanical integrity.

§ 3145.34 When may I conduct drill stem testing?

(a) You may initiate and conduct drill stem testing (DST) without BLM's prior approval only during daylight hours. You must follow the recommended practices of Section 14, API RP 54.

(b) If you start the DST during daylight hours, you may continue testing at night if—

(1) The rate of flow is stabilized; and

(2) You provide safe, adequate lighting.

(c) You may release packers, but must not begin tripping before daylight, unless you have BLM's approval.

(d) You may conduct closed chamber DST's day or night.

Drilling Operations in a Hydrogen Sulfide (H_2S) Environment

§ 3145.40 When must I follow BLM hydrogen sulfide (H_2S) requirements?

You must follow BLM H2S requirements when you drill, complete, test, or rework in zones known, or reasonably expected, to contain H_2S in concentrations of 100 parts per million (ppm) or more in the gas stream.

§ 3145.41 What additional requirements apply when I drill in an H_2S environment?

When you drill in an H_2S environment—

(a) Your plans and operations must follow the standards contained in API ''Recommended Practice 49, Recommended Practices for Safe Drilling of Wells Containing Hydrogen Sulfide'', Second Edition, April 15, 1987 (RP 49);

(b) You must submit an H_2S plan as part of your APD that shows how you will—

(1) Provide for safety of personnel that are essential to maintain control of the well;

(2) Conduct general rig operations and drill stem testing;

(3) Handle special rig problems in an H_2S environment; and

(4) Alert and protect the public if a potentially hazardous volume of H_2S is released from your operation when—

(i) The 500 parts per million (ppm) radius of exposure is greater than 50 feet and includes any part of a road or highway principally maintained for public use;

(ii) The 100 ppm radius of exposure is greater than 50 feet and includes any occupied residence, school, church, park, school bus stop, place of business, or other area where the public could reasonably be expected to frequent; or

(iii) The 100 ppm radius of exposure is equal to or greater than 3,000 feet where facilities or roads are principally maintained for public use.

(c) You may submit a single plan for multiple wells within a single field.

§ 3145.42 How do I calculate the radius of exposure?

(a) You must use one of the following methods to calculate the radius of exposure, as appropriate—

(1) If the H_2S concentration in the gas stream is less than 10 percent, calculate—

(i) The 100 ppm radius of exposure using the formula—

$$X=[(1.589)(H_2S \text{ concentration})(Q)]^{(0.6258)}$$; or

(ii) The 500 ppm radius of exposure using the formula—

$$X=[(0.4546)(H_2S \text{ concentration})(Q)]^{(0.6258)}$$

Where—

X=radius of exposure in feet.

H_2S Concentration = decimal equivalent of the mole or volume fractions of H_2S in the gaseous mixture.

Q=maximum volume of gas determined to be available for escape in cubic feet per day (at standard condition of 14.73 pounds per square inch absolute (psia) and 60° Fahrenheit).

(2) If the H_2S concentration in the gas stream is 10 percent or greater, you must calculate the 100 ppm or the 500 ppm radius of exposure using a dispersion technique that takes into account atmospheric stability, complex terrain, wind speed and direction, and other dispersion features. You may use one of the computer models outlined in the Environmental Protection Agency's ''Guidelines on Air Quality Models (Revised) (EPA–450/2–78–027R)'', July 1986; or

(3) Another method if BLM approved it.

(b) You must assume a radius of at least 3,000 feet for a well you are drilling in an area where you have insufficient data to calculate a radius of exposure, but where you could reasonably expect H_2S to be present in concentrations of 100 ppm or more.

(c) Use a field-wide radius of exposure or calculate the radius of exposure for each component part of the drilling, completion, workover, and production system where multiple H_2S sources (i.e., wells, treatment equipment, flowlines, etc.) are present.

§ 3145.43 What if I encounter H_2S in concentrations of 100 ppm or more in the gas stream that was not anticipated at the time BLM approved my APD?

(a) If you encounter H_2S in concentrations of 100 ppm or more in the gas stream that was not anticipated at the time BLM approved your APD, you must immediately ensure control of the well, suspend drilling ahead (unless you need it for well control), and obtain materials and safety equipment so that your operations comply with the regulations in this part; and

(b) You must notify BLM within 24 hours of encountering H_2S in concentrations of 100 ppm and describe the steps you took, or are taking, to control the situation.

§ 3145.44 What training and equipment must I provide personnel at the wellsite for H_2S operations?

(a) You must train all personnel working at the wellsite with the general training requirements outlined in Section 2 of API RP 49.

(b) For drilling operations, you must complete the initial training session either—

(1) Three business days before drilling into known or probable H_2S zones; or

(2) Before reaching a depth 500 feet above known or probable H_2S zones.

(c) On a drilling, completion, or workover site, all personnel (including service company personnel) essential to maintain or regain control of the well, and visitors, must have, or have access to, escape or pressure-demand type breathing apparatus. You must not allow anyone onto the location without the proper equipment.

(d) Your respiratory protection equipment program must follow the standards of Section 3 of API RP 49.

Additional Well Operations

§ 3145.50 What requirements must I satisfy for additional well operations?

For additional well operations that require BLM approval under § 3145.51, you must submit Sundry Notice, Form 3160–5, or other filing instrument acceptable to BLM, that describes the proposed surface use and downhole procedures. You must include details similar to those required when filing an APD (e.g., maps, construction methods, pressure control systems, and when BLM does not manage the surface, resource protection measures, standards for occupancy of the surface, and reclamation measures).

§ 3145.51 What additional well operations require BLM approval?

(a) You must request and receive BLM approval, before you—

(1) Plug, plug back, squeeze, deepen, complete in a different zone, temporarily abandon a well, convert a well to injection, dispose of produced water or commingle production;

(2) Conduct downhole operations that affect valuable hydrocarbons and other mineral deposits, oil and gas resource recovery, production accountability, subsurface usable waters, or public health and safety;

(3) Use bioremediation methods or other measures to reclaim lands contaminated by spills and accidents;

(4) Disturb the surface off the existing access road, wellpad, or approved facility sites, or disturb areas previously reclaimed; or

(5) Construct new pits or enlarge existing pits except for those constructed for routine well maintenance on the existing well pad or approved facility sites, or on sites that are not reclaimed.

(b) BLM may give oral approval whenever the regulations in this part require you to obtain BLM approval before starting operations. BLM may require you to file a written request on Sundry Notices and Reports on Wells (SN), Form 3160–5, within five business days of the oral approval.

§ 3145.52 What additional well operations do not require BLM approval?

You do not need BLM approval to—

(a) Perform only surface disturbing activities on NFS lands;

(b) Perform operations that are included in a plan BLM previously approved;

(c) Return fluids from the well bore to a closed system for transport and disposal according to existing laws and regulations;

(d) Take actions to correct or contain an emergency situation. However, you must notify BLM no later than 48 hours after the occurrence; or

(e) Perform activities that will not disturb the surface off the existing access road, wellpad, facility sites or disturb areas previously reclaimed, when you perform—

(1) Routine well maintenance;

(2) Any modification to surface production equipment not covered under § 3151.10; or

(3) Downhole operations that will not affect valuable hydrocarbons and other mineral deposits, oil and gas resource recovery, subsurface usable waters, or public health and safety.

§ 3145.53 What happens when BLM receives my application for additional well operations?

(a) When BLM receives your application for additional well operations, SN, Form 3160–5, BLM will—

(1) Schedule and conduct a site inspection, if needed to evaluate your proposal; and

(2) Notify you whether—

(i) BLM will process your application, or whether BLM needs additional information to process your application; or

(ii) Whether you must contact another surface management agency;

(b) After we receive a complete application, BLM will —

(1) Approve the application as submitted or with appropriate modifications or conditions;

(2) Reject the application and advise you of the reasons why; or

(3) Advise you of the reasons why BLM will delay the decision and when you can expect a final BLM decision.

§ 3145.54 What reports must I submit after I complete additional well operations?

Within 30 calendar days after you complete additional well operations, you must submit to BLM—

(a) A Well Completion Report, Form 3160–4, if you complete your well in a new formation;

(b) Reports, well logs, and test data;

(c) A SN, Form 3160–5, if—

(1) You alter the existing wellbore configuration; or

(2) BLM requests it; and

(d) Other information BLM requires.

§ 3145.55 What must I do to reclaim surface disturbance that results from operations on my well or lease?

To reclaim surface disturbance that results from operations on your well or lease, you must—

(a) Complete recontouring and seedbed preparation in time to plant approved seed mixtures by the next available period for establishing vegetation;

(b) Reclaim all of the excess pad, facility, and road areas, pipeline or utility corridors, pits, contaminated areas, and areas disturbed during emergencies, to a stable, revegetated state similar to adjacent undisturbed land; and

(c) Comply with any reclamation conditions of your approved permit or lease.

11. Revise part 3150—Onshore Oil and Gas Geophysical Exploration to read as follows:

PART 3150—OIL AND GAS MEASUREMENT AND OPERATIONS

Subpart 3151—Production, Storage and Measurement

Production, Storage and Measurement—General

Sec.

Production Operations With Hydrogen Sulfide (H^2S)

Authority: 25 U.S.C. 396d and 2107; 30 U.S.C. 189, 306, 359 and 1751; and 43 U.S.C. 1732(b), 1733 and 1740.

Subpart 3151—Production, Storage and Measurement

Production, Storage and Measurement—General

§ 3151.10 What Federal and Indian oil or gas production activities require BLM approval?

Before you begin production activities involving Federal or Indian oil or gas, you must have BLM approval to —

(a) Measure gas by a method other than that authorized under subpart 3154;

(b) Measure oil by a method other than tank gauging or positive displacement metering system, or by a method that you can demonstrate to BLM is equivalent in accuracy and accountability to either of those two systems;

(c) Measure oil and gas at a location off your lease;

(d) Commingle production; or

(e) Vent or flare gas, unless § 3151.16 applies.

§ 3151.11 How do I get BLM approval for production activities involving Federal and Indian oil or gas?

The following table lists application requirements for those production activities for Federal or Indian oil or gas that require BLM approval. For each of the listed activities, request approval from the BLM using Sundry Notice, Form 3160–5, and provide the documentation indicated—

Activity	Documentation—
(a) Measure gas by a method other than that authorized in subpart 3154.	Show that your method of measuring will not adversely affect royalty income or production accountability.
(b) Measure oil by a method other than tank gauging or positive displacement metering system.	Show that your method of measuring will not adversely affect royalty income or production accountability.
(c) Measure oil and gas at a location off your lease.	Identify where you want to measure production; and Why you must measure off-lease; and Show that your proposed location will not adversely affect surface resources, royalty income or production accountability.
(d) Commingle Federal or Indian oil or gas	Indicate the volume, quality, and source of the products you want to commingle; and Show how you will allocate production back to the source; and Show that commingling will not adversely affect royalty income or production accountability.
(e) Vent or flare gas in situations other than those described in § 3151.16.	Identify the volume, composition and source of the gas you want to vent or flare; and Show why it is not economical for you to market the gas at the time of application or use it on lease.

§ 3151.12 What are the standards for lease production operations?

(a) You must conduct production operations in accordance with accepted industry practices to—

(1) Put all oil, other hydrocarbons, gas and sulphur that you produce into a marketable condition, if economically feasible;

(2) Prevent any oil going to a pit or open tank except in an emergency. If oil goes to a pit, you must remove it within 48 hours, unless BLM directs otherwise;

(3) Prevent avoidable loss of oil and gas; and

(4) Protect the mineral resource, other natural resources and environmental quality.

(b) You must report to BLM not later than the fifth business day after a well first begins production or resumes production after being shut-in for 90 calendar days or more under § 3103.10(r). For purposes of this paragraph, production begins or resumes—

(1) For an oil well, on the date on which you first sell or ship liquid hydrocarbons from a temporary storage facility, such as test tanks, or the date on which you first produce liquid hydrocarbons into a permanent storage facility, whichever occurs first; or

(2) For a gas well, on the date on which you first measure gas through a sales metering facility or the date on which you first sell or ship associated liquid hydrocarbons from a temporary storage facility, whichever occurs first. For purposes of this paragraph, a gas well is shut-in only if it is incapable of production.

§ 3151.13 How must I handle Federal royalty-in-kind oil?

If the lessor elects to take its royalty in-kind, you must store the amount of oil equal to the royalty volume from or allocated to your Federal lease at a location agreed to by you and BLM for up to 30 calendar days at no cost to the lessor.

§ 3151.14 On what oil and gas must I pay royalty?

You must pay royalty on—

(a) Oil and gas produced from or allocated to your lease that you sell or remove from your lease;

(b) Gas you vent or flare without BLM approval, or that exceeds an amount exempted under § 3151.16; or

(c) Oil and gas which is avoidably lost.

§ 3151.15 On what oil and gas am I not required to pay royalty?

You are not required to pay royalty on—

(a) Oil and gas used for beneficial purposes;

(b) Waste oil;

(c) Gas you vent or flare with BLM approval or as provided in § 3151.16; or

(d) Oil and gas which is unavoidably lost.

§ 3151.16 When may I vent or flare Federal or Indian gas without BLM approval without paying royalty?

(a) You are not required to have BLM approval or pay royalty when you vent or flare gas during—

(1) Emergency situations (e.g., equipment failures or relief of abnormal system pressures) that do not exceed 24 hours per incident or 144 hours total for a lease during any calendar month;

(2) Initial production tests, provided you do not test for more than 30 calendar days or produce more than 50,000 Mcf of gas;

(3) Unloading or clean up of your well, up to 24 hours per event;

(4) Drill stem testing up to 24 hours or special well evaluation tests up to 72 hours;

(5) Routine preventive maintenance of production equipment, up to 24 hours per month; or

(6) Routine well maintenance operations.

(b) BLM may approve requests for longer periods for any of the situations listed in paragraph (a) of this section.

(c) You are not required to obtain approval to vent or flare gas from Federal oil wells which produce less than 10 Mcf of gas per day as part of normal oil production, unless it is economic to capture that gas. You must flare or vent gas in a safe manner

according to applicable laws, regulations, and accepted industry practice.

Production Operations With Hydrogen Sulfide (H_2S)

§ 3151.20 What precautions must I take if there is any possibility for Hydrogen Sulfide (H_2S) at my production facility or storage tank?

If there is any possibility for H_2S at your production facility or storage tank, you must—

(a) Test each production facility and tank for H_2S concentration in the gas stream, tank vapors, and sustained ambient air when you install a new facility or modify your production or operation method;

(b) Notify BLM within five calendar days whenever concentrations of 20 parts per million (ppm) or greater are encountered. You do not need to notify BLM if your modification(s) to your production or operation method changes the previously reported H_2S concentration by 5 percent or less; and

(c) Design and maintain your facility to keep the sustained ambient concentration below 10 ppm H_2S or 2 ppm sulphur dioxide (SO_2) within a 50-foot radius and at any occupied residence, school, church, park, playground, school bus stop, place of business, or other area that the public could reasonably be expected to frequent.

§ 3151.21 When must I take additional precautions?

You must take the additional precautions described in §§ 3151.22, 3151.23, and 3151.24 at your well or production facility when—

(a) Your storage tank(s) operates at or near atmospheric pressure and contains produced fluids which accumulate vapor resulting in an H_2S concentration greater than 500 ppm in the tank;

(b) You have an H_2S concentration of 100 ppm or more in the gas stream; or

(c) The sustained ambient H_2S concentration is more than 10 ppm at 50 feet from the production facility or storage tank(s), as measured at ground level under calm (1 mph) conditions.

§ 3151.22 What precautions must I take if my storage tank has a vapor accumulation with an H_2S concentration greater than 500 ppm?

If your storage tank has a vapor accumulation with an H_2S concentration greater than 500 ppm you must—

(a) Restrict entry to all stairs or ladders leading to the top of storage tank;

(b) Post danger signs on or within 50 feet of each storage tank to alert the public of the potential H_2S hazard;

(c) Install at least one permanent wind direction indicator so someone at, or approaching, the storage tank(s) can easily determine wind direction; and

(d) Install a fence and gate(s), and lock all gates when you are not at the site, to restrict public access if storage tanks are located—

(1) Within ¼ mile of, or inside, a city or incorporated limits of a town;

(2) Within ¼ mile of an occupied residence, school, church, park, playground, school bus stop, place of business; or

(3) Where the public could reasonably be expected to frequent.

§ 3151.23 What precautions must I take if my production facility has an H_2S concentration of 100 ppm or more in the gas stream?

If your production facility has an H_2S concentration of 100 ppm or more in the gas stream, you must—

(a) Take all the precautions required by § 3151.22 for storage tanks. If your tank is next to your facility, you do not need to duplicate precautions;

(b) Design and construct your facility in conformance with American Petroleum Institute (API) RP 55, ''Recommended Practices for Conducting Oil and Gas Producing and Gas Processing Plant Operations Involving Hydrogen Sulfide'', Second Edition, February 15, 1995 (API RP 55, 1995);

(c) Calculate your 100 and 500 ppm radii of exposures using the formulae or methods listed in § 3145.42;

(d) Develop, implement, and update at least annually, a public protection plan that details how you will alert and protect the potentially affected public in the event of a potentially hazardous release of H_2S and SO_2. The plan must follow the contingency planning procedures of the API RP 55 1995, if—

(1) The 500 ppm radius of exposure is greater than 50 feet and includes any part of a road or highway principally maintained for public use;

(2) The 100 ppm radius of exposure is greater than 50 feet and includes any occupied residence, school, church, park, school bus stop, place of business, or other area which the public could reasonably be expected to frequent; or

(3) The 100 ppm radius of exposure is equal to or greater than 3,000 feet where facilities or roads are principally maintained for public use.

(e) Post danger signs at locations where well flowlines and lease gathering lines that carry H_2S gas cross public or lease roads. You are not required to install fencing or wind direction indicators around your flowlines;

(f) Install on all wells, except for those you produce by artificial lift, a secondary means of immediate well control that allows you to reenter under pressure for permanent well control operations; and

(g) For wells you produce by artificial lift, and where the 100 ppm radius of exposure for H_2S includes any occupied residence, place of business, school, other inhabited structure or any area that the public may reasonably be expected to frequent, install automatic shut-in controls that are set to activate in the event of a potentially hazardous release of H_2S.

§ 3151.24 What precautions must I take when the sustained ambient concentration of H_2S exceeds acceptable limits?

If the sustained ambient concentration exceeds the limit specified in § 3151.20(c), you must collect or reduce vapors from the system. All vapor you collect must be—

(a) Sold;

(b) Used on the lease;

(c) Reinjected; or

(d) Flared, if terrain and conditions permit and will not result in SO_2 concentrations that exceed 2 ppm within a 50-foot radius.

Subpart 3152—Site Security

General

§ 3152.10 What are BLM's site security requirements for production facilities?

You must configure and secure all production facilities where Federal and Indian production or allocable production is produced or stored to ensure production accountability for that oil and gas.

Storage and Sales Facilities—Seals

§ 3152.20 What oil and condensate measurement system components must I seal for site security?

(a) You must seal each valve, combination of valves and measurement system component(s) that, if altered, could substantially and adversely affect royalty income or production accountability. You must use a uniquely numbered seal to detect unauthorized or undocumented access to oil or condensate;

(b) For each valve requiring a seal, you must place the seal so that it would be destroyed if the position of the valve changes; and

(c) For each component in a measuring system requiring a seal, you must place the seal so that it would be destroyed if a component is accessed.

§ 3152.21 When must I seal a valve?

(a) During the production phase, you must seal closed all valves that provide access to oil or condensate production; and

(b) Before taking the top gauge for sale, you must seal closed all valves that would allow unmeasured production to enter or leave the sales tank.

Oil and Gas Meters

§ 3152.30 How must I secure metering systems?

(a) During normal operation of your Lease Automatic Custody Transfer system (LACT), you must seal all components that could affect the volume or quality determination of the oil passing through the LACT;

(b) You must seal LACT components by following the requirements of § 3152.20; and

(c) You must not have bypasses around meters that could permit any person to remove oil or gas from the lease or facility without measuring it, unless BLM approved a bypass.

Federal Seals

§ 3152.40 What will BLM do if I do not seal a valve or component of a measurement system where BLM requires a seal?

If BLM discovers a missing seal, BLM will require you to place a seal or BLM will place a Federal seal on the valve or component to secure production if you are not at the site when BLM makes the discovery.

Plans and Facility Diagrams

§ 3152.50 What is a site security plan?

(a) A site security plan is a document that details how you will secure your production facilities. Your site security plan must specify which leases and production facilities are covered by your plan and describe how you will—

(1) Implement a self-inspection program to periodically monitor production volumes, and production and measurement equipment;

(2) Seal appropriate valves at storage and production facilities;

(3) Prepare and maintain records of sales;

(4) Prepare and maintain records of seals;

(5) Identify and report potential theft or mishandling of production; and

(6) Update your plan when you change or add production facilities.

(b) You must maintain all of your production facilities to comply with your site security plan.

(c) You must provide BLM a copy of the plan when we request it.

§ 3152.51 What is a site facility diagram?

A site facility diagram is a schematic of your production facility that—

(a) Accurately reflects the conditions at the site;

(b) Commencing with the header (if applicable), clearly identifies the vessels, piping, metering system, and pits, if any, which apply to the handling and disposal of oil, gas, and water;

(c) Indicates which valves you must seal and the position of the valve during the production and sales phases;

(d) Identifies where your production facility is located and the lease it serves; and

(e) States where you keep the site security plan that applies to your production facility.

§ 3152.52 For what production facilities must I prepare a site facility diagram?

(a) You must prepare and submit to BLM a site facility diagram for all production facilities you use to handle or to store oil or condensate produced from, or allocable to, Federal or Indian lands.

(b) You do not need a site facility diagram for—

(1) A dry gas production facility where you do not produce or store oil or condensate; or

(2) A production facility where a single tank is used for collecting 15 barrels a day or less of oil or condensate produced from a single well.

Well and Facility Identification

§ 3152.60 How must I identify wells and production facilities?

(a) For every unplugged well on a Federal or Indian lease or within an agreement BLM approved, you must place a legible sign in a noticeable place, that identifies the well name or number, ownership, legal description of the location, and lease name or number;

(b) On every production facility you use to store Federal or Indian production, you must place a legible sign in a noticeable place that identifies the facility name or number, ownership, legal description of the location, and lease name or number. You also must place a unique number on each storage tank; and

(c) If you have one tank battery servicing one well at a common location, you may use one sign for both, if it includes the information required for both wells and production facilities.

Transporter Documentation

§ 3152.70 What information must I have when transporting oil and gas production that is produced from or allocated to my lease?

(a) If you transport oil from your lease by motor vehicle or pipeline, the driver or transporter must have a measurement ticket, trip log or other documentation showing—

(1) The quantity and quality of oil transported;

(2) The property and production facility identification number from which the oil came; and

(3) The intended first purchaser of the oil.

(b) If you transport gas by pipeline, it must be reported according to the requirements in subpart 3154.

Theft

§ 3152.80 What if I discover theft or mishandling of oil, condensate or gas produced from my wells?

If you discover theft or mishandling of oil, condensate or gas produced from your wells—

(a) You must provide BLM a written or oral report of the incident no later than the next business day after you discover the apparent theft or mishandling; and

(b) If you report the incident orally, you must follow up the oral notice with a written report to BLM describing the details of the incident within 10 business days.

Subpart 3153—Oil Measurement

General

§ 3153.10 How must I measure Federal and Indian oil?

You must measure Federal and Indian oil by tank gauging, a positive displacement metering system such as a lease automatic custody transfer system (LACT), or a method that you can demonstrate to BLM to be equivalent in accuracy and accountability to tank gauging or a LACT.

Tank Gauging

§ 3153.20 How do I determine the quantity and quality of oil that I sell by tank gauging?

The following table lists the American Petroleum Institute (API) standards and practices that you must follow to achieve accurate oil measurement by tank gauging—

When you—	You must follow the standards and practices of—
(a) Set and equip storage tanks	API RP 12R1, ''Recommended Practice for Setting, Maintenance, Inspection, Operation and Repair of Tanks in Production Service'', Fifth Edition, October 1, 1997.
(b) Calibrate a storage tank	API MPMS Chapter 2.2A, ''Measurement and Calibration of Upright Cylindrical tanks by the Manual Tank Strapping Method'', First Edition, dated February 1995; or API MPMS Chapter 2.2B, ''Calibration of Upright Cylindrical Tanks Using the Optical Reference Line Method'', First Edition, March 1989 (Reaffirmed May 1996).
(c) Transfer custody of oil	API MPMS Chapter 18.1, ''Measurement Procedures for Crude Oil Gathered from Small Tanks by Truck'', Second Edition, April 1997.
(d) Sample oil from a tank	API MPMS Chapter 8.1, ''Standard Practice for Manual Sampling of Petroleum and Petroleum Products'', Third Edition, October 1995 (ASTM D4057) or Chapter 8.2, ''Sampling of Liquid Petroleum and Petroleum Products'', Second Edition, October 1995 (ANSI/ASTM D4177).
(e) Gauge a tank	API MPMS Chapter 3.1A, ''Standard Practice for the Manual Gauging of Petroleum and Petroleum Products'', First Edition, December 1994 or API MPMS Chapter 3.1 B, ''Standard Practice for Level Measurement of Liquid Hydrocarbons in Stationary Tanks by Automatic Tank Gauging'', First Edition, April 1992 (Reaffirmed January 1997).
(f) Determine oil gravity	API MPMS Chapter 9.1, ''Hydrometer Test Method for Density, Relative Density (Specific Gravity) or API Gravity of Crude Petroleum and Liquid Petroleum Products'' (ANSI/ASTM D 1298), June 1981 (Reaffirmed October 1992) (API MPMS Chapter 9.1 1992).
(g) Determine oil temperature	API MPMS Chapter 7.1, ''Static Temperature Determination Using Mercury-in-Glass Tank Thermometers'', First Edition, February 1991 (Reaffirmed November 1996).
(h) Determine sediment and water in oil	API MPMS Chapter 10.4, ''Determination of Sediment and Water in Crude Oil by the Centrifuge Method (Field Procedure)'' Second Edition, May 1988 (ASTM D96–88) (Reaffirmed December 1993) (API MPMS Chapter 10.4 1993).

Lease Automatic Custody Transfer

§ 3153.30 How must I install and operate my LACT unit?

(a) Your LACT unit must be installed with all of the non-optional primary components shown in Figure 1 of API MPMS Chapter 6.1, ''Lease Automatic Custody Transfer (LACT) Systems'', Second Edition, May 1991 (Reaffirmed July 1996) (API MPMS Chapter 6.1, July 1996) and include the following optional equipment—

(1) A positive displacement meter;

(2) An air/gas eliminator; and

(3) An automatic temperature/gravity compensator (ATC or ATG) or electronic temperature averaging device.

(b) For all LACT units installed after [effective date of the final rule], you must design, install, operate, and maintain your LACT system to meet the specifications and requirements of—

(1) API Specification 11N, ''Specification for Lease Automatic Custody Transfer (LACT) Equipment'', Fourth Edition, November 1, 1994; and

(2) API MPMS Chapter 6.1, July 1996.

(c) If you installed your LACT system before [effective date of the final rule] according to earlier versions of API references, you are not required to retrofit to meet the API standards of this section.

§ 3153.31 How do I determine oil gravity and sediment and water content of oil measured through my LACT?

You must determine oil gravity and sediment and water for the sample obtained from the LACT sample container by following API MPMS Chapter 9.1, 1992 (oil gravity) and API MPMS Chapter 10.4, 1993 (sediment and water).

§ 3153.32 How do I determine the composite meter factor for my LACT meter?

(a) Prove your LACT meter with a pipe or tank prover, master meter, or other API recognized meter prover so that you—

(1) Follow the applicable proving procedures of API MPMS Chapter 6.1, July 1996; and

(2) Make at least six proving runs when proving your meter, with five consecutive proving runs within a span of 0.0005 (0.05 percent) and compute the average of the five consecutive runs.

(b) If you cannot achieve five consecutive runs within 0.05 percent during proving, you must—

(1) Use five consecutive runs that most accurately reflect operation of your meter;

(2) Determine a malfunction meter factor using the procedures in paragraph (d) of this section; and

(3) Immediately remove the meter from service and have it repaired.

(c) If your LACT system is equipped with an electronic temperature averaging device, check its accuracy during the meter proving at operating conditions with a mercury thermometer and adjust it if a discrepancy in excess of 0.5° F is observed.

(d) Calculate the composite meter factor using the procedures and correction factors from—

(1) API MPMS Chapter 12.2, ''Calculation of Liquid Petroleum Quantities Measured by Turbine or Displacement Meters'', First Edition, September 1981 (Reaffirmed May 1996);

(2) API MPMS Chapter 11.1, Volume I, ''Table 5A-Generalized Crude Oils and JP–4, Correction of Observed API Gravity to API Gravity at 60°F'' and ''Table 6A—Generalized Crude Oils and JP–4, Correction of Volume to 60°F Against API Gravity at 60°F'' (ANSI/ASTM D 1250–80) (IP 200) (API Standard 2540), August 1980 (Reaffirmed October 1993); and

(3) API MPMS Chapter 11.2.1, ''Compressibility Factors for Hydrocarbons: 0–90° API Gravity Range'', First Edition, August 1984 (Reaffirmed November 1995).

§ 3153.33 What requirements apply to the meter prover I use to determine the LACT composite meter factor?

You must ensure that the meter prover you use to determine the LACT composite meter factor has a certificate of calibration available for review on site that shows—

(a) It was calibrated according to API standards within the last—

(1) 90 calendar days for master meters;

(2) 36 months for portable tank and pipe provers; or

(3) 60 months for stationary tank and pipe provers.

(b) The certified volume, as determined by the water draw method, if the meter prover is a pipe or tank prover; or

(c) It is a master meter and has an operating factor within 0.9900 to 1.0100 and had five consecutive prover runs within 0.0002.

§ 3153.34 When must I determine the composite meter factor for my LACT meter?

You must determine the composite meter factor for your LACT meter—

(a) Immediately after you install or repair it;

(b) Monthly, if more than 100,000 barrels of oil per month are measured through the LACT;

(c) Quarterly, if between 10,000 and 100,000 barrels of oil per month are measured through the LACT; or

(d) Semiannually, if less than 10,000 barrels of oil per month are measured through the LACT.

§ 3153.35 What tolerance does BLM require for the LACT composite meter factor?

Your composite meter factor must not change more than ±0.0025 between provings.

§ 3153.36 What if the LACT composite meter factor changes more than ±0.0025 between provings?

If the LACT composite meter factor changes more than ±0.0025 between provings, you must repair or replace the meter unless you can justify to BLM that the composite meter factor change will not affect accurate oil measurement.

§ 3153.37 What notices and reports must I provide to BLM about operation of my LACT system?

(a) You must notify BLM, orally or in writing, within five business days—

(1) Prior to proving your LACT meter; and

(2) After you discover failure or malfunction of a LACT system component that adversely affects accurate oil measurement.

(b) Within 10 business days after a required proving, you must submit to BLM a completed meter proving report that contains—

(1) The information shown in one of the model forms of API MPMS Chapter 12.2, 1996; and

(2) Information for BLM to identify the lease(s) and facility your LACT meter services.

§ 3153.38 How do I correct volumes if my composite meter factor changes between LACT provings?

(a) If your composite meter factor changes between LACT provings, you must—

(1) Calculate an arithmetic average of the new and previous composite meter factors and apply it to the volume metered between provings; and

(2) Report volume corrections as required by MMS on the Monthly Report of Operations, Form MMS–3160.

(b) If you conduct monthly LACT proving, you must make the required volume correction and report on Form MMS–3160 for that month.

Measurement Tickets

§ 3153.40 How must I document the sale or removal of oil from my production facility?

(a) Before oil is removed from your production facility, you must complete a uniquely numbered measurement ticket with the following information—

(1) Information to identify the seller and facility from which you are selling;

(2) Start and stop totalizer readings (for LACT units) or opening and closing gauge readings, oil temperatures, quality test results, and the total volume of the oil sold (for tank gauging);

(3) Names and signatures of the gauger and the operator's representative (for tank gauging); and

(4) Numbers of seals removed and installed.

(b) Maintain measurement tickets and provide them to BLM when requested.

Subpart 3154—Gas Measurement

Gas Measurement

§ 3154.10 How do I measure and report gas production from Federal and Indian lands?

(a) To measure and report gas production from Federal and Indian lands, you must use a measurement system that—

(1) Has an established industry standard (i.e., American Petroleum Institute (API), American Gas Association (AGA), American Society of Testing and Materials (ASTM), American National Standard Institute (ANSI)) for the accuracy, installation, operation, and maintenance of the meter;

(2) Is designed, installed, operated, and maintained to—

(i) Follow the manufacturer's specifications and the applicable industry standard;

(ii) Achieve an overall uncertainty of ±3 percent of reading, or better, over the normal operating range of the meter; and

(iii) Provide either a continuous mechanical recording or an electronic record of the measured parameters at a sampling interval of one hour or less;

(3) Displays all measured parameters in a location accessible to BLM during normal working hours; and

(4) Is capable of being calibrated or proved using equipment traceable to national standards.

(b) You must report the volume of gas that you produce to the Minerals Management Service (MMS) on Form MMS–3160 under the regulations in 30 CFR part 210. For reporting purposes, you must use a base pressure of 14.73 psia and a base temperature of 60° F; and

(c) You may estimate the amount of gas used for beneficial purposes using—

(1) The equipment manufacturer's specification for consumption;

(2) The allocation based on the gas/oil ratio; or

(3) Other methods acceptable to BLM.

Orifice Meter—Primary Element

§ 3154.20 How must I install, operate, and maintain an orifice meter?

(a) Your orifice meter must meet the specification and installation requirements of—

(1) API Manual of Petroleum Measurement Standards (MPMS) Chapter 14.3, ''Orifice Metering of Natural Gas and Other Related Hydrocarbon Fluids'', Second Edition, September 1985 (ANSI/API 2530), if it was installed before [effective date of final rule]; and

(2) API MPMS Chapter 14.3, Part 2, ''Specification and Installation Requirements'', Third Edition, February 1991 (ANSI/API 2530, Part 2, 1991) if it was installed after [effective date of final rule].

(b) If your orifice meter measures more than 100 Mcf of gas per actual producing day on a monthly basis you must—

(1) Remove and inspect, and replace, if necessary, the orifice plate at least once every six months; and

(2) Use a continuous temperature recorder to measure the flowing gas temperature.

(c) If your orifice meter measures less than 100 Mcf of gas per actual producing day on a monthly basis, some requirements in this subpart may be different (see § 3154.40).

§ 3154.21 How must I determine the volume of gas that passes through my orifice meter?

You must calculate gas volumes that pass through your orifice meter using the flow equations specified in API MPMS Chapter 14.3, Part 3, ''Natural Gas Applications'', Third Edition, August 1992.

Orifice Meter—Secondary Element

§ 3154.30 How must I record the differential and static pressures on a chart recorder?

If your meter measures more than an average of 100 Mcf per actual producing day, on a monthly basis, you must—

(a) Maintain the differential pressure in the upper 80 percent of the chart, measured from zero, for the majority of the flowing periods, unless well

conditions (e.g., erratic flow patterns) will not permit you to do so; and

(b) Maintain the static pressure in the upper two thirds of the physical distance on the chart, measured from zero, for the majority of the flowing periods.

§ 3154.31 What additional requirements must I follow when using electronic flow computers (EFC)?

Your EFC must—

(a) Display the instantaneous values of the static pressure, differential pressure, and temperature; and

(b) Have a back up power device to allow the EFC to retain collected data for a minimum of 35 calendar days.

§ 3154.32 How must I calibrate the secondary element of an orifice meter?

(a) Follow the recommended practices for on-site calibrations of orifice meters in Section 1.14 of the API MPMS, Chapter 20.1, ''Allocation Measurement'', First Edition, September 1993 (API MPMS Chapter 20.1, 1993);

(b) In addition to the recommended test points in Section 1.14 of API MPMS Chapter 20.1, 1993, test the differential and static elements at 100 percent of the element range; and

(c) Document the calibration/inspection with a complete report of station and meter data, test procedures, test results, corrective actions, involved persons, dates, and signatures.

§ 3154.33 When must I calibrate the secondary element?

(a) You must calibrate the secondary element when—

(1) You install it;

(2) After you make any repairs to it; and

(3) Quarterly, if your meter measures more than an average of 100 Mcf per actual producing day, on a monthly basis.

(b) Submit a copy of the calibration report to BLM within five business days after we request it.

Orifice Meters—Low Volume Exemptions

§ 3154.40 What measurement standards apply if I use an orifice meter and measure an average of 100 Mcf of gas, or less, per producing day on a monthly basis?

If you use an orifice meter and measure an average of 100 Mcf of gas, or less, per producing day on a monthly basis—

(a) You are not required to maintain your beta ratio within the range specified in ANSI/API 2530, Part 2, 1991;

(b) You are not required to measure flowing gas temperature with a continuous temperature recorder. Instead, you must use a temperature that reasonably represents the average flowing temperature of the gas stream in your volume calculations;

(c) You may record the differential pressure on any portion of the chart range if you use a chart recorder;

(d) You may record the static pressure on any portion of the chart range for the majority of the flowing periods if you use a chart recorder;

(e) You are not required to inspect your meter tube more than once every six years; and

(f) You are not required to calibrate your meter and inspect your orifice plate more than annually unless BLM requires more frequent calibration or inspection.

Other Metering Systems

§ 3154.50 What standards must I follow if I measure gas by a metering system other than an orifice meter?

If you measure gas by a metering system other than an orifice meter, you must—

(a) Meet the requirements of § 3154.10;

(b) Use a system that either directly measures the temperature of the gas stream or compensates for temperature; and

(c) Calibrate or prove your system semiannually or at such times as BLM otherwise requires.

Volume Corrections

§ 3154.60 How do I correct volumes if my meter did not measure accurately?

(a) If a meter calibration or proving shows that a volume error occurred, you must correct the volume back to when the error occurred, if known. If you do not know when the error occurred, correct the volume for the last half of the time period that elapsed since the last calibration or proving;

(b) If your measuring equipment is out of service or malfunctions so that you do not know the quantity of gas delivered, you must estimate the volume by the most accurate method available; and

(c) You must report volume corrections under this section as required by MMS on Form MMS–3160.

Gas Quality Measurements

§ 3154.70 How do I determine the quality of my gas stream?

(a) Conduct a test to determine the specific gravity and the heating value of the gas stream at least annually, or as otherwise required by BLM. Testing procedures and results must be provided to BLM upon request.

(b) Collect a gas sample at the measurement point on the lease or at another location BLM approved.

(c) Follow the sample collection and handling procedures in API MPMS Chapter 14.1, ''Collecting and Handling of Natural Gas Samples for Custody Transfer'', Fourth Edition, August 1993.

(d) Determine the specific gravity of your sample by—

(1) Continuous recording gravitometer; or

(2) Compositional analysis through at least the normal hexane (C^6H^{14}) component of a spot or cumulative gas sample.

(e) Determine the heating value of your sample by—

(1) A recording calorimeter; or

(2) Compositional analysis through at least the normal C^6H^{14} component of a spot or cumulative gas sample.

Subpart 3155—Produced Water Disposal

Produced Water Disposal

§ 3155.10 Why must I obtain approval from BLM to dispose of water produced from my lease?

You must obtain BLM's approval to dispose of water produced from your lease to ensure that—

(a) Disposal of produced water does not adversely affect Federal or Indian lands and resources, or public health and safety;

(b) Removal of produced water from a Federal or Indian oil and gas lease does not adversely affect Federal or Indian lands and resources, or public health and safety; and

(c) Facilities used for the disposal of produced water are authorized and operating in compliance with the terms of their permits.

§ 3155.11 When do I need BLM approval to dispose of produced water?

Except for the conditions described in § 3155.12, you must obtain BLM's approval before you—

(a) Dispose of produced water from a Federal or Indian well on a Federal or Indian lease;

(b) Remove produced water from a Federal or Indian well for disposal—

(1) Off of the lease it is produced from, regardless of the physical location of the disposal facility; or

(2) On State or privately owned land within the same communitized or unitized area; or

(c) Remove produced water from a communitized or unitized private or State well, if disposal occurs on Federal or Indian land within the same communitized or unitized area.

§ 3155.12 When may I dispose of produced water without BLM approval?

BLM approval is not required to dispose of produced water if you—

(a) Inject it into the same formation from which it is produced as part of an enhanced recovery project approved by BLM or Bureau of Indian Affairs;

(b) Inject it into an approved disposal well on the same Federal or Indian lease; or

(c) Inject it or dispose of it in the same well bore and formation from which it is produced.

§ 3155.13 What type of water disposal will BLM allow?

BLM will allow water disposal by methods including, but not limited to—

(a) Injection into the subsurface;

(b) Discharge into lined or unlined pits;

(c) Surface discharge under a National Pollution Discharge Elimination System (NPDES) permit;

(d) Discharge to commercial pits or open top tanks designed for containing produced water; or

(e) Disposal to facilities designed to reuse or treat produced water.

§ 3155.14 What BLM forms and Environmental Protection Agency, State or Indian Tribe permits must I submit to BLM if I plan to dispose of produced water?

(a) When BLM approval for produced water disposal is necessary under § 3155.11, you must submit a Sundry Notice and Report on Wells (SN), Form 3160–5, or other filing instrument acceptable to BLM, that describes your disposal method and location of disposal facilities.

(b) If you intend to dispose of produced water within the same Federal or Indian lease or communitized or unitized area, in conjunction with construction of disposal facilities on a Federal or Indian lease, your SN must include your construction plans following the additional well operation requirements of subpart 3145, if you intend to—

(1) Convert an existing well to an injection well;

(2) Construct an earthen pit or an NPDES facility; or

(3) Construct roads or pipelines.

(c) If you intend to dispose of produced water within the same Federal or Indian lease or communitized or unitized area, in conjunction with drilling a new well or reentering an abandoned well on a Federal or Indian lease, you must submit an Application for Permit to Drill or Reenter (APD), Form 3160–3, following the requirements of subpart 3145.

(d) You must obtain a right-of-way (R/W) authorization for the use of BLM lands according to part 2800 of this chapter if you—

(1) Drill, convert, construct or operate disposal facilities, or construct roads and pipelines off of your lease but on BLM managed surface; or

(2) Operate disposal facilities on your lease where you dispose of produced water from operations off of your lease.

(e) You may attach to your APD, SN or R/W application the information that you prepare to obtain an Underground Injection Control Permit (UIC), earthen pit disposal, or NPDES permit(s) in its original form. BLM will accept this information toward fulfilling the requirements of subpart 3145 and this subpart.

(f) Include with your SN, APD or R/W either—

(1) Copies of UIC, earthen pit, or NPDES permits you have received for the disposal facilities you intend to use; or

(2) The location of these existing or proposed disposal facilities and their permit name/number.

(g) You may use the APD or SN package to furnish the information BLM requires to process a R/W instead of filing a R/W plan of development. If you choose this option, the APD or SN will serve as a R/W application even though BLM will issue two separate approval documents (APD or SN and R/W grant).

(h) If your proposal involves off-lease activities on surface BLM does not manage, you must contact the appropriate surface management agency or surface owner for surface use permits.

(i) Follow the requirements of subpart 3145 for drilling and additional well operations if you drill or convert a well under a BLM R/W grant.

§ 3155.15 What additional requirements must I follow for water disposal into pits?

(a) For produced water disposal into lined and unlined pits, you must submit to BLM information on the—

(1) Daily quantity of water you plan to dispose of;

(2) Quality of the produced water, unless specifically waived by BLM for lined pits. If the volume of produced water disposed of does not exceed more than an average of five barrels of produced water per day, based on the amount of produced water expected per month, you are not required to submit a water quality analysis unless BLM requests it;

(3) Source of your produced water; and

(4) How you intend to handle emergencies, if BLM requests it.

(b) Your use of a lined pit must follow the standards in this paragraph and your application must show how you will—

(1) Ensure adequate storage capacity considering climatic factors that affect fluid levels;

(2) Ensure stability of the pit and its levees;

(3) Include periodic and proper disposal of precipitated solids;

(4) Use an impermeable liner that will withstand the effects of weather, contained liquids and solids, and other characteristics of your site;

(5) Provide safe containment of produced water, and associated liquids and solids, to prevent pit leakage and contamination of soils, surface waters, groundwater and intermittent drainage;

(6) Prevent discharges of liquid hydrocarbons to the pit;

(7) Prevent access by livestock and wildlife, unless otherwise approved by BLM, the surface management agency, Indian, or private surface owner;

(8) Deter entry by birds, if liquid hydrocarbons discharge to the pit or if water contained in the pit could injure birds; and

(9) Include a leak detection system that adequately detects leakage, and plans to monitor it.

(c) Your use of unlined pits must follow all of the objectives for lined pits except for paragraphs (b)(3), (b)(4), and (b)(9) of this section, and your application must show how you will meet these conditions.

§ 3155.16 When may I use an unlined pit for produced water disposal?

You may use an unlined pit for produced water disposal, if you can meet the requirements of § 3155.15(c), and you can demonstrate to BLM in your application that your produced water—

(a) Is of equal or better quality than existing surface and subsurface water sources, and State or Federal water quality standards, including standards for toxic constituents;

(b) Will primarily be used for beneficial purposes, such as irrigation, livestock, or wildlife, and meets minimum water quality standards for such uses;

(c) Will not exceed an average of five barrels of produced water per day based on the amount of produced water expected per month; or

(d) Will not degrade the quality of surface or subsurface waters, and soils in the area.

§ 3155.17 If the quantity and quality of my produced water changes, do I need a new approval from BLM to continue using an unlined pit?

You must submit an amended proposal for BLM's approval if your produced water does not satisfy the

standard used to obtain the original approval to use an unlined pit.

§ 3155.18 What must I submit to BLM for surface discharge that requires NPDES permit?

For surface discharge that requires a NPDES permit you must submit to BLM—

(a) A SN, Form 3160–5, including a description of site facilities;

(b) A current water quality analysis;

(c) Your plans for surface use from the origin of the produced water to the point of discharge;

(d) A copy of the NPDES permit or the location of the existing or proposed NPDES facility and its permit name or number; and

(e) Information that supported obtaining the NPDES permit, if BLM requests it.

§ 3155.19 What if the EPA, State, or Indian Tribe cancels or suspends the permit for a disposal facility I am using?

If the EPA, State, or Indian Tribe cancels or suspends the permit for a disposal facility you are using, BLM will terminate your water disposal permit immediately and you must submit a new proposal to BLM.

Subpart 3156—Spills and Accidents

Spills and Accidents

§ 3156.10 What action must I take after an accident or spill that involves Federal or Indian production?

After an accident or spill that involves Federal or Indian production—

(a) Take immediate corrective actions to control the spill or accident; and

(b) Report spills and accidents to BLM that could affect the public health and safety or adversely affect lease or off-lease resources to—

(1) Allow BLM to determine if—

(i) Your loss of oil or gas is subject to royalty collection;

(ii) Corrective orders are needed; or

(iii) A contingency plan is needed to address potential future events.

(2) Provide BLM the opportunity to approve your reclamation and remediation plans and monitor the results of these operations.

§ 3156.11 How soon after a spill or accident must I report it to BLM?

You must notify BLM within 24 hours of—

(a) Oil and saltwater spills that individually or in combination result in the discharge of 100 or more barrels of liquid during a single event;

(b) Equipment failures or other accidents that release 500 Mcf or more of gas;

(c) Any fire that consumes volumes in the ranges described in paragraphs (a) or (b) of this section;

(d) Any spill, venting, or fire, regardless of the volume involved, which occurs in or near a sensitive area, such as parks, recreation sites, threatened and endangered species habitat, riparian areas, water bodies, or urban or suburban areas;

(e) Each accident that involves a major, life-threatening, or fatal injury;

(f) Every time loss of well control occurs; or

(g) Releases of hazardous substances of a quantity that is reportable under Environmental Protection Agency regulations at 40 CFR part 302.

§ 3156.12 When must I submit a written report on spills and accidents to BLM?

You must submit a written report to BLM within 10 business days, or such longer period BLM may approve, for events listed in § 3156.11 and for—

(a) Spills that individually or collectively involve between 10 and 100 barrels of liquid during a single event;

(b) Releases that involve between 50 and 500 Mcf of gas; and

(c) Fires that consume volumes in the ranges described in paragraphs (a) and (b) of this section.

§ 3156.13 What must I include in my report of a spill or accident?

(a) In addition to a description of the facility involved, the applicable lease name or number and your official contact for the event, your report to BLM of a spill or accident must include—

(1) When and where the spill or accident occurred;

(2) Whether sensitive areas are affected;

(3) The direct and indirect causes of the event;

(4) An estimate of volumes of material discharged and lost;

(5) A description of any injuries, damage, or contamination;

(6) What you or response teams are doing to control and clean up the spill or accident, including using emergency pits;

(7) Your plans for reclaiming or remediating areas affected by the spill or accident; and

(8) Your plans to prevent a repeat of the incident.

(b) If BLM requests it, you must also submit a—

(1) Copy of the Spill Prevention Control and Countermeasure Plan required by the Environmental Protection Agency according to the regulations at 40 CFR part 112, or a contingency plan that completely describes your plans to prevent and control future occurrences; and

(2) Reclamation or remediation plan that follows the requirements for additional well operations in subpart 3145.

§ 3156.14 When must I submit follow-up written reports to BLM about a spill or accident?

You must submit follow-up written reports of a spill or accident if—

(a) You do not document clean up in the first report you submit;

(b) BLM requests additional reports to monitor ongoing efforts to control or investigate a spill or an accident; or

(c) BLM requests additional reports to document progress and completion of reclamation or remediation.

Subpart 3159—Well Abandonment

Temporary Abandonment

§ 3159.10 How do I obtain BLM approval to temporarily abandon all or a portion of a Federal or Indian well?

You must—

(a) Receive BLM approval before you temporarily abandon all or a portion of a well for more than 30 calendar days;

(b) Submit an application for temporary abandonment of a well to BLM on Sundry Notices and Reports on Wells (SN) Form 3160–5. In it you must—

(1) Explain the reasons for temporarily abandoning, rather than permanently abandoning, utilizing, or producing your well or zone; and

(2) Describe your plans for securing the wellbore and describe any additional surface disturbance or partial reclamation not previously approved in your Application for Permit to Drill or Deepen (APD); and

(c) If your well is located on Forest System lands, follow the requirements of § 3145.11(a).

§ 3159.11 How do I temporarily abandon a well?

You must design and perform your temporary abandonment using acceptable industry practices so that—

(a) It does not prevent proper permanent abandonment;

(b) The well bore or zone(s) is secured to prevent fluid migration within or out of the well bore; and

(c) The wellhead is secured at the surface, as appropriate.

Permanent Abandonment

§ 3159.20 When must I permanently plug and abandon my well?

(a) You must promptly plug and abandon each well you operate in which oil or gas is no longer capable of being

produced in paying quantities, unless BLM approves your well for some other use or delays your permanent abandonment.

(b) You must have BLM approval before you begin plugging operations on your well.

(c) BLM may approve temporary abandonment and delay the permanent abandonment of your well for up to 12 months.

(d) BLM may approve additional delays, up to 12 months for each delay approved, if BLM determines that additional delays are in the interest of conservation.

(e) BLM will require you to post additional bond in accordance with §§ 3107.55 and 3107.56, as a condition of delaying permanent abandonment of your well.

§ 3159.21 How do I obtain BLM approval to permanently plug and abandon my well?

(a) You must submit to BLM a Notice of Intent to Abandon (NIA) on a SN, that describes the—

(1) Current downhole condition of your well, if you have not already provided it to BLM;

(2) Type, size, and placement of plugs you proposed for use in your well to isolate zones of concern and protect surface and subsurface useable waters;

(3) Casing you will recover from your well;

(4) Cement slurry design, including necessary additives for specific downhole conditions; and

(5) Methods you will use to maintain well control of your well when you anticipate high pressure or hydrogen sulfide.

(b) Unless BLM previously approved the following activities in your APD, your NIA must also describe—

(1) How you will handle and dispose of pit and other wastes;

(2) When and how you will remove structures, equipment, and other materials;

(3) When you will schedule dirtwork and seeding; and

(4) How you will address any special aspect of reclamation, such as recontouring and requirements of surface management agencies or private surface owners.

(c) If the well you propose to plug and abandon is located on National Forest System lands, you must comply with applicable Forest Service requirements; and

(d) BLM may orally approve a request to begin plugging dry holes or drilling failures in emergency situations. You must submit an NIA to BLM within five business days to confirm the oral approval.

§ 3159.22 How must I permanently plug and abandon a well?

To permanently plug and abandon a well, you must—

(a) Design and perform your plugging operations according to the standards in Section 2 of American Petroleum Institute's (API) Bulletin E3, ''Well Abandonment and Inactive Well Practices for U.S. Exploration and Production Operations, Environmental Guidance Document'', First Edition, January 1993, to—

(1) Protect or isolate all formations containing useable quality water;

(2) Prevent fluid and gas migration within and out of the well bore; and

(3) Protect all prospectively valuable deposits of oil, gas, geothermal resources, or other minerals;

(b) Use a minimum of 10 percent excess cement per 1000 feet of depth for each plug placed in the well;

(c) Use a minimum of 25 sacks of cement for any plug placed through tubing, except for the surface plug;

(d) Fill each of the intervals between plugs with a fluid of sufficient density to prevent formation fluid from entering the wellbore and to prevent plug movement;

(e) Test for placement of critical plugs;

(f) Reclaim the disturbed surface in a timely manner according to your approved reclamation plan and comply with §§ 3145.11, 3145.13, 3145.14, 3145.15, and 3145.55; and

(g) Permanently inscribe the operator name, lease identification, well name/number and legal location on the permanent well marker (for wells cut off below ground level only the lease identification and well name/number must be inscribed on the cover plate). The well marker should be of size and design so as not to be visually intrusive and must be securely attached to the well.

§ 3159.23 When must I test plug placement?

You must perform a plug placement test by tagging the plug with the working pipe string or other method BLM approved when—

(a) The cement plug(s) is the only isolating medium for a usable water zone or a prospectively valuable mineral deposit and the fluid level will not remain static; or

(b) Plug integrity is questionable.

§ 3159.24 What must I do if the surface owner or surface management agency requests that I convert a well I plan to plug and abandon into a water well?

If the surface owner or surface management agency requests that you convert a well you plan to plug and abandon into a water well—

(a) The surface owner or surface managing agency must notify BLM in writing that it will assume responsibility for the portion of the well bore used for the water well;

(b) You must not begin any action to convert to a water well until BLM approves your NIA application; and

(c) You may perform the additional work needed to complete the conversion to a water well by an agreement between you and the surface owner or surface managing agency, but at a minimum you must—

(1) Plug your well from total depth to the base of the usable water zone; and

(2) Complete reclamation of the disturbed area as approved.

§ 3159.25 What if my approved plans for well abandonment change after I receive BLM approval?

You must request approval, either orally or by SN, before performing any changes from your approved plan. If BLM gives you oral approval, you must document the changes on the Subsequent Report of Abandonment (SRA), SN Form 3160–5, as required in § 3159.26(a).

§ 3159.26 What must I submit to BLM after I permanently abandon my well and complete reclamation measures?

After you permanently abandon your well and complete reclamation measures, you must—

(a) Submit the SRA to BLM within 30 calendar days after you complete well plugging operations. The SRA must document in detail the plugging process, including any changes BLM approved orally;

(b) Document the estimated timetable for completing recontouring and reclamation procedures on the SRA; or

(c) Submit a separate Final Abandonment Notice (FAN) on a SN when you complete all reclamation and the site is ready for final inspection.

12. Revise part 3160—Onshore Oil and Gas Operations to read as follows:

PART 3160—OIL AND GAS INSPECTION AND ENFORCEMENT

Subpart 3161—Inspections

Inspections

Sec.

Authority: 25 U.S.C. 396d and 2107; 30 U.S.C. 189, 306, 359, and 1751; and 43 U.S.C. 1732(b), 1733 and 1740.

Subpart 3161—Inspections

Inspections

§ 3161.10 Will BLM inspect my operations on Federal and Indian leases?

BLM will inspect your lease to ensure your operations comply with—

(a) Applicable laws and regulations;

(b) Terms of the lease;

(c) Terms and conditions of permits and other approvals;

(d) Notices to Lessees; and (e) Written orders or other BLM instructions.

§ 3161.11 Who may inspect my lease operations?

(a) You must allow authorized, properly identified representatives of the Secretary and BLM access to your lease sites, secured facilities, and records, without advance notice, to conduct inspections and investigations.

(b) For the purpose of making any inspection or investigation, authorized, properly identified representatives of the Secretary and BLM may have access to any site where you store oil and gas that was produced from or allocated to Federal or Indian leases.

§ 3161.12 Can BLM inspect motor vehicles that transport oil produced from or allocated to my Federal or Indian lease?

(a) On any lease site on Federal or Indian lands, an authorized, properly identified representative of the Secretary or BLM may stop and inspect any motor vehicle (see 30 U.S.C. 1718), which he or she has probable cause to believe is carrying oil either produced from or allocable to a Federal or Indian lease, to determine whether the driver has the documentation required by § 3152.70.

(b) Off your lease site, an authorized, properly identified representative of the Secretary or BLM, accompanied by a law enforcement officer, or a law enforcement officer alone, may stop and inspect any motor vehicle (see 30 U.S.C. 1718), which he or she has probable cause to believe is carrying oil either produced from or allocable to a Federal or Indian lease, to determine whether the driver has the documentation required by § 3152.70.

Subpart 3162—Enforcement

Enforcement

§ 3162.10 What action will BLM take if I do not comply with applicable laws, the regulations in this part, the terms of any lease or permit, or the requirements of any notice or order?

(a) If you failed to comply with applicable laws, the regulations in this part, the terms of any lease or permit, or the requirements of any notice or order, BLM will—

(1) Notify you of the violation unless immediate action is warranted under § 3162.12

(2) Give you a reasonable period to correct the violation. The period BLM allows you to comply will depend on the seriousness of the violation; and

(3) Take other enforcement actions as described in this part to ensure you correct the violation.

(b) If you discover and report a violation to BLM, we will confirm your report in writing and establish a reasonable period to correct it.

(c) BLM will extend the compliance period if you provide acceptable justification for an extension before the end of the compliance period.

§ 3162.11 How will BLM notify me of violations and enforcement actions?

(a) BLM will notify you of any requirements or enforcement actions—

(1) Verbally, followed in writing; or

(2) In writing, delivered by registered mail or by personal service.

(b) You are served with notice on the date you receive written notice from BLM, or within seven business days after BLM mails it to your last known address in BLM records, whichever is earlier.

§ 3162.12 May BLM shut down my operations for any violation?

(a) BLM may require you to shut down your operations if—

(1) You are not in compliance with any requirements of § 3163.11 (a) through (e); or

(2) Continued operations could have an immediate, substantial and adverse impact on public health and safety, the environment, production accountability, or royalty income.

(b) BLM may require you to shut down your operations only after giving you written notice under § 3162.11, except in emergencies, in which case BLM may require you to shut down your operations immediately without notice.

(c) You must not resume operations without BLM approval.

Subpart 3163—Assessments

Assessments

§ 3163.10 Will BLM assess me if I do not correct a violation?

Except as provided in § 3163.11, if you do not correct a violation within the time BLM gives you to correct it under § 3162.10—

(a) BLM will assess you up to $250 per day for each day each violation continues, beginning on the first day after the end of the compliance period and ending when the violation(s) is corrected; and

(b) You may be liable for proposed civil penalties under subpart 3164.

§ 3163.11 What violations will subject me to an immediate assessment?

BLM will immediately charge you the indicated assessment upon discovery of each of the following violations, regardless of when the violation actually occurred and whether you subsequently correct the violation—

If you—	The assessment amount is—
(a) Fail to install blowout preventer or equivalent well control equipment, as required by the approved drilling or operating plan.	$5,000.
(b) Begin drilling operations without approval	10,000.
(c) Disturb the surface, regardless of surface ownership, without approval to conduct operations for Federal or Indian wells.	5,000.
(d) Begin plugging and abandonment operations without approval	2,500.
(e) Commingle production from different formations, leases, communitized areas, units, and/or unit participating areas without BLM approval.	500.
(f) Have been cited for the same type of violation four times on the same lease within a 12 month period.	500 for the fifth and each subsequent violation within 12 months.
(g) Destroy or remove a Federal seal without approval	500.
(h) Fail to notify BLM of H_2S concentrations as required by § 3151.20.	500.

§ 3163.12 May BLM reduce assessments?

BLM may waive or reduce assessments authorized under this subpart. You must submit to BLM written justification why your assessment should be reduced within 30 calendar days after you receive notice of the assessment.

§ 3163.13 Under what circumstances will BLM enter my lease to correct violations?

(a) When necessary for compliance, BLM may occupy your lease and perform, or have performed, operations that you were directed in writing to perform, at your risk and expense.

(b) BLM will charge you for the actual cost of performing the work, plus an additional 25 percent for administrative costs.

§ 3163.14 May BLM charge me for any loss or damage that results from my noncompliance?

BLM will charge you the value of any actual loss or damage that results from your noncompliance.

Subpart 3164—Civil Penalties

Civil Penalties

§ 3164.10 What civil penalties may BLM assess?

BLM may assess civil penalties under the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1719). These civil penalties are in addition to any assessment you may be liable for under subpart 3163.

§ 3164.11 Will BLM notify me if I do not comply with any statute, regulation, order, Notice to Lessee, lease term, or permit relating to my obligations under this part?

(a) If you do not comply with any statute, regulation, order, Notice to Lessee, lease term, or permit relating to your obligations under this part, BLM may issue a Notice of Incident of Noncompliance, Form 3160–9 (INC).

(b) BLM must serve the INC by personal service by an authorized BLM representative or by registered mail. Service by registered mail occurs when received or seven business days after the date it is mailed, whichever is earlier.

(c) The notice will set out the—

(1) Violation and the remedial action required;

(2) Amount of the penalty applicable for each day the violation continues; and

(3) Length of time for which the penalty will be assessed.

§ 3164.12 What must I do after I receive an Notice of Incident of Noncompliance (INC)?

(a) When BLM issues you an INC under this subpart—

(1) You must correct the violation within 20 calendar days (or such longer time as the notice specifies) from the date that the notice is served, or you are liable for a penalty of up to $500 per violation for each day the violation continues, dating from the date you were served notice;

(2) You must correct the violation within 40 calendar days (or such longer time as the notice specifies) from the date that the notice is served, or you are liable for a penalty of up to $5,000 per violation for each day the violation continues, dating from the date you were served notice; or

(3) If you do not correct the violation within 20 calendar days (or such longer time as the notice specifies) from the date that the notice is served, you may, by that date, request a hearing on the record by filing a written request with the Hearings Division (Departmental), Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203.

(b) If you correct the violation within 20 calendar days (or such longer time as the notice specifies) from the date that the notice is served, BLM will not assess penalties under this subpart and you are not entitled to a hearing on the record provided for in paragraph (a)(3) of this section. You may appeal the INC or other disputed BLM decision or order under § 3101.22.

§ 3164.13 Are there any violations for which I will be subject to an immediate penalty?

BLM may issue you an INC for a serious violation. You will receive notice in the same manner as § 3164.11. Penalties for serious violations begin to accrue on the date the violation occurred according to the following table—

Violation	Civil penalty amount
(a) Any person transporting oil from your lease who does not permit BLM to review the documentation required under § 3152.70.	Up to $500 per violation per day.
(b) You or your representative fails or refuses to allow lawful entry or inspection	Up to $10,000 per violation per day.
(c) You knowingly or willfully fail to notify BLM before the fifth business day after your well begins production or resumes production after being off production for more than 90 calendar days.	Up to $10,000 per violation per day.

Violation	Civil penalty amount
(d) You or your representative knowingly or willfully prepares, maintains or submits false, inaccurate or misleading reports, notices, affidavits, records, data or other written information.	Up to $25,000 per violation per day.
(e) You or your representative knowingly or willfully takes or removes, transports, uses or diverts any oil or gas from or allocable to any Federal or Indian lease site, without having the authority to do so.	Up to $25,000 per violation per day.
(f) You or your representative purchases, accepts, sells, transports or conveys to another, any oil or gas, having reason to know that the oil or gas was stolen or unlawfully removed or diverted from any Federal or Indian lease site or a lease site with oil or gas allocable to a Federal or Indian lease.	Up to $25,000 per violation per day.

§ 3164.14 What action will BLM take if I do not correct the violations listed in § 3164.13?

(a) For transporters that do not produce the documentation required under § 3152.70,—

(1) BLM will issue an INC under § 3164.11;

(2) BLM will order Federal and Indian oil and gas producers in the area to prohibit the transporter from removing crude oil or other liquid hydrocarbons from all Federal or Indian leases or from any facility which receives or stores production allocable to a Federal or Indian lease; and

(3) BLM's order will remain in effect until the transporter complies and pays the assessed civil penalty.

(b) For violations listed in § 3164.13 (b) through (f), BLM may begin procedures to cancel your lease under either subpart 3144, or in the case of Indian lands, recommend to BIA that it initiate lease cancellation procedures.

§ 3164.15 May BLM reduce the amount of proposed civil penalties?

BLM may waive or reduce civil penalties under the regulations in this subpart. You must justify in writing why your proposed civil penalty should be reduced and submit your justification to BLM within 30 calendar days after you receive notice of the proposed civil penalty.

§ 3164.16 May I request a hearing on the record if I am served with an INC for a serious violation?

If you are served with an INC for a serious violation under § 3164.13, you have 20 calendar days from the date of service to file a written request for a hearing on the record with the Hearings Division (Departmental), Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203.

§ 3164.17 If I request a hearing on the record, do penalties accrue?

If you request a hearing on the record under § 3164.12(a)(3) or § 3164.16, penalties will accrue each day until you correct the violations in the INC. BLM may suspend the requirement to correct the violations pending completion of the hearings provided for in this subpart.

§ 3164.18 If I requested a hearing on the record under § 3164.12(a)(3) or § 3164.16, may I appeal that decision?

If you request a hearing on the record under § 3164.12(a)(3) or § 3164.16, the hearing will be conducted by an Administrative Law Judge (ALJ) (Departmental), Office of Hearings and Appeals. After the hearing, the ALJ will issue a decision in accordance with the evidence presented and applicable law. Any party to a case adversely affected by a decision of the ALJ may appeal that decision to the Interior Board of Land Appeals under part 4 or part 1840 of this title.

§ 3164.19 If I requested a hearing under § 3164.12 or § 3164.16, may I appeal a final order to a U.S. District Court?

If you timely requested a hearing under § 3164.12 or § 3164.16, and are aggrieved by a final order, you may seek review of the order in the U.S. District Court for the judicial district in which the violation allegedly took place. Review by the District Court will be only on the administrative record and not *de novo.* Such action will be barred unless filed within 90 calendar days after the final order.

Payment of Assessments and Civil Penalties

§ 3164.20 When must I pay assessments and civil penalties under the regulations in this subpart?

(a) You must pay—

(1) Assessments within 30 calendar days of receipt of a Bill for Collection, Form 1371–22. If sent by certified mail, BLM will consider you to have received the Bill for Collection on the date you received it, or within seven business days after BLM mailed it, whichever comes first; and

(2) Civil penalties within 30 calendar days of the final order BLM issues or in the case of an appeal of a BLM decision to the District Court, as specified in the final order of the Court.

(b) Civil penalties you owe under these regulations may be deducted from any monies that the United States may owe you.

§ 3164.21 What if I do not pay, or I underpay, an assessment or civil penalty?

(a) For assessments, BLM will charge you interest on the balance due at the current interest rate stated by the Department of Treasury as the ''Treasury Current Value of Funds Rate.'' Interest will be calculated from the date your assessment is due through the date payment is received.

(b) For civil penalties, the Court may impose sanctions for nonpayment or underpayment.

§ 3164.22 Will BLM require me to pay both assessments and civil penalties?

(a) BLM may require you to pay both assessments and civil penalties. However, BLM will deduct any assessment amount you paid from the amount of civil penalties you owe.

(b) Any civil penalties you are assessed under this subpart are in addition to any penalties or assessments you are charged for your acts of noncompliance under provisions of other laws.

§ 3164.30 If I violate the regulations in this part, am I liable for both civil and criminal penalties?

You may be liable for both civil and criminal penalties under 30 U.S.C. 1720 for violating these regulations.

[FR Doc. 98–31671 Filed 12–2–98; 8:45 am]
BILLING CODE 4310–84–P

Federal Register

Thursday
December 3, 1998

Part III

Department of Energy

10 CFR Part 850

Chronic Beryllium Disease Prevention Program; Proposed Rule

DEPARTMENT OF ENERGY

10 CFR Part 850

[Docket No. EH–RM–98–BRYLM]

RIN 1901–AA75

Chronic Beryllium Disease Prevention Program

AGENCY: Office of Environment, Safety and Health, Department of Energy.

ACTION: Notice of proposed rulemaking and public hearings.

SUMMARY: The Department of Energy (DOE or the Department) is proposing regulations to establish a chronic beryllium disease prevention program (CBDPP) to reduce the number of workers currently exposed to beryllium in the course of their employment with DOE or its contractors, minimize the levels of and potential for exposure to beryllium, and establish medical surveillance requirements to ensure early detection and treatment of disease. The proposed rule would be applicable to DOE Federal and contractor employees and subcontractors during the performance of beryllium work at DOE facilities. This action would codify the interim program requirements currently prescribed in DOE directives and protect the health and safety of workers.

DATES: The comment period for this proposed rule will end on March 9, 1999. Public hearings will be held on: February 3, 1999, in Oak Ridge, TN, from 9:00 a.m. to 1:00 p.m. and 6:00 p.m. to 9:00 p.m.; February 9, 1999, in Golden, CO (Denver), from 9:00 a.m. to 1:00 p.m. and 6:00 p.m. to 9:00 p.m.; and February 11, 1999, in Washington, DC, from 9:00 a.m. to 1:00 p.m.

Requests to speak at any of the hearings should be phoned in to Andi Kasarsky, 202–586–3012, by February 1, 1999, for the Oak Ridge, TN, hearing; February 5, 1999, for the Golden, CO, hearing; and February 10, 1999, for the Washington, DC, hearing. Each presentation is limited to 10 minutes.

ADDRESSES: Written comments (ten copies) should be addressed to: Jacqueline D. Rogers, U.S. Department of Energy, Office of Environment, Safety and Health, EH–51, Docket Number EH–RM–98–BRYLM, 1000 Independence Avenue, SW, Washington, D.C. 20585. Where possible, commenters should identify the specific section to which they are responding.

Copies of the public hearing transcripts, written comments received, technical reference materials referred to in this notice, and any other docket material may be reviewed and copied at the DOE Freedom of Information Reading Room, Room 1E–190, 1000 Independence Avenue, SW, Washington, DC 20585 between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays. The docket file material for this rulemaking will be filed under ''EH–RM–98–BRYLM.'' In addition, related prerulemaking docket material is filed under ''BERYLLIUM STANDARD.'' This material may also be reviewed and copied at the DOE Freedom of Information Reading Room at the address noted previously. The technical material from the BERYLLIUM STANDARD docket file may also be reviewed at the DOE Rocky Flats Freedom of Information Reading Room and the DOE Oak Ridge Public Reading Room.

The public hearings for this rulemaking will be held at the following addresses:

Oak Ridge, TN: The American Museum of Science and Energy, 300 South Tulane Avenue, Auditorium, Oak Ridge, TN 37830

Golden, CO (Denver): National Renewable Energy Laboratory, Visitor Center, Auditorium, 15013 Denver West Parkway, Golden, CO 80401 (I–70, Exit 263, right at top of exit ramp if coming from Denver, left at stop sign, building on right)

Washington, DC: U.S. Department of Energy, Room 1E–245 (first floor, E corridor), 1000 Independence Avenue, SW, Washington, DC 20585

For more information concerning public participation in this rulemaking proceeding, see Section VIII of this notice (Public Comment Procedures).

FOR FURTHER INFORMATION CONTACT: Jacqueline D. Rogers, U.S. Department of Energy, Office of Environment, Safety and Health, EH–51, 1000 Independence Avenue SW, Washington, DC 20585, 301–903–5684 or Edward LeDuc, U.S. Department of Energy, Office of General Counsel for Environment, 1000 Independence Avenue SW, Washington, DC 20585, 202–586–6947.

For information concerning the public hearings, requests to speak at the hearings, submittal of written comments, or to obtain copies of materials referenced in this notice, contact: Andi Kasarsky, 202–586–3012.

SUPPLEMENTARY INFORMATION:

I. Overview

The Department of Energy (DOE) has a long history of beryllium use because of the element's broad application to many nuclear operations and processes. Beryllium metal and ceramics are used in nuclear weapons, as nuclear reactor moderators or reflectors, and as nuclear reactor fuel element cladding. At DOE, beryllium operations have historically included foundry (melting and molding), grinding, and machine tooling of parts.

Inhalation of beryllium dust or particles causes chronic beryllium disease (CBD) and beryllium sensitization. CBD is a chronic, often debilitating, and sometimes fatal lung condition. Beryllium sensitization is a condition in which a person's immune system becomes highly responsive (allergic) to the presence of beryllium in the body. There has long been scientific consensus that exposure to airborne beryllium is the only cause of CBD.

As of June 1998, 110 workers have been diagnosed with CBD, and another 232 workers have become sensitized to beryllium from among the 8,951 current and former DOE Federal and contractor workers who were screened for the disease. DOE anticipates an increase in the number of workers who may be exposed to beryllium as the Department moves forward with deactivating and decommissioning former nuclear weapons production facilities.

The current worker protection permissible exposure limit (PEL) of 2 $\mu g/m^3$, measured as an 8-hour, time-weighted average (TWA), was adopted by the Occupational Safety and Health Administration (OSHA) as codified in 29 CFR 1910.1000 Tables Z–1, Z–2 and Z–3 in 1971 by reference to existing

national consensus standards. This limit of 2 μg/m³ was set by DOE and its predecessor agencies, the Energy Research and Development Administration (ERDA) and the Atomic Energy Commission (AEC), for application at their facilities in 1949. Between the 1970s and 1984, there was a significant reduction in the incidence rate of the disease. This, coupled with the long latency period for the disease, led to the assumption that CBD was occurring only among workers who had been exposed to high levels of beryllium decades earlier (e.g., in the 1940's). However, DOE medical surveillance programs are discovering cases of CBD among workers who were first exposed after 1970, when DOE facilities were expected to maintain worker exposure to beryllium at levels below the OSHA PEL.

The number of confirmed cases of CBD, data suggesting the occurrence of CBD among workers with low-level exposures, and the expected future increase in the number of workers potentially exposed to beryllium all indicate a need for more aggressive workplace controls to minimize worker exposure to beryllium in the DOE complex. Accordingly, DOE has developed this notice of proposed rulemaking (NOPR) to establish a performance-based approach to protecting DOE Federal and contractor employees from the adverse health effects resulting from occupational exposure to beryllium and preventing cases of CBD resulting from DOE operations. DOE proposes to accomplish this goal through the implementation of a comprehensive chronic beryllium disease prevention program (CBDPP), which is designed to reduce the number of workers exposed, minimize the levels of beryllium exposure and the potential for beryllium exposure, and establish medical surveillance protocols to ensure early detection of disease. Because the occupational health community, including OSHA and the American Conference of Governmental Industrial Hygienists (ACGIH), does not at this time have sufficient exposure and health effects data to establish a new 8-hour TWA exposure limit for beryllium exposure, DOE is instead including in the proposed regulation a short-term exposure limit (STEL) of 10 μg/m³ for small-scale, short-duration operations, an 8-hour TWA action level of 0.5 μg/m³ for triggering certain precautions and control measures, and an exposure reduction and minimization requirement that will encourage contractors to reduce potential exposures to the action level or below. This combined approach should provide a reasonably safe and achievable added layer of protection to beryllium workers in view of data, which suggest that CBD or beryllium sensitization has occurred at exposures of 2 μg/m³ or less, and in view of the related scientific uncertainty with respect to the adequacy of the existing PEL. In addition to these immediate efforts, DOE intends to adopt a revised OSHA PEL for beryllium if OSHA rulemaking efforts for beryllium conclude that a new PEL for beryllium is appropriate. DOE acknowledges that Great Britain, which also employs a 2 μg/m³ 8-hour TWA PEL, has experienced a minimal number of CBD cases among its exposed work force. The Department recognizes that the difference between DOE's and Great Britain's experiences with the occurrence of CBD may be indicative of the use of more stringent work practice controls at Great Britain's facilities. DOE believes, however, that the fortified approach set forth in the proposed regulation will work towards eradicating CBD within the Department.

DOE contractors are already required, under DOE Order 440.1A, Worker Protection Management for DOE Federal and Contractor Employees, to have general worker protection programs. DOE Order 440.1A contains a set of minimum general requirements that establish the framework for the worker protection program. The proposed rule would enhance and supplement these existing programs with hazard-specific provisions to manage and control beryllium exposure hazards.

This proposed CBDPP rulemaking initiative has been preceded by 2 years of information-gathering and data analysis by the Department. In 1996, the Department surveyed its contractors to characterize the extent of beryllium usage, the types of tasks involving beryllium usage, the controls in place for each task, the estimated number of workers exposed during each task, and the estimated exposure levels associated with each task.

In summary, this survey found that between 1994 and 1996, 10 of the 15 DOE sites surveyed performed 64 different operations or processes that could expose workers to beryllium. The surveyed DOE sites estimated that between 518 and 530 workers in 58 different job categories were potentially exposed to beryllium in the performance of these 64 operations or processes. Where available, reported 8-hour TWA exposure data (personal breathing zone monitoring results) for these workers ranged from nondetectable to 25 μg/m³. Most of these exposure levels were reported to be below the 2 μg/m³ 8-hour TWA PEL. To control worker exposures in the affected processes or operations, the surveyed sites reported the use of various engineering and administrative controls, including ventilation hoods, glove boxes, wet machining methods, high-efficiency particulate air (HEPA) vacuums, regulated areas, action levels and administrative warning levels, and personal protective equipment. Copies of this survey are available for review and copying at the DOE headquarters, Rocky Flats, and Oak Ridge Public Reading Rooms (see the **ADDRESSES** section of this NOPR for addresses and details) as part of the prerulemaking docket filed under BERYLLIUM STANDARD.

To supplement the data obtained from the 1996 survey, the Department published a **Federal Register** notice on December 30, 1996, requesting scientific data, information, and views relevant to a DOE beryllium health standard (61 FR 68725). The survey and **Federal Register** notice were followed by two Beryllium Public Forums, held in Albuquerque, New Mexico, and Oak Ridge, Tennessee, in January 1997. Responses to the **Federal Register** notice and the proceedings of the public forums are also available in the ''BERYLLIUM STANDARD'' docket file.

Acting on the information compiled from these various sources, and in view of the time needed to promulgate a rule, former Secretary of Energy Peña directed the Office of Environment, Safety and Health to publish a new DOE policy to protect the workforce while the Department moved forward with its rulemaking process. DOE Notice 440.1, Interim Chronic Beryllium Disease Prevention Program, was signed by former Secretary Peña and issued on July 15, 1997. The Department decided to issue the interim Notice to direct immediate action for the protection of workers while the rulemaking efforts continued. This interim Notice established a CBDPP that enhanced and supplemented worker protection programs already required by DOE Order 440.1A with hazard-specific provisions that are designed to manage and control beryllium exposure hazards in the DOE workplace.

Because of the complexity and significance of issues regarding the development of a DOE health standard for beryllium, former Secretary Peña also established the Beryllium Rule Advisory Committee (BRAC) in June 1997 to advise the Department on issues pertinent to the proposed rulemaking activity. The BRAC, which consisted of a diverse set of stakeholders and

recognized experts from DOE, other Federal agencies, industry, labor, medicine, and academia, generated a set of recommendations for consideration in the development of a CBDPP rule.[1]

DOE used the BRAC recommendations and the lessons learned in the implementation of DOE Notice 440.1 to develop this NOPR. Consistent with the Department's worker protection philosophy and the BRAC recommendations, the objectives of this proposed rule are to: (1) Minimize the number of workers exposed to beryllium; (2) minimize the levels of beryllium exposure and the potential for beryllium exposure; (3) establish medical surveillance protocols to ensure early detection of CBD; and (4) assist affected workers who are dealing with beryllium health effects. In addition, the Department intends to collect and analyze as appropriate the resulting exposure and health data as part of its ongoing beryllium-related research efforts to ensure the protection of workers' health. DOE will consider the desirability of amendments to its regulations as additional information and feedback are collected.

This proposed rule is not being promulgated as a nuclear safety requirement as defined in 10 CFR part 820, Procedural Rules for Nuclear Activities. Any radiological implications of the two radioisotopic forms of beryllium would be addressed under the provisions of 10 CFR part 835, Occupational Radiation Protection.

II. Legal Authority and Relationship to Other Regulatory Programs

The Department of Energy has broad authority as provided by the Atomic Energy Act, 42 U.S.C. 2201(i)(3) and (p) to develop generally applicable policies covering all aspects of defense nuclear facilities, including protection of the health of workers. Under the Atomic Energy Act, DOE may impose requirements on its contractors either by regulation, or by administrative directive (orders and notices) that are made binding through incorporation into DOE contracts.

DOE contractors currently are required by DOE Order 440.1A, Worker Protection Management for DOE Federal and Contractor Employees, to have general worker protection programs. Additionally, on July 15, 1997, former Secretary Peña issued DOE Notice 440.1, Interim Chronic Beryllium Disease Prevention Program, to supplement the general worker protection programs with provisions specifically aimed at the hazards of beryllium in the DOE work place. Implementation of the interim Notice depended upon negotiation with DOE contractors to include compliance with Notice 440.1 as a term of their contracts, or their agreement voluntarily to comply.

As discussed in the Overview section of this preamble, former Secretary Pẽna established a Beryllium Rule Advisory Committee in June of 1997 to assist DOE to develop a rule to establish permanent Chronic Beryllium Disease Prevention Program provisions that would apply to all covered DOE contractors and employees. The Department's decision to use rulemaking to establish a CBDPP requirement is based on the need for consistency in the implementation of particular CBDPP requirements and a desire to give all potentially affected persons and institutions a meaningful opportunity to provide information and views on the proposed program. Without a DOE rule, DOE contractors would be obligated to bargain about such provisions with the organizations representing the contractors' employees for purposes of collective bargaining. That approach would likely produce inconsistent outcomes in areas such as worker exposure monitoring and medical surveillance. DOE believes a rule or regulation would result in more uniform implementation across the DOE complex and, thus, improve worker protection and the quality of information generated regarding the health effects of exposure to beryllium.

DOE recognizes that it may be necessary in the future to amend its CBDPP regulations if other Federal agencies promulgate rules governing worker exposure to beryllium. Although DOE facilities currently are exempt from regulation by the Occupational Safety and Health Administration (OSHA), DOE routinely adopts OSHA health standards, as a matter of policy. DOE is aware that OSHA plans to initiate a rulemaking to examine, and possibly revise, their current health standard for beryllium. Additionally, DOE is working with the Congress on plans to eventually transfer responsibility for regulating health and safety at DOE facilities to another Federal agency (probably OSHA). In light of the uncertain timing of future actions by OSHA or another external regulator, and the present and potential risk to workers at DOE facilities from beryllium exposure, DOE has decided to proceed with this rulemaking now. However, considering OSHA's decision to examine the health standard for beryllium, DOE proposes (in proposed section 850.22, Exposure Limits) to express the permissible exposure limit (PEL) as 2 ug/m^3 calculated as an 8-hour TWA exposure, as measured in the worker's breathing zone, or any more stringent limit that OSHA may promulgate pursuant to section 4(b)(1) of the OSH Act. This language would permit DOE to continue its policy of requiring compliance with OSHA health standards without conducting notice and comment rulemaking to amend these regulations.

III. Chemical Identification and Use

Beryllium (atomic number 4) is a silver-gray metal with a density of 1.85 g/cm^3 and a high stiffness. Beryllium is found in the earth's surface in about 45 minerals. Bertrandite ($Be_4Si_2O_7[OH]_2$) is the major source of beryllium; other important beryllium-containing materials include beryl ($3BeO.Al_2O_36.SiO_2$), chrysoberyl ($BeAl_2O_4$), and phenacite ($BeSiO_4$). The alloying property of beryllium confers on metals specific properties of resistance to corrosion, vibration, and shock; beryllium can also improve alloy hardness and ductility. For example, the addition of only 2 percent or less beryllium to copper forms an alloy with high strength and hardness. Few other copper alloys are capable of this type of strengthening.

Because of their strength, formability, thermal and electrical conductivities, magnetic transparency, and corrosion resistance, beryllium alloys (especially beryllium-copper) are used extensively in industries such as automotive, electronics, aerospace, and defense. In electronics, for example, beryllia ceramics provide good electrical insulators with superior thermal conductivity to remove heat. Beryllium's low neutron absorption, high neutron scattering characteristics, and ability to multiply neutrons have led to its use in experimental nuclear reactors and nuclear weapons.

IV. Health Effects

A. Introduction

Chronic beryllium disease (CBD) is a disease of the lungs. CBD is caused by the body's reaction to inhaled beryllium dust or fumes. The time in which an individual may develop CBD may vary from several months to many years after exposure to beryllium. The body's reaction to beryllium is often called ''sensitization.'' Sensitization means that beryllium specific lymphocyte

[1] BRAC recommendations were made by individual members and groups of members, not by majority vote. They were generated by the facilitated process used during the meetings and were not adopted by the committee as consensus opinions. For convenience of reference these recommendations are referred to as the ''BRAC recommendations.''

proliferation testing has demonstrated that an individual is able to mount a cell mediated immune response to beryllium. Data suggest that even brief or small exposures can lead to CBD. Beryllium is also classified as a human carcinogen (cancer-causing agent) by the International Agency for Research on Cancer (IARC) and by the American Conference of Governmental Industrial Hygienists (ACGIH).

Symptoms of CBD include one or more of the following: cough, difficulty breathing, fever, night sweats, fatigue, weight loss, or appetite loss. On physical examination, a doctor may find signs of CBD, such as changes in lung sounds, fever, and weight loss. A radiograph (X-ray) of the lungs may show many small scars. There may also be an abnormal breathing test, pulmonary function tests, and a blood test, the beryllium-induced lymphocyte proliferation test (Be-LPT). Examination of lung tissue under the microscope may show granulomas, which are signs of damage due to the body's reaction to beryllium. CBD may be confused with other lung diseases, especially sarcoidosis.

Patients with CBD can be treated with medication and, in more serious cases, with oxygen. Patients who are sensitized to beryllium do not need medical treatment, but they must be checked regularly for signs or symptoms of CBD. CBD cannot be cured. Severe CBD may be very disabling.

B. Chronic Beryllium Disease

Chronic beryllium disease is a granulomatous disease affecting primarily the lungs, although systemic involvement may also occur. Exposure occurs via inhalation of beryllium metal or insoluble beryllium salts. Beryllium is a hapten (a substance that provokes an immune response only when combined with another substance, generally a protein) that binds to peptides on mucosal surfaces. In susceptible individuals the beryllium-peptide complex initiates an immune response, which may progress ultimately to granuloma formation in the pulmonary interstitium. Data have suggested that CBD occurs at relatively low exposure levels and, in some cases, after relatively brief durations of exposure. The typical latency period is 5 to 10 years, but it varies from several months to 30 years or more.

Frequently reported symptoms include dyspnea on exertion, cough, chest pain and, less frequently, arthralgias, fatigue, and weight loss. Physical examination may be normal or it may reveal rales, cyanosis, digital clubbing, or lymphadenopathy. In advanced cases, there may be manifestations of right-sided heart failure, including cor pulmonale.

The peripheral blood beryllium-induced lymphocyte proliferation test (Be-LPT) is used to detect *in vitro* the immunologic response of human lymphocytes to beryllium. A positive Be-LPT indicates sensitization to beryllium-containing antigens. A diagnostic evaluation by means of bronchoscopy with bronchoalveolar lavage (BAL) and transbronchial biopsy is indicated. The presence of granulomata in the lung in a patient with a positive lung Be-LPT is diagnostic of CBD. In the absence of granulomata or other clinical evidence of CBD, individuals with positive Be-LPTs are classified as sensitized to beryllium.

The rate of progression from sensitization to disease is unknown. Once sensitization has occurred, it is medically prudent to prevent additional exposure to beryllium. However, this measure has not been shown to prevent or delay the progression of sensitization to CBD.

The clinical course of CBD is highly variable. Some individuals deteriorate rapidly; most experience long, gradual deteriorations. Treatment consists of oral corticosteroid therapy. Individuals with impaired respiratory gas exchange may require continuous oxygen administration.

Individuals sensitized to beryllium are asymptomatic and not disabled. Individuals with CBD have clinical illness varying from mild to severe. In severe cases, the affected individuals may be permanently and totally disabled. Mortality directly attributable to CBD and its complications is estimated to be 30 percent (ref.1).[2] The mortality estimate of 30% is based upon historical data reflecting both the higher levels of exposure that occurred in the workplace prior to regulation of workplace exposure in the late 1940s and a tracking of the medical history of subjects of CBD over several decades. DOE's more recent experience suggests a lower mortality rate of 3% for CBD cases.

C. Beryllium Exposures at DOE Operations

Personal monitoring of occupational exposures to beryllium was not widely adopted at DOE sites until the 1980s. Prior to the 1980s many sites relied on area monitoring to assess occupational exposures to beryllium. However, these have been shown to significantly underestimate actual exposure levels. Since 1984, personal sampling data have provided more precise information on occupational exposure to beryllium at DOE sites.

Available personal sampling data provides a clear indication of the low levels of beryllium exposure which can be achieved in both fabrication and machining operations and decommissioning and decontamination projects when effective control strategies are implemented. Most beryllium fabrication and machining operations at DOE to date have been at the Rocky Flats facility and at the Y–12 plant in Oak Ridge. Over time, engineering improvements and advanced control strategies have significantly reduced occupational beryllium exposure levels in these operations.

Since 1980, and continuing through 1996, about 1600 personal samples have been collected at the Oak Ridge Y–12 Plant (Table 1). These samples were taken at several different Y–12 operations with a bias toward sampling those jobs where exposure potential was greatest or where previous monitoring results were high. Despite this bias, over two thirds of sample results were below the limit of detection of 0.1 μg/m^3 (usually reported as ''none detected'').

TABLE 1.—OAK RIDGE Y–12 PLANT PERSONAL SAMPLING

	1980–1989	1990–1996
Number of samples	148	1448.
Arithmetic Mean	0.9 μg/m^3	0.3 μg/m^3.
Percent of samples less than 2 μg/m^3.	94%	98%.

These data are from beryllium operations that are associated with cases of chronic beryllium disease. The facilities where these operations take place have not been remodeled since the 1970s. Increased monitoring in the 1990s led to investigations of exceedences over the existing exposure limit and resulted in changes to work practices that contributed to the high readings. This focus on levels exceeding the limit also led to a significant reduction in average exposure levels.

Personal sampling data from the Rocky Flats Building 444 Beryllium Machine Shop (Table 2) collected in 1984–85 and after extensive remodeling to the ventilation system in 1986 illustrate the impact and effectiveness of engineering modifications to control exposure.

[2] A listing of references is included at the end of the preamble to this Notice of Proposed Rulemaking.

TABLE 2.—ROCKY FLATS BUILDING 444 BERYLLIUM MACHINE SHOP PERSONAL SAMPLING DATA

	1984–1985	1986
Number of Samples	99	279.
Arithmetic Mean	1.19 μg/m³.	0.035 μg/m³.
Percent of samples less than 2 μg/m³.	84%	99.6%.

The samples collected in 1984 were the first personal samples collected in this shop following the discovery of a case of CBD that year. Controls in that machine shop had previously been judged to be adequate based on area monitoring. In addition to the extensive remodeling of the ventilation system in the shop to minimize leakage from hoods, operations performed outside of hoods were eliminated to the extent possible. The decision to implement improved engineering controls in this shop reduced average exposure levels by a factor greater than 30 to levels approaching 1% of the limits established by the existing PEL.

A final example, taken from personal sampling data collected during decontamination of Rocky Flats buildings 865 and 867 in 1995–1996, further demonstrates the low levels of beryllium exposure which can be achieved through effective control planning (See Table 3). Each worker was sampled during each work shift during this time period.

TABLE 3.—DECONTAMINATION OF ROCKY FLATS BUILDINGS 865 AND 867 PERSONAL SAMPLING, 1995–1996

Number of Samples	7673.
Arithmetic Mean	0.03 μg/m³.
Percent of samples less than 2 μg/m³.	99.8%.

As can be seen from the foregoing examples, Rocky Flats machining and D&D operations achieved an exceptional level of exposure control.

While the application of controls eliminates predictable sources of exposure, there still can be large day-to-day variations in exposure. The exposures that remain are likely to reflect accidents, equipment failures, or poor work planning. Meeting exposure minimization goals will require planning to limit the potential for such occurrences and monitoring to detect those that do occur so they can be investigated and prevented from reoccurring.

The personal monitoring results at Rocky Flats and Y–12 indicate that most exposures are very low with a few exceptions. These exceptions account for much of the total exposure that workers receive.

D. Epidemiology

The first evidence of the existence of chronic beryllium disease (CBD) was reported in a 1946 paper by Hardy and Tabershaw (ref. 2). The paper described ''delayed chemical pneumonitis'' among fluorescent lamp workers exposed to beryllium compounds. The differential diagnosis included tuberculosis and sarcoidosis, an immune disease of unknown etiology.

There were also reports of CBD in individuals without known occupational exposure to beryllium. Under the direction of Dr. Thomas Mancuso, 16 cases of CBD were diagnosed (by X-ray examination) among 20,000 residents living near a beryllium production facility in Lorain, Ohio (ref. 3). Likewise, a 1949 report described 11 patients with CBD who lived near a beryllium extraction plant (ref. 4). Ten of these 11 lived within ¾ of a mile of the plant, and exposure from plant discharges into the air was the suggested cause for their CBD. Measurements of air concentrations of beryllium at various distances from the plant provided the basis for the Environmental Protection Agency's (EPA's) community permissible exposure limit (24-hour ambient air limit of 0.01 microgram of beryllium per cubic meter of air [μg/m³]).

In addition, CBD has been reported among family members of beryllium workers who were presumably exposed to contaminated work clothing during the 1940's and 1950's (refs. 5, 6). The virtual disappearance of CBD as a result of air pollution or household exposures has been attributed to more stringent control of air emissions and improved work practices, such as mandatory work clothing exchange. This reduction in disease incidence is also attributed to improvements in diagnostic testing (ref. 7). However, as recently as 1989, a woman previously diagnosed with sarcoidosis was diagnosed with CBD. She had no occupational exposure, but her husband was a beryllium production worker. This is the first new case of non-occupational CBD reported in 30 years.

Sterner and Eisenbud suggested that CBD was a highly selective immunologic response. Their conclusion was based on epidemiologic evidence that (1) severe cases have occurred at low exposure; (2) the level of beryllium contained in tissue did not correlate with the extent of the disease; (3) there was a correlation between disease and low atmospheric concentration, but not high concentrations; (4) the onset of symptoms could occur years after the termination of exposure; and (5) pulmonary lesions were not easily reproduced in animals (ref. 6).

A registry of production plant CBD cases was started at Columbia University in 1947. A second registry of phosphor-lamp CBD cases was started around the same time. In 1952, a Beryllium Case Registry was established at the Massachusetts Institute of Technology (MIT) where files from the other beryllium registries were consolidated. The consolidated Beryllium Case Registry was moved to Massachusetts General Hospital in the 1960's and ultimately relocated to the National Institute for Occupational Safety and Health (NIOSH) in 1978. At that time, the Beryllium Case Registry contained 622 cases of CBD, 224 cases of acute beryllium disease, and 44 acute cases that developed into CBD. Twenty-three cases were attributed to household exposures and 42 to air pollution (ref. 5). The Beryllium Case Registry, which is now inactive, was criticized as deficient in acquiring data on cases, identifying populations at risk (denominator data), maintaining follow up of questionable cases, and obtaining exposure data (ref. 8).

According to criteria utilized by the Beryllium Case Registry, the diagnosis of CBD included at least four of the following six criteria with one of the first two conditions required: (1) the establishment of beryllium exposure based on occupational history or results of air samples, (2) the presence of beryllium in lung tissue or thoracic lymph tissue or in the urine, (3) evidence of lower respiratory tract disease and a clinical course consistent with beryllium disease, (4) pathological changes consistent with beryllium disease on examination of lung tissue or thoracic lymph nodes, (5) radiologic evidence of interstitial lung disease, and (6) decreased pulmonary function tests (ref. 9).

The beryllium-induced lymphocyte proliferation test (Be-LPT) in blood and bronchoalveolar lavage (BAL) fluid has allowed early identification of the disease and is one of the criteria required for diagnosis (refs. 10–12). Beryllium has been found to act as a specific antigen, causing proliferation and accumulation of beryllium-specific helper T lymphocytes (CD4) in the lung (ref. 13). Current data suggest that the peripheral blood Be-LPT is a specific and sensitive method for testing

beryllium sensitivity (ref. 10). The presence of granulomatous tissue in the lung along with a positive BAL Be-LPT is considered definitive evidence for diagnosis of CBD (ref. 11). Probable CBD is also diagnosed based on signs and symptoms of CBD and a positive blood Be-LPT when bronchoscopy is not indicated or is refused.

An article published by Cullen et al. in 1987 reported on cases of CBD among precious-metal refinery workers (ref. 14). In 1993, researchers at the National Jewish Medical and Research Center (NJMRC) published two reports on epidemiologic studies that were designed to determine the incidence of CBD among beryllium workers and the value of the Be-LPT in detecting CBD (refs. 15, 16). One study was conducted at DOE's Rocky Flats Environmental Technology Site (Rocky Flats). The three epidemiologic studies showed that CBD incidence among exposed workers was the same as had been reported among workers exposed in the 1940's, when the disease was first recognized. These were the first studies of exposed workers since the adoption of the current Occupational Safety and Health Administration (OSHA) 8-hour, time-weighted average (TWA) permissible exposure limit (PEL) of 2 μg/m^3. The exposure limit was originally derived by analogy to other toxic metals (ref. 17). A decline in the number of reports of CBD led to the assumption that the 2 μg/m^3 limit had been effective in preventing CBD (ref. 5). It is now clear that these standards have not eliminated the incidence of disease.

In 1991, following the NJMRC study, the DOE Office of Environment, Safety and Health initiated a beryllium worker health surveillance program at Rocky Flats to provide medical screening to current and former beryllium workers who had not participated in the earlier NJMRC study. In addition, the Office of Environment, Safety and Health initiated a study at the Oak Ridge Y–12 Plant (Y–12) in 1991 to learn if the NJMRC findings on CBD incidence and the effectiveness of the Be-LPT could be replicated. Results to date confirm NJMRC findings that CBD incidence rates are high and that the Be-LPT is an effective screening test for CBD as shown in Table 4.

TABLE 4.—RESULTS OF MEDICAL SCREENING OF BERYLLIUM-EXPOSED WORKERS AT 3 DOE SITES THROUGH DECEMBER 1997

	Rocky Flats	Y–12	Mound
Individuals Examined	6257	1949	632
Abnormal Be-LPT, Number (percent)	221 (3.5)	77 (4)	[1]1
Completed Diagnostic Exams	186	33	0
CBD[2] Number (percent)	79[3] (1.3)	25[4] (1.3)	0

[1] The one Mound employee who was found to be consistently positive declined to go on for diagnostic testing. Four others had one positive blood test result and were awaiting retesting.

[2] Includes 44 cases confirmed through biopsy and testing of lavage cells and 35 presumptive cases in which the pulmonologist diagnosed CBD but biopsy and/or lavage could not be completed.

[3] Includes 56 cases found through the surveillance program since 1991, 17 through the 1987–1991 NJMRC study, and 6 between 1984 and 1987 for a total of 79 CBD cases. Six of the 79 cases had consistently normal Be-LPT results and were identified through lung disease symptoms or abnormal chest X-rays.

[4] Includes 17 cases found in the surveillance program since 1993, 2 found in 1991 among beryllium workers who had been diagnosed with other lung diseases, and 6 cases found by the site clinic in 1993 among 146 currently exposed beryllium workers provided the Be-LPT.

In 1996, three studies reported on exposure to beryllium associated with CBD and immunologic sensitization to beryllium (refs. 18–20). Two of the studies reported on cases of CBD at Rocky Flats (refs. 18, 19). The third reported on an epidemiology study of a private sector beryllia ceramics fabrication plant that began operating in 1981 (ref. 20). Both Rocky Flats and the ceramics plant were extensively monitored for compliance with the current OSHA 8-hour TWA exposure standard of 2 μg/m^3. The authors concluded that exposures among the highest exposed groups in the plants were, on average, below the 2 μg/m^3 limit. At both plants, cases of CBD and sensitization to beryllium were found among administrative and other personnel, whose average exposures were lower, as well as among the more highly exposed workers.

Stange and colleagues reported on the findings of a health surveillance program at Rocky Flats that used the Be-LPT to screen for CBD (ref. 18). Of 97 individuals who tested positive on the Be-LPT, 28 were found to have CBD. The article included an analysis of the work histories of these 97 current and former workers. A qualitative exposure estimate based on the work histories of individuals who developed CBD concluded that exposures varied by more than an order of magnitude. Extensive air monitoring data were available for one of the highest exposed groups, machinists.

Barnard and colleagues completed an extensive analysis of the monitoring data associated with machining operations at Rocky Flats (ref. 19). Prior to 1984, air monitoring was accomplished with fixed area monitors located near the machine tools that were thought to be the primary sources of emissions into the work rooms. In 1984, personal sampling was initiated, which was more representative of individual exposure. The article reported a high degree of uncertainty in exposure assessments prior to 1984 due to the lack of correlation between area monitoring and personal monitoring. The authors concluded that machinists, as a group, shared similar exposure potential, that average exposures were less than but near the 2 μg/m^3 limit, and that excursions above the limit were common.

Kreiss and colleagues studied CBD occurring in a beryllium oxide ceramics manufacturing plant (ref. 20). They found that machinists had the highest incidence rate of beryllium sensitization and the highest exposure potential. The area monitoring conducted in this plant was aimed at estimating exposures associated with job titles and was found to correlate with personal sampling. The authors concluded that ''the existing data suggests that the machining exposures resulting in the 14.3 odds ratio for beryllium sensitization were largely within those permitted by current regulations.'' This article confirmed the findings of a study of CBD in the neighborhood of a beryllium extraction plant, which showed a correlation between ambient beryllium levels and incidence of CBD (ref. 4). Further analyses of CBD incidence at Rocky Flats, as yet unpublished, showed a similar higher risk for machinists compared to that for other workers (See Table 5).

TABLE 5.—INCIDENCE RATES OF CBD AT ROCKY FLATS

Job category [1]	Number tested	CBD cases	Incidence rate (percent)
Beryllium Machinist	223	21	9.4
Administrative	1,903	23	1.2
Professional	1,396	15	1.1
All Employees Tested	6,254	64	1.0

[1] Many employees held more than one job title.

Cases of CBD have occurred in machinists who worked in the Y–12 beryllia ceramic machine shop, where levels have been quite low. Only a small percentage of samples have detected beryllium. Applying a nonparametric tolerance limit test to 1980 and 1990 personal sampling results from this shop shows, with 95 percent confidence, that 90 percent of exposures were lower than the detection limit (0.1 $\mu g/m^3$ in the 1980–1990 timeframe). Only one of several hundred personal samples was over the 2 $\mu g/m^3$ limit. Continuous area air monitors have operated in the shop throughout its existence. One area sample indicated levels above 2 $\mu g/m^3$ when a machine tool was operated with a disconnected exhaust duct. No other area measurement above 2 $\mu g/m^3$ were recorded, and the median measurement was at the level of detection.

Several authors have highlighted the uncertainty that exists in the exposure assessments (refs. 19–21). The chemical composition of the beryllium materials used and the particle size distribution of the aerosol created by the work operation affect the bioavailability of beryllium, and neither is accounted for by current personal sampling and analytical methods. It is not known what percentage of the beryllium that is being measured in air is capable of reaching the regions of the lung where the health effect occurs. In addition, area monitoring used in the past does not correlate with the personal monitoring that is thought to be more representative of exposure (refs. 19, 21).

Epidemiologic investigations to date have failed to show whether the time course of exposure (dose rate) is biologically significant. High day-to-day variation in exposure level and excursions above the 2 $\mu g/m^3$ limit have occurred in all groups studied. Excursions make up a significant contribution to individuals' total doses, confounding attempts to understand if dose rate is an important risk factor. Beryllium oxide and metal in the lung dissolve slowly over a period of months and years (ref. 22), producing the beryllium ion that elicits an immune response (ref. 23). The persistent presence of the beryllium ion in the lung makes CBD a chronic disease (ref. 24). Either intermittent or chronic exposure to less soluble forms of beryllium can create and maintain a lung burden that will not clear for many years, if at all (ref. 25).

Certain individuals are more susceptible to CBD than others. It has long been suspected that genetic predisposition plays an important role in determining who will develop CBD. Recent advances in genetics and immunology have made it possible for researchers to investigate the basis for CBD and to identify a genetic component (ref. 26).

Differences in individual susceptibility have made it difficult to understand the relationship between exposure and CBD. Early epidemiologic studies detected similar disease rates among high- and low-exposure occupational groups (Table 6). The NJMRC researchers detected differences in disease rates among the workers they studied (Table 7). The DOE surveillance findings supported this conclusion (See Table 5). NJMRC researchers have found cases of CBD among those who had been exposed for periods as short as 1 month and those who had unrecognized or seemingly trivial exposure. However, they also found evidence that disease incidence increased with increasing exposure and concluded that exposure to beryllium should be minimized.

TABLE 6.—CHRONIC BERYLLIUM DISEASE RATES

Exposed during the 1940's	Estimated exposed	Cases	Estimated incidence per 100 exposed	Estimated level of exposure $\mu g/m^3$
Residents Living Within 0.25 Mile of a Beryllium Extraction Plant [1]	500	5	1.0	1
Fluorescent Lamp Manufacturing [1]				
Massachusetts	15,000	175	1.16	100
Ohio	8,000	32	0.4	100
Machine Shop [1]	225	11	4.9	500
Beryllium-Copper Foundry [1]	1,000	13	1.3	500
Beryllium Extraction [1]				
Lorain, Ohio	1,700	22	1.3	1000
Painesville, Ohio	200	0	0.0	1000
Reading, Pennsylvania	4,000	51	1.3	1000

Exposed from the 1970's to the 1980's	Study participants	Cases	Incidence per 100 exposed	Estimated level of exposure $\mu g/m^3$
Beryllia Ceramics Plant [2]	505	9	1.8	NA
The DOE Rocky Flats Plant [3]	895	15	1.7	1

Exposed from the 1970's to the 1980's	Study participants	Cases	Incidence per 100 exposed	Estimated level of exposure µg/m³
Second Beryllia Ceramics Plant[4]	709	8	1.1	0.5

[1] Eisenbud and Lisson, ''Epidemiologic Aspects of Beryllium-Induced Non Malignant Lung Disease: A 30-Year Update,'' JOM, Vol. 25, pp 196–202, 1983.
[2] Kathleen Kreiss et al., ''Beryllium Disease Screening in the Ceramics Industry,'' JOM, Vol. 35, pp 267–274, 1993.
[3] Kathleen Kreiss et al., ''Epidemiology of Beryllium Sensitization and Disease in Nuclear Workers,'' Am. Rev. Res. Dis., Vol. 148, pp 985–991, 1993.
[4] Kathleen Kreiss et al., ''Machining Risk of Beryllium Disease and Sensitization with Median Exposures Below 2 µg/m³,'' Am. J. Ind. Med., Vol. 30, pp 16–25, 1996.

TABLE 7.—BERYLLIUM SENSITIZATION AND DISEASE RATES AT ROCKY FLATS

Beryllium process title	Workers sensitized	Workers doing process	Sensitization rate (percent)
Cleaning Tools, Machines	7	255	2.7
Machining	6	189	3.2
Inspection	2	138	1.4
Metallurgical Sample Preparation	3	115	2.6
Sawing	5	06	4.7
Trepanning	3	77	3.9
Band Sawing	4	67	6.0
Decanning, Shearing	2	65	3.1
Precision Grinding	2	31	6.5
All participants	**Number**	**Participants**	**Rate (percent)**
Sensitized	18	895	2.0
Confirmed CBD Cases	15	895	1.7

From Kathleen Kreiss et al. ''Epidemiology of Beryllium Sensitization and Disease in Nuclear Workers,'' Am. Rev. Res. Dis., Vol. 148, pp 985–991, 1993.

A recent publication by Eisenbud in January 1998, (ref. 27), consolidated the previous epidemiologic studies that have questioned the relevance of the current PEL after evaluating the effect of the level of exposure on disease. In this article, Eisenbud concludes that it ''appears'' the current 2 µg/m³ standard is not protective enough. Rather than recommend an alternative exposure limit, however, Eisenbud points to the need for the development of an animal model to aid in better understanding the etiology of CBD and suggests that innovative measures may be needed to control the disease.

In summary, evidence suggests higher incidence of CBD among workers with higher exposures (e.g., machinists), but, at lower exposure levels, other factors may operate to confound a clear dose-response relationship. These factors include: (1) The effect of peak exposures (such that most of the exposure results from short-term episodes); (2) inadequacy of area monitoring in reflecting actual exposure; (3) chemical composition, etc., that may affect bioavailability; (4) inadequate monitoring of beryllium composition/species associated with exposures; and (5) the effect of genetic predisposition. As a result, the existing literature does not point to a clear set of measures that will reduce incidence.

E. Value of Early Detection

Researchers at the National Jewish Medical and Research Center (NJMRC) compared the lung functions of patients with chronic beryllium disease (CBD) who had been identified through abnormal chest X-rays or clinical symptoms to those of patients whose CBD had been identified through positive beryllium-induced lymphocyte proliferation tests (Be-LPTs) (ref. 28). Twelve of 21 Be-LPT-identified patients had lung abnormalities, including reduced exercise tolerance. Fourteen of 15 patients identified through chest X-rays or clinical symptoms had abnormal lung function, and their abnormalities were more severe. The authors concluded that the Be-LPT was useful because it permitted detection of affected individuals earlier in the disease process.

Early identification also allows removal of patients with CBD from jobs with beryllium exposure. There is no direct evidence that removal from exposure improves the prognosis of patients with CBD, because follow up studies have not been done. However, beryllium does clear from the lung over time, and a reduced level of antigen in the lung should reduce the severity of the inflammation and the amount of lung damage.

The 79 cases of CBD diagnosed among Rocky Flats workers showed a range of severity similar to that reported elsewhere. Thirty-nine individuals had symptoms that required treatment ranging from inhaled bronchodilators to corticosteroids to oxygen. Two individuals died of CBD. Seventy-three of the 79 cases were identified among individuals who had abnormal Be-LPT results but normal chest X-rays or pulmonary function screening test results.

V. Request for Information

The Department is considering more stringent requirements in various areas of the proposed NOPR. It is especially interested in comments that are supported by evidence and rationale whenever possible, regarding the following areas.

Industrial hygiene competencies: Proposed sections 850.21(b) and 850.24(a) would require that hazards assessments and exposure monitoring, respectively be conducted by ''individuals with sufficient knowledge in industrial hygiene.'' The Department

is considering using more prescriptive definitions for the qualifications an individual must possess to perform the required hazard assessments and exposure monitoring. One possible alternative approach would be to use OSHA's ''competent person'' definition. OSHA defines a competent person as:

> * * * one who is capable of identifying existing and predictable hazards in the surroundings or working conditions which are unsanitary, hazardous, or dangerous to employees, and who has authorization to take prompt corrective measures to eliminate them.

Another possible approach would be to require that hazards assessments and exposure monitoring be performed by a ''certified industrial hygienist'' as defined by the American Board of Industrial Hygiene. DOE requests that interested parties submit comments regarding the use of such prescriptive definitions and/or suggestions for alternative approaches.

Permissible exposure limit: To address the uncertainties associated with the existing PEL and the limitations of the existing scientific data, DOE requests that interested parties submit any compelling, scientific evidence that would assist the Department in establishing a new permissible exposure limit that would be more protective of worker health.

Percent exceedance: The Department is considering alternatives to the action level as a basis for judging and interpreting exposure monitoring results. Descriptions of three methods used to interpret exposure level data are contained in the American Industrial Hygiene Association, A Strategy for Occupational Exposure Assessment (ref. 29). Of the three methods described, the percent exceedance approach appears as the best alternative for achieving the policy goal of encouraging periodic monitoring to understand the distribution of exposures and for investigating the causes of high exposures to prevent their reoccurrence. We are considering proposing that monitoring demonstrate 95% confidence that fewer than 5 percent of the 8-hour or 15 minute TWA PEL levels exceed the exposure limit. The advantage of this method is that periodic monitoring is needed to characterize the distribution of exposure before compliance can be demonstrated, usually through an upper tolerance limit test. In addition this method rewards day-to-day management of exposure levels through investigation of the causes of an exceedance and the implementation of corrective actions that will prevent it from reoccurring. A weakness of this method is that it can underestimate the degree of risk in a workplace where day-to-day, or between worker variation, is very large. This weakness can be minimized by assuring that long term mean levels are not high compared to the PEL. DOE requests that interested parties provide information on: the feasibility and implication of a percent exceedance approach to defining an acceptable workplace; the percent exceedance that would still provide the level of protection intended by the 8-hour or 15 minute TWA PEL; and whether mean testing should be specified as well. Commentors should provide the rationale and associated costs for approaches supported in their submittals, as well as input on implementation strategies or issues.

Exposure monitoring: Given the uncertainty regarding the adequacy of the PELs and whether any level of beryllium exposure should be considered safe, DOE is considering establishing a requirement for daily exposure monitoring of all beryllium workers to document and characterize more completely a worker's exposure to beryllium, and to better evaluate the adequacy of existing exposure levels or determine appropriate levels for alternative exposure limits. At the very low exposure levels that the Department is attempting to achieve, work practices that would ordinarily be judged as presenting trivial potential sources of exposure may be significant. The goal of an exposure monitoring program should be routine sampling aimed at characterizing the distribution of exposures due to typical work. Monitoring results help identify both the cause of exposure above limits and measures that can prevent recurrence. DOE requests that interested parties provide information on the feasibility and implications of this more restrictive monitoring requirement. Commentors should also provide the rationale for the approaches supported in their submittals.

Respiratory protection: DOE is considering requiring the use of respiratory protection at the action level instead of the PEL due to uncertainty about the protective value of the PEL. DOE requests that interested parties submit comments regarding the impact of such a change.

Protective clothing and equipment: DOE is requesting information regarding the presence of soluble beryllium compounds within the DOE complex and the appropriateness of the exclusion of such compounds from the definition of beryllium in the proposed rule. In addition, DOE requests comments with appropriate supporting rationale regarding the need for the protective clothing provisions of proposed section 850.29(a)(2) given that soluble beryllium compounds apparently are not present within the DOE complex.

Surface contamination level: DOE requests that interested parties submit comments regarding the validity of the proposed 3 μg/100 cm^2 surface contamination level. If an alternate level is suggested, the Department requests that the rationale and associated cost implications for choosing the alternate surface contamination level also be provided.

Release level: DOE is aware of the need to set an acceptably free-release surface contamination level for beryllium for unrestricted equipment release and transfer to uncontrolled areas and the public. DOE requests that interested parties submit comments regarding the setting of a beryllium free-release public contamination level. If a level is suggested, the Department requests that the rationale and associated cost implications for choosing the associated surface contamination level also be provided.

Medical surveillance: DOE seeks comments on whether all workers with any potential exposure to beryllium, regardless of the level of exposure, should be provided the option to participate in a medical surveillance program to identify workers who may become sensitized to beryllium at exposures less than the action level or STEL.

Anonymous testing: The Department realizes that some workers may elect not to participate in the medical surveillance program because they may believe that a diagnosis of CBD or beryllium sensitization could have a negative impact on future employment opportunities or on their health insurance. To address this concern and to encourage greater worker participation in the medical surveillance program, DOE is considering including a provision in the proposed rule that would allow for anonymous testing for CBD. Such a provision could include assigning an identification number (not traceable to the worker's name) to the worker's blood sample. The tested worker could use the identification number to call into the testing laboratory after a specified amount of time to retrieve the test results.

DOE recognizes that such a system may encourage greater participation in the medical surveillance program, but it also has several drawbacks including the inability to correlate collected exposure data to health outcomes, and problems associated with the need for followup testing to confirm positive

results. DOE request that interested parties comment on appropriate methods for, and the feasibility and utility of provisions for anonymous testing for CBD.

Outreach program: DOE is considering a requirement that contractors develop and implement an outreach education program for family members of beryllium workers. The outreach awareness program would address the hazards of exposure to beryllium and the purpose and content of the CBDPP. The objective of this requirement would be to increase awareness among the families of beryllium workers about the hazards associated with beryllium exposure and the actions being taken within the Department to address these hazards. DOE requests that interested parties comment on the feasibility, utility, and implications of such an outreach program.

VI. Section-by-Section Analysis

Overview of the Proposed Rule

The proposed rule would strengthen the Department's worker protection program established in DOE Order 440.1A, Worker Protection Management for DOE Federal and Contractor Employees (5483.1B, 5480.4, 5480.8A, and 5480.10 for operations not covered contractually under 440.1A), by supplementing the general worker protection program requirements of the order with hazard-specific provisions that are designed to manage and control beryllium exposure hazards in the DOE workplace. These hazard-specific provisions are derived largely from DOE Notice 440.1, ''Interim Chronic Beryllium Disease Prevention Program.''

DOE Notice 440.1 was developed by the DOE Beryllium Rule Development Team and Executive Committee, both of which consisted of representatives of each of the affected DOE headquarters and field offices. The technical basis for the notice was based in part on public input provided to the DOE Office of Environment, Safety and Health (EH) by 43 commentors and organizations in response to a December 30, 1996, **Federal Register** notice requesting scientific data, information, and views relevant to a DOE beryllium standard (61 FR 68725). Much of this information was presented and discussed at public forums held in Albuquerque, NM, and Oak Ridge, TN, in January 1997. Records of these public forums, as well as copies of all related public input and the minutes and recommendations of the BRAC meetings, are available at the DOE Freedom of Information Reading Room in the prerulemaking docket file entitled ''BERYLLIUM STANDARD.'' See the preceding **ADDRESSES** section for details on how to review or obtain copies of this material.

Consistent with DOE Notice 440.1 the proposed rule establishes a CBDPP that is designed to prevent the occurrence of chronic beryllium disease (CBD) among DOE Federal and contractor workers. The CBDPP will accomplish this disease-prevention mission through provisions that (1) reduce the number of current DOE Federal and contractor workers who are exposed to beryllium by clearly identifying and limiting worker access to areas and operations that contain or utilize beryllium; (2) minimize the potential for, and levels of, worker exposure to beryllium by implementing engineering and work practice controls that prevent the release of beryllium particles into the workplace atmosphere and/or capture and contain airborne beryllium particles before worker inhalation; (3) establish medical surveillance to monitor the health of exposed workers and ensure early detection and treatment of disease; and (4) continually monitor the effectiveness of the program in preventing CBD and implement program enhancements as appropriate.

The provisions of the proposed rule are presented in three main subparts: A, B, and C. Subpart A of the proposed rule describes the purpose and applicability of the rule, defines terms that are critical to the rule's application and implementation, and establishes DOE and contractor responsibilities for executing the rule. Subpart B establishes administrative requirements to develop and maintain a CBDPP and to perform all beryllium-related activities according to the CBDPP. Subpart C establishes requirements that focus on protecting workers from the harmful health effects associated with exposure to airborne levels of beryllium. Some of the provisions of Subpart C would apply only when it is determined that the airborne concentrations of beryllium in a specific workplace or operation rise above a specified limit. Table 5 summarizes these provisions and indicates the levels of beryllium at which the provisions would be enacted. Subparts A, B, and C of the proposed rule are discussed in detail in the following sections.

TABLE 5.—LEVELS AT WHICH THE PROVISIONS OF THE CBDPP WOULD BE ENACTED

Provision	Worker exposure or potential exposure levels (8-hour TWA)		
	> 0	≥ Action level or > STEL	> PEL (8-hr TWA or STEL)
Baseline Beryllium Inventory (850.20)	X		
Hazard Assessment (850.21)	X		
Initial Exposure Monitoring (850.24)	X		
Periodic Exposure Monitoring (850.24)		X	
Exposure Reduction and Minimization (850.25)	X[1]	X[2]	X[3]
Regulated Areas (850.26)		X	
Change Rooms (850.27)		X	
Respiratory Protection (850.28)			X
Protective Clothing and Equipment (850.29)		X	
Housekeeping (850.30)	X[4]		
Medical Surveillance (850.33)		X	
Training (850.36)	X[5]		
Counseling (850.36)		X[6]	
Warning Signs (850.37)		X	
Waste Disposal (850.31)	Applies to beryllium waste and beryllium-contaminated waste.		
Beryllium Emergencies (850.32)	Applies to beryllium operations.		

TABLE 5.—LEVELS AT WHICH THE PROVISIONS OF THE CBDPP WOULD BE ENACTED—Continued

Provision	Worker exposure or potential exposure levels (8-hour TWA)		
	> 0	≥ Action level or > STEL	> PEL (8-hr TWA or STEL)
Warning Labels (850.37)	Applies to beryllium and beryllium waste and beryllium-contaminated material and waste.		

[1] If exposure levels are below the action level or STEL, contractors must establish exposure reduction and minimization goals to further reduce worker exposures where practicable.
[2] Contractors must investigate opportunities for and, if feasible, implement controls for reducing exposures to below the action level or STEL.
[3] Contractors must reduce exposures to or below the PEL or STEL.
[4] Housekeeping efforts must maintain removable surface contamination at or below 3 μg/100 cm^2.
[5] Hazard communication training is required for all workers who could be potentially exposed.
[6] Counseling is required for beryllium workers diagnosed with CBD or beryllium sensitization.

A. Subpart A—General Provisions

Proposed section 850.1 emphasizes that the proposed CBDPP would enhance, supplement, and be integrated into existing worker protection program requirements for DOE Federal and contractor employees. The Department has structured the proposed rule this way for two main reasons: (1) To take advantage of existing and effective comprehensive worker protection programs that have been implemented at DOE facilities, and (2) to minimize the burden on DOE contractors by clarifying that contractors need not establish redundant worker protection programs to comply with the proposed rule.

Proposed section 850.2(a)(1) specifies that the proposed rule would apply to DOE Federal employees with responsibilities for operations or activities involving exposure or the potential for exposure to beryllium at DOE-owned or -leased facilities. The Department recognizes that its federal workers are not usually directly involved in production tasks or other activities in which they would be exposed to airborne beryllium. However, in performing management and oversight duties, DOE federal workers often must enter facilities where beryllium is handled. Federal workers are protected under the health and safety provisions of 29 CFR Part 1960, ''Basic Program Elements for Federal Employee Occupational Safety and Health Programs and Related Matters,'' as well as Executive Order (EO) 12196, ''Occupational Safety and Health Programs for Federal Employees.'' The Department's intent in proposed section 850.2(a)(1) is to supplement these general worker protection requirements with specific beryllium-related requirements in the limited instances where DOE federal workers may have the potential for beryllium exposure.

Proposed section 850.2(a)(2) specifies that the proposed rule would also apply to DOE contractors with operations or activities involving exposure or the potential for exposure to beryllium. As clarified in the definition of DOE contractor (proposed section 850.3), the Department's intent is that the DOE contractors covered under this proposed rule would include any entity under contract to perform DOE activities at DOE-owned or -leased facilities, including contractors awarded contracts, integrating contractors, and subcontractors. This section further clarifies that the requirements of the CBDPP would apply only to contractors and subcontractors who work in areas or on DOE activities that involve the potential for worker exposure to beryllium. The Department's intent with this clarification is to focus DOE and contractor resources and efforts on areas and activities that present a real potential for worker exposure to beryllium and thus realize the most benefit from implementing the proposed CBDPP. DOE emphasizes this intent throughout the proposed rule by requiring that DOE contractors tailor their approach to implementing the CBDPP.

The Department's intent with the applicability provisions of proposed section 850.2(a)(1) and (a)(2) is that the proposed rule would apply only to exposures and potential exposures to beryllium that occur in connection with facility operations. This recognizes the fact that beryllium occurs naturally in soils and that the focus of the CBDPP should not be on naturally occurring beryllium but rather on the occupational exposures resulting from DOE operations.

Proposed section 850.2(b)(1) would exempt ''beryllium articles'' from the requirements of the proposed rule (see the discussion of the definition of ''beryllium article'' under proposed section 850.3). The Department recognizes that some beryllium-containing manufactured items may not pose beryllium hazards where they have been formed to specific shapes or designs and their subsequent uses or handling will not result in the release of beryllium. This exemption for beryllium articles is consistent with the approach taken by OSHA when defining hazardous materials subject to the Hazard Communication standard at 29 CFR 1910.1200.

Proposed section 850.2(b)(2) would establish that the rule does not apply to the DOE laboratory operations involving beryllium that are subject to the requirements of OSHA's Occupational Exposure to Hazardous Chemicals in Laboratories standard, 29 CFR 1910.1450, commonly called OSHA's laboratory standard. In establishing its laboratory standard, OSHA clarified its intent that 29 CFR 1910.1450 supersede all other OSHA regulations for bench-top laboratory-scale activities, noting that the provisions of the standard were more relevant and suitable to the unique characteristics of laboratory activities. The Department agrees with OSHA's approach and believes that the provisions of OSHA's laboratory standard are adequate to protect workers from beryllium exposures in facilities that fall within the scope of the standard.

Proposed section 850.3 would apply traditional industrial hygiene terminology to define key terms used throughout the proposed rule. In relying on such terminology and by using terms consistent with OSHA interpretations, DOE intends to signal the Department's increased emphasis on industrial hygiene compliance through the use of accepted occupational safety and health requirements and procedures. The following discussion defines and

explains each of the definitions in the proposed rule.

Accepted applicant is any person who has accepted an offer of employment in beryllium work at a DOE facility but who has not yet begun performing beryllium work. DOE intends for DOE contractors to provide such individuals with baseline medical evaluations before allowing them to begin employment as beryllium workers to ensure that they can safely perform work in areas that may present the potential for exposure to beryllium.

Action level means the level of airborne concentration of beryllium established pursuant to Subpart C, which, if exceeded, would require the implementation of certain provisions of the proposed rule. Using an action level to trigger certain provisions of the proposed rule is consistent with the approach applied in many of OSHA's substance-specific standards. This approach ensures that appropriate workplace precautions are taken and that training and medical surveillance are provided in cases in which worker exposures to beryllium could approach the permissible exposure limit. Additional discussion on the application of the action level in this proposed rule is provided in the discussion on proposed section 850.23, Action Level, and in the discussions of the individual provisions of the proposed rule that would be triggered by exceeding the proposed action level.

Authorized person means any person required by work duties to be in regulated areas. Authorized individuals are intended to be trained and experienced in the hazards of beryllium and in the means of protecting themselves and those around them against such hazards. Training requirements for all individuals working with beryllium are specified in proposed section 850.36 of the proposed rule. The concept of authorized persons is consistent with OSHA standards and with contractor practice in many facilities and is intended to ensure that the number of potentially exposed individuals is reduced to the lowest possible number and that workers who are granted access to regulated areas have the knowledge they need to protect themselves and other workers.

Beryllium means elemental beryllium and any insoluble beryllium compound or alloy containing 0.1 percent beryllium or greater that may be released as an airborne particulate. The Department has chosen this definition of beryllium because it clearly reflects that the focus of the proposed rule is on exposure to airborne levels of beryllium. DOE notes in this definition that OSHA uses the criterion for a carcinogenic mixture as one that contains a carcinogenic component at a concentration of 0.1 percent (or 1,000 parts per million [ppm]) or greater, by weight or volume.

Beryllium article means a manufactured item that is formed to a specific shape or design during manufacture and that has end-use functions that depend in whole or in part on the item's shape or design during use and that does not release beryllium or otherwise result in exposure to airborne concentrations of beryllium under normal-use conditions. The Department has included this definition of ''beryllium article'' to distinguish between forms of beryllium that could result in exposure and manufactured items containing beryllium that do not release beryllium or otherwise result in exposure to airborne concentrations of beryllium. This definition is consistent with the rationale employed by OSHA in formulating its definition of ''article'' in the Hazard Communication standard (29 CFR 1910.1200). The key concept is that an article does not have the potential to result in hazardous exposures; this definition of ''article'' also considers the item's intended use. For example, an item ceases to be an ''article'' when it is subjected to machining, cutting, or drilling. Similarly, if an item is manufactured for the purpose of being machined later, it is not considered an article.

Beryllium emergency means any occurrence such as, but not limited to, equipment failure, container rupture, or failure of control equipment or operations, that unexpectedly releases a significant amount of beryllium. This definition is particularly important when determining appropriate emergency response procedures that fall within the scope of OSHA's Hazardous Waste Operations and Emergency Response standard, 29 CFR 1910.120. This definition is based on OSHA's interpretation of the term as applied in 29 CFR 1910.120 and is intended to refer to any untoward event, such as a major spill of powdered beryllium or an unexpected, massive upset that releases a significant amount of airborne beryllium into the workplace atmosphere. The use of the term ''beryllium emergency'' in this proposed rule applies to proposed section 850.32, Emergencies, which requires DOE contractors to develop emergency procedures and training to address emergency scenarios. Such procedures and training must focus on emergency events that can reasonably be foreseen by an employer, such as a spill or a rupture of a pipe or a container.

Beryllium-induced lymphocyte proliferation test (Be-LPT) means an *in vitro* measure of the beryllium antigen-specific, cell-mediated immune response. This test measures the extent to which lymphocytes, a class of white blood cells, respond to the presence of beryllium by replicating in the laboratory. The Be-LPT is used by medical personnel to identify workers who have become sensitized to beryllium through their occupational exposure.

Beryllium worker means a current worker who is exposed or potentially exposed to airborne concentrations of beryllium at or above the action level or above the STEL or who is currently receiving medical removal protection benefits. This individual is a DOE Federal or contractor worker, a worker of a subcontractor to a DOE contractor, or a visitor who performs work for or with DOE or uses DOE facilities. This definition, through the phrase ''current worker who is exposed or potentially exposed to airborne concentrations of beryllium,'' clarifies the Department's intent that the proposed rule would apply only to current workers who are part of the at-risk population. The definition further clarifies that current workers who have been removed from beryllium exposure as part of the medical removal plan would continue to be considered as beryllium workers under the proposed rule. Former DOE workers who were potentially exposed to beryllium do not fall within this definition or the proposed rule. These workers will be addressed under a separate DOE initiative that is under development.

Breathing zone is the hemisphere forward of the shoulders, centered on the mouth and nose, with a radius of 6 to 9 inches. This definition applies specifically to proposed section 850.24, Exposure Monitoring, which would require DOE contractors to determine worker exposures to beryllium by monitoring for the presence of contaminants in the worker's personal breathing zone. This definition is consistent with sound and accepted industrial hygiene practice and ensures that samples collected for personal exposure monitoring represent the air inhaled by workers while performing their duties in affected work areas.

DOE means the Department of Energy or Department.

DOE beryllium activity means an activity performed for, or by, DOE that can expose workers to airborne concentrations of beryllium. Activities within the scope of this definition

include design, construction, operation, maintenance, and decommissioning. The definition further explains that, to the extent appropriate, a ''DOE activity'' may involve one DOE facility or operation, a combination of facilities and operations, or possibly an entire site. This definition is broad enough to include such activities as repair work performed by support-service subcontractors who visit the site infrequently.

DOE contractor means any entity under contract (or its subcontractors) with DOE with responsibility for performing DOE activities at DOE-owned or -leased facilities. This does not apply to contractors or subcontractors who solely provide ''commercial items'' as defined under the Federal Acquisition Regulations (FAR). As explained in proposed section 850.10, subcontractors included in this definition who would be covered under the proposed rule would not necessarily be expected to produce their own written CBDPPs. However, these subcontractors should be included in the CBDPP that encompasses all beryllium-related activities at the site. See the discussion in proposed section 850.10 for further details on how the requirements of the proposed CBDPP would be extended to a subcontractor.

DOE facility means any facility owned or leased by DOE.

High-efficiency particulate air (HEPA) filter means a high-efficiency filter capable of trapping and retaining at least 99.97 percent of 0.3-micrometer monodisperse particles. Such filters are commonly used in heating and ventilating systems, respiratory protection equipment, local exhaust ventilation, and so on, to remove toxic or hazardous particulates like beryllium.

Immune response refers to the series of cellular events by which the immune system reacts to challenge a specific antigen. Types of immune responses include acquired immunity and sensitization. The body's immune response to beryllium is indicated by the results of the Be-LPT.

Medical removal protection benefits are employment rights established in proposed section 850.34 for beryllium workers who voluntarily accept temporary or permanent medical removal from regulated areas following medical evaluations that confirm beryllium sensitization or CBD. These provisions would ensure that contractors make reasonable efforts to find and offer alternate employment to beryllium workers who have suffered negative health effects due to exposure to beryllium. The definition of medical removal protection benefits and the requirements in proposed section 850.34 would ensure that such workers would suffer no reductions in wage rate, seniority, or other benefits for 2 years after medical removal. The 2-year period would allow the contractor to make a reasonable effort through job retraining and out-placement programs operated by many sites to locate alternate work placement for beryllium workers, either internally or with different employers.

Regulated area means an area established and managed by the contractor to demarcate locations where the airborne concentration of beryllium exceeds, or can reasonably be expected to exceed, the action level (see the preceding definition of ''action level''). Employees working in regulated areas must be authorized to do so by the contractor and trained and equipped with protective clothing and equipment. The purpose of such areas is to limit beryllium exposure to as few employees as possible. This is a standard definition used throughout DOE, particularly with regard to radiation protection, and is consistent with OSHA's expanded health standards that address toxic particulates.

Short-term exposure limit (STEL) means the level of airborne concentration established pursuant to Subpart C (calculated as a 15-minute TWA, measured in the worker's breathing zone by personal monitoring), which should not be exceeded for any 15-minute period at any time during the workday. Additional discussion on the application of the STEL in this proposed rule is provided in the discussion on proposed section, 850.22, Exposure Limits.

Site occupational medicine director (SOMD) means the physician responsible for the overall direction and operation of the site occupational medicine program. DOE's intent with this definition is to ensure that each site's occupational medicine program would be administered by a qualified medical professional.

Surface contamination means the presence of beryllium on exposed work surfaces, which may cause skin irritation upon contact or which may present an airborne hazard when reentrained into the workplace air. This definition of ''surface contamination'' is also important in addressing the maintenance, decontamination, and cleaning of facilities and equipment for recycling or for release for other uses. The Department recognizes that airborne respirable beryllium particles differ from surface contamination, which is not respirable until it is disturbed. Therefore, the rule provides separate definitions of ''beryllium'' and ''surface contamination.''

Worker means a person who performs work for or on behalf of DOE, including a DOE employee, an independent contractor, a DOE contractor employee, or any other person who performs work at a DOE facility. As clarified in the definition of DOE contractor, a contractor employee can be an employee of a covered subcontractor.

Worker exposure means the airborne concentration of beryllium in the breathing zone of the worker when the worker is not using respiratory protective equipment. This definition is consistent with accepted industrial hygiene practice and with OSHA's definition of the term ''employee exposure'' as applied in the OSHA expanded health standards.

Proposed section 850.3(b) references the standard definitions contained in the Atomic Energy Act and related rules under 10 CFR part 850 for other terms used throughout this proposed rule.

Proposed section 850.4 would establish enforcement provisions for the proposed rule. Like other Departmental regulations that apply to DOE contractors, this provision would allow DOE to employ contractual mechanisms, such as contract termination or fee reduction, when contractors fail to comply with the provisions of this proposed rule. These mechanisms help the Department ensure that beryllium workers receive an appropriate level of protection while performing Departmental activities that involve exposure or the potential for exposure to beryllium.

Proposed section 850.5 would provide the appropriate steps that the Department may take to enforce compliance with this proposed rule. The grievance-arbitration processes of collective bargaining agreements covering accepted applicants and beryllium workers employed by Department contractors would generally apply to disputes relating to implementation of this part. Therefore, proposed section 850.5 would provide that disputes arising under this part brought by beryllium workers and accepted applicants (or by labor organizations acting on their behalf) that are covered by grievance-arbitration processes should be resolved through such processes. This approach to dispute resolution would minimize the possibility of bypassing collective bargaining representatives or existing contractual grievance-arbitration processes and minimize the possibility of conflicting outcomes that would exist with multiple avenues for enforcing compliance with the rule.

However, where the individuals bringing such disputes are not covered by collective bargaining agreements or where such collectively bargained processes are not applicable, the proposed rule would provide that disputes brought by individuals may be resolved by the Department's Office of Hearings and Appeals (OHA). OHA is an established and impartial body that has experience in dealing with whistleblower, security, and other disputes brought by individual workers. The procedures in 10 CFR part 1003, Subpart C, shall apply to resolution of disputes by OHA.

B. Subpart B—Administrative Requirements

Subpart B of the proposed rule would establish general and administrative requirements to develop, implement, and maintain a CBDPP and to perform all beryllium-related activities according to the CBDPP.

As owner or lessor of DOE-owned or -leased facilities, the Department has both a responsibility for overseeing the health and safety activities of its contractors and a partnership interest in achieving excellence in worker protection activities. Accordingly, *proposed section 850.10*(a)(1) would require DOE contractors who are responsible for DOE beryllium activities to prepare CBDPPs for their operations and submit the CBDPPs to the appropriate DOE Field Organization for approval. This section would establish a 90–day time frame from the effective date of the rule for contractor submission of the CBDPP to the appropriate DOE Field Organization. The Department is well aware of the burden of documentation that can be generated by new programs. However, most DOE contractors have already developed CBDPPs in response to the requirements of DOE Notice 440.1. The Department expects that the additional efforts that would be required to refine the existing CBDPPs to meet the requirements of the proposed rule would be minimal. The Department considers 90-days sufficient time for DOE contractors to examine their safety and health programs and make any changes necessitated by the rule.

Proposed section 850.10(a)(2) would require that a single written CBDPP be submitted to encompass all beryllium-related activities at a site. Because the Department recognizes that one site may encompass multiple contractors and numerous work activities, however, this proposed section clarifies that the CBDPP for a given site may include specific sections for individual contractors, work tasks, and so on. DOE believes that this allowance for a segmented CBDPP structure would minimize the burden associated with the CBDPP update and approval requirements because it allows contractors to update and submit for approval only the affected sections of the CBDPP. When multiple contractors are involved, the DOE contractor designated by the DOE Field Organization shall take the lead in compiling the overall CBDPP document and coordinating the input from various subcontractors or work activities. This section further clarifies that in such cases where multiple contractors are involved, the designated contractor would have to review and approve the CBDPPs of other contractors engaged at the site before a consolidated CBDPP would be submitted to the head of the cognizant DOE Field Organization for final review and approval.

Proposed section 850.10(b) would require heads of DOE Field Organizations to review and approve CBDPPs. DOE believes that DOE review and approval are necessary to ensure that each contractor's CBDPP is consistent with best industry practices for industrial hygiene, the Department's exposure reduction and minimization philosophy, and the objectives of the CBDPP. Through these proposed sections, DOE hopes to establish clear lines of authority for review and approval of contractors' CBDPPs.

Proposed section 850.10(b)(1) would establish a 90-day period for DOE to review and either approve or reject the CBDPP. During its review, DOE could direct the contractor to modify the CBDPP, or it could modify the CBDPP itself. If DOE takes no action within 90 days, the initial CBDPP would be considered approved. The Department would establish this 90-day time frame to facilitate timely implementation of program elements by contractors and to ensure that DOE Field Organizations respond to contractors' submissions.

Proposed section 850.10(b)(2) would require that the written CBDPPs be furnished upon request to the DOE Assistant Secretary for Environment, Safety and Health or his or her designee; DOE program offices; affected workers; and designated worker representatives. This proposed requirement would be in addition to the provisions of this section that would require contractors to submit the CBDPP, or portions (e.g., the medical surveillance section) of it, to cognizant DOE offices. The Department's intent with this requirement is to facilitate implementation and enforcement of the proposed rule. In addition, this proposed section would ensure that workers and their representatives could access information that is related to the protection of their health during the performance of DOE activities.

Proposed section 850.10(c) would establish that updates to the written CBDPP be required under two circumstances: (1) Whenever a significant change or addition is made to the program and (2) whenever a contractor or subcontractor changes. DOE feels that such updates would be warranted to ensure that the CBDPP accurately reflects workplace conditions and appropriately addresses specific beryllium workplace exposure hazards.

This proposed section would also require that DOE contractors review their written CBDPPs at least annually and revise these programs as necessary to reflect any significant changes. Only sections of the CBDPP that require changes would have to be resubmitted to the head of the DOE Field Organization for approval. The Department considers the annual review cycle to be appropriate and necessary to ensure that CBDPPs remain up-to-date and accurately reflect workplace conditions and required control procedures.

Proposed section 850.10(d) was added to ensure that the CBDPP would be developed and implemented consistent with the requirements imposed by the National Labor Relations Act (NLRA) on employers in this context, and not to create obligations in excess of those that would be found in such circumstances under the NLRA.

Proposed section 850.11(a) specifies that the CBDPP would be expected to address all existing and anticipated operational tasks that fall within its scope. In addition, the section would require all DOE contractors to develop and implement a CBDPP that is integrated into the Department's existing worker protection program. This proposed requirement would reflect the Department's desire to develop and implement one comprehensive, consistent, and integrated worker protection program that addresses all DOE workplace hazards. By including this provision, DOE notes the importance of controlling beryllium hazards within the framework of the worker protection program established under DOE Order 440.1A (or, where applicable, under predecessor orders like DOE Orders 5483.1A, 5480.4, 5480.8A, and 5480.10) and related DOE health and safety initiatives. The existing industrial hygiene and occupational medicine programs, which were established in the comprehensive worker protection program and related initiatives, provide the basis needed to protect DOE federal

and contractor workers from health hazards like beryllium exposure. DOE believes that establishing a beryllium exposure control program outside the framework of this accepted program would create redundant and inconsistent requirements that would unnecessarily burden the regulated community and create an inefficient program.

Unlike the DOE orders listed above, the regulatory requirements of this proposed rule would by operation of law apply to DOE contracts. Accordingly, the application and enforcement of this proposed rule would not be subject to the Work Smart Standards Program or other related processes. DOE believes that this mandatory application of the proposed CBDPP requirements to all DOE beryllium activities is appropriate given the hazardous nature of beryllium-related work.

Proposed section 850.11(b) would require that contractors tailor the scope and content of their CBDPPs to the specific hazards associated with the DOE beryllium activities being performed. In addition, proposed section 850.11(b)(1) would require that these programs have to include formal plans outlining how DOE contractors would ensure that occupational exposures to beryllium are maintained at or below the PELs (8-hour TWA PEL of 2 $\mu g/m^3$ and 15-minute STEL of 10 $\mu g/m^3$).

Proposed section 850.11(b)(2) further specifies that a contractor's CBDPP must, at a minimum, address each requirement in Subpart C of the rule. Consistent with the performance-based nature of the proposed rule, DOE's intent with this requirement is that DOE contractors include in their CBDPPs those provisions necessary to protect workers from exposure to beryllium during the performance of DOE beryllium activities at the contractors' respective sites. Proposed section 850.11(b)(3) would clarify that the CBDPP provisions must focus on: (i) Minimizing the number of current workers exposed and potentially exposed to beryllium; (ii) minimizing the number of opportunities for workers to be exposed to beryllium; and (iii) setting challenging exposure reduction and minimization goals to facilitate the minimization of worker exposures. DOE believes that the establishment of exposure reduction and minimization goals is essential to the success of the CBDPP. With this catalyst to achieving further exposure reductions, DOE contractors would be encouraged to seek opportunities to provide enhanced worker protection, thereby assisting DOE in moving toward the ultimate goal of preventing CBD within the DOE complex.

DOE is sensitive to concerns that exist within the DOE community regarding the need to approach the Department's exposure reduction and minimization objectives in a responsible and realistic manner. Accordingly, proposed section 850.11(b)(3)(iii) would establish a performance-based requirement that would allow contractors to establish their own exposure reduction and minimization goals tailored to their unique workplace needs and conditions. DOE's intention with this proposed requirement is that DOE contractors would establish reasonable but challenging goals based on sound industrial hygiene principles and the specific circumstances for each affected workplace and location. DOE believes that relevant circumstances must be considered in establishing these goals. Those circumstances would include the current level of worker exposures, the number of workers exposed, the existing controls that are in place, the technical feasibility and exposure reduction potential of possible additional controls, and the cost and operational impact of the controls.

Proposed sections 850.12 (a) and (b) would require that DOE contractors manage and control beryllium exposures in all DOE beryllium activities in accordance with the approved CBDPP. This section would clarify that DOE and contractor personnel must follow applicable requirements of the rule and any resulting programs, plans, schedules, or processes, as well as requirements in other applicable Federal statutes and regulations.

Proposed section 850.12(c) would clarify the Department's position that tasks involving potential beryllium exposure that would not be covered under the CBDPP could not be initiated until the CBDPP has been updated to include them and has been approved by the appropriate DOE Field Organization. DOE provides an exception of this requirement for urgent and unexpected situations. In such cases, the task could proceed with the approval of the DOE Field Organization prior to revision and approval of the CBDPP.

Proposed section 850.12(d) would require that, depending on the circumstances of the work, other actions may be necessary to protect workers and that such actions are not to be limited by the provisions of the proposed rule. The Department recognizes that those individuals responsible for implementing CBDPP activities are accountable for using their professional judgment in protecting the health and safety of workers. Nothing in the proposed rule should be viewed as relieving these individuals of their professional responsibility to take whatever actions are warranted to protect the health and safety of the workforce.

Proposed section 850.13(a) would mandate that DOE activities involving beryllium comply with their respective CBDPP that has been approved by the cognizant DOE Field Organization, as appropriate. Through this provision, DOE recognizes that even the best CBDPP will not adequately protect workers if it is not followed at the site. Proposed section 850.13(b) further proposes that once the final rule takes effect, DOE contractors would have 2 years to fully implement all aspects of the program (written plans, schedules, and other measures). The Department intends to reduce the resource impacts on contractors by permitting them to phase in costly controls over the 2-year period. However, the Department would expect portions of the program to be implemented as soon as practical during the 2-year period.

Proposed section 850.13(c) would specify that the DOE contractor in charge of the activity involving a potential for beryllium exposure would be responsible for complying with the rule. When no contractor is responsible for the activity and Federal employees perform the activity, this section would require DOE to be responsible for compliance.

Subpart C—Specific Program Requirements

Subpart C of the proposed rule would establish performance-based requirements for the CBDPP. These proposed requirements focus on preventing CBD by reducing the number of workers who could be exposed to beryllium, minimizing the potential level of beryllium in the workplace atmosphere, and continually monitoring worker health to ensure that workplace controls are sufficiently protective. The Department's intent is that implementation of the rule will increase understanding of the development and course of chronic beryllium disease. Throughout the Department's pre-rulemaking activities, including the public forums in Albuquerque, NM, and Oak Ridge, TN, and the BRAC meetings, many interested parties advised DOE to adopt various hazard-specific programs to address DOE beryllium hazards. For instance, several public forum participants suggested that DOE control beryllium hazards through an ''as low as reasonably achievable (ALARA)''

approach, similar to that the Department applies to control radiation hazards. These participants believed the ALARA approach was warranted due to the continued occurrence of CBD among the DOE workforce and questions regarding whether any level of beryllium exposure should be considered safe. Other public forum participants argued that OSHA's expanded health standard for asbestos would provide a better model because it applies accepted industrial hygiene practices to remediation activities similar to the remediation activities that may be encountered in DOE cleanup operations that involve beryllium. DOE acknowledges that both the ALARA approach and the OSHA Asbestos standard (as well as other OSHA expanded health standards) include provisions that could be applied effectively in controlling beryllium hazards in the DOE workplace. Accordingly, DOE combined the relevant components of the Asbestos standard (and other OSHA expanded health standards) and the ALARA approach in DOE Notice 440.1 and continues this approach in the proposed rule.

Proposed section 850.20(a) would require that DOE contractors develop a baseline beryllium inventory to identify beryllium in DOE facilities and operations and to identify workers who are or may be potentially exposed to beryllium. Such baseline inventories would accomplish several functions that are critical to the success of the CBDPP, including: (1) The identification of locations and operations that should be physically isolated from other areas to prevent the spread of contamination, (2) the identification of areas in which worker access should be restricted to minimize the number of workers who could be exposed, (3) the identification of beryllium contamination in facilities scheduled for decontamination and decommissioning (D&D) operations to ensure the implementation of appropriate D&D control procedures, (4) the identification of beryllium contamination in facilities that are still used to determine the need for appropriate cleanup measures, and (5) the determination of which workers should be covered under the CBDPP.

Proposed sections 850.20(b)(1) through (4) would supplement the generic inventory requirement originally established in DOE Order 440.1A by requiring DOE contractors to conduct records reviews, employee interviews, and, if necessary, appropriate sampling procedures to determine and document the presence and locations of beryllium on DOE sites. These supplemental requirements are necessary because of the nature of past beryllium operations within the DOE complex, which were often conducted in open, uncontrolled work areas.

Because the results of records reviews and employee interviews alone may not suffice to confirm the presence of beryllium contamination in a specific location, proposed section 850.20(b)(4) would require that DOE contractors conduct sampling procedures to assess beryllium workplace hazards. DOE contractors should design such sampling protocols according to the specific workplace conditions and the suspected types and locations of beryllium contamination. Sampling techniques could include collecting area and wipe samples and/or collecting personal breathing zone samples.

Proposed section 850.20(c) would require contractors to ensure that the baseline beryllium inventory activities required under proposed section 850.20 are conducted by individuals with sufficient knowledge in industrial hygiene. The Department believes that this provision would be required to ensure that the inventory is accurate and complete and that the CBDPP provides protection to all affected workers. Because the identification of the possible presence of beryllium in a workplace does not, in and of itself, suffice to determine whether a hazard exists or whether various control measures must be employed, *proposed section 850.21* would require DOE contractors to conduct a beryllium hazard assessment to characterize workplace beryllium exposure hazards. This requirement would allow each site to determine the appropriate risk-based approach for assessing beryllium-related hazards in its worksites where the baseline beryllium inventory has established that beryllium is present.

The flexibility of proposed section 850.21 is particularly important because operations, conditions, and the potential for exposure may vary greatly from operation to operation and facility to facility. For instance, the hazard assessment required for a facility that houses current beryllium machining operations may be much more in-depth than that required for an inactive storage facility that stored a used beryllium lathe temporarily. In both cases, proposed section 850.21(a) would require a review of existing worksite conditions, exposure data, medical surveillance trends, and exposure potential of planned activities. In the beryllium machining operations example, however, this review would require an in-depth analysis of machining and other interrelated operations involving the performance of multiple tasks by multiple employees, each with varying exposure potentials. In this case, extensive medical surveillance and personal exposure monitoring data may already exist and may provide a sufficient basis for hazard assessment efforts. If the existing data do not suffice, however, the collection and analysis of additional personal breathing zone monitoring data for each task, operation, and work area may be necessary to accurately characterize potential beryllium exposure hazards.

For the inactive storage area, a review of existing wipe sampling data, collected according to proposed section 850.20(b)(4), may suffice to ascertain that no beryllium exposure hazard exists in the facility. However, if wipe sampling data from the facility indicate that beryllium contamination exists in the storage facility, a more in-depth analysis could be required to determine the extent of contamination, the potential for the contamination to become airborne, and the need for facility cleanup and/or related exposure control measures.

Proposed section 850.21(b) would require contractors to ensure that hazard assessments are conducted by individuals with sufficient knowledge in industrial hygiene. The Department believes that the establishment of such minimum personnel qualifications would be necessary to ensure the appropriate implementation of the provisions of the proposed rule and to ensure that the CBDPP provides protection to all affected workers.

Proposed section 850.22(a) would retain the OSHA 8-hour, TWA PEL for beryllium (2 ($\mu g/m^3$), as measured in the worker's breathing zone, or would adopt a lower 8-hour TWA PEL if such a PEL were established by OSHA through the rulemaking process. DOE is aware of viewpoints both for and against a lower DOE 8-hr TWA PEL for beryllium. Arguments in favor of lowering the PEL include the growing number of confirmed CBD cases (110 as of June 1998 among the 8,951 current and former DOE federal and contractor workers who have undergone medical screening) and the apparent low-level, incidental beryllium exposures received by some of the afflicted workers. Arguments against lowering the PEL include a lack of compelling scientific evidence that the current exposure limit is not protective.

There is scientific evidence (presented in the Health Effects discussion of this NOPR, Section IV) that suggests that the current exposure limit does not sufficiently protect worker health. However, existing scientific data does not currently

provide an adequate basis for determining an appropriate new DOE exposure limit. For this reason, DOE proposes to retain the existing OSHA 8-hr TWA PEL at this time and include in this proposed rule other provisions that are designed to minimize worker exposure in DOE facilities and to encourage continual monitoring of worker health to ensure an adequate level of protection. Chief among these provisions are the action level in proposed section 850.23, the exposure reduction and minimization requirements of proposed section 850.25, and the medical surveillance provisions of proposed section 850.33. Each is discussed below.

OSHA has placed beryllium on its regulatory agenda but has indicated that it will take several years for a new OSHA standard on beryllium to be promulgated. Through proposed section 850.22(a), DOE has clarified its intent to adopt the new OSHA permissible exposure limit upon promulgation.

Proposed section 850.22(b) would adopt the short-term exposure limit (STEL) established by the American Conference of Governmental Industrial Hygienists (ACGIH) of 10 μg/m^3, averaged over a 15-minute sampling period. According to the ACGIH Threshold Limit Value (TLV) and Biological Exposure Indices booklet, a worker's 15-minute TWA exposure must not exceed the STEL at any time during the workday even if the worker's full shift exposure is within the 8-hour TWA PEL. Exposures above the PEL-TWA must not be longer than 15 minutes and must not occur more than four times per day. The ACHIH TLV and Biological Exposure Indices booklet further indicates that if such exposures occur more than once a day, there must be at least 60 minutes between successive exposures in this range.

The ACGIH recently established this 10 μg/m^3 STEL for beryllium based on studies suggesting that acute beryllium disease did not appear in a group of workers exposed below 15 μg/m^3, and that CBD and lung cancer appear to be associated with exposure regimes in which short, high exposures occur. As noted in the ACGIH supporting rationale for the STEL, the 10 μg/m^3 STEL is in accord with the ACGIH's standard practice of recommending a generic excursion limit of 5 times the 8-hour TWA threshold limit value (TLV). The ACGIH 8-hr TWA TLV for beryllium is equal to OSHA's 8-hour TWA PEL of 2 μg/m^3.

DOE recognizes that the ACGIH 15-minute STEL is more protective than the OSHA acceptable maximum peak exposure for beryllium of 25 μg/m^3 for a duration of 30 minutes. DOE also notes that the adoption of the ACGIH STEL in this proposed rule is consistent with current DOE policy and with minimum standards already in effect throughout the Department. As specified in DOE Order 440.1A and its predecessor Orders, DOE contractors must comply with both the OSHA standards and with the ACGIH TLVs. These Orders further clarify that where a conflict exists between the OSHA and ACGIH exposure limits, the more protective standard shall apply.

DOE is aware of the continued occurrence of CBD among its workforce and intends to take every reasonable measure to minimize worker exposure to beryllium and to prevent the occurrence of CBD. One such measure is in *proposed section 850.23,* which would establish an 8-hour TWA action level of 0.5 μg/m^3, measured in the worker's breathing zone. Consistent with the worker protection practices employed in many of the OSHA expanded health standards, the action level would be used to trigger certain mandatory elements of the CBDPP: periodic exposure monitoring (proposed section 850.24(c)), regulated areas (proposed section 850.26), change rooms (proposed section 850.27), protective clothing and equipment (proposed section 850.29), and medical surveillance (proposed section 850.33).

In selecting the action level for the proposed rule, DOE considered: (1) OSHA's practice of establishing action levels; (2) the results of a 1996 survey of DOE facilities (presented in the draft DOE Beryllium Information Survey Report contained in the prerulemaking docket), which reported potential beryllium exposures and related control practices throughout the DOE complex; and (3) questions regarding the adequacy of the 8-hour TWA PEL. OSHA, in its expanded health standards, typically establishes action levels for hazardous and toxic substances at one-half the 8-hour TWA PEL. Applying this approach to beryllium would result in an 8-hour TWA action level of 1.0 μg/m^3. According to the results of the 1996 DOE survey, however, two DOE facilities (Pantex and Rocky Flats) had already employed an action level of 0.5 μg/m^3. One facility (Lawrence Livermore National Laboratory) reported the use of an ''administrative warning range'' of 0.2 to 2.0 μg/m^3, which triggered a requirement for an investigation, and six DOE facilities employed an action level of 1.0 μg/m^3. Consistent with the Department's decision to implement aggressive exposure minimization efforts DOE proposes adopting the lower of the existing action levels currently used within the DOE complex in proposed section 850.23 rather than following typical OSHA practice. DOE believes that the successful implementation of this action level at two DOE facilities, and the implementation of an even lower ''administrative warning range'' at a third facility, provide sufficient evidence of the feasibility of implementing the 0.5 μg/m^3 action level across the DOE complex. DOE does not intend for this action level to discourage efforts to reduce exposures below 0.5 μg/m^3 in a regulated area. In fact, proposed section 850.25 would require contractors to establish and implement appropriate exposure reduction and minimization goals to further reduce worker exposures to beryllium.

Proposed section 850.24 would establish CBDPP worker exposure monitoring requirements. Monitoring of breathing zone air space in areas where workers are potentially exposed is a well-recognized and widely accepted risk-management tool that is used to protect workers from exposure to airborne toxic substances. The proposed provisions in this section, which are also required under DOE Order 440.1A, are necessary to characterize worker exposures to a specific toxic substance and, based on these exposures, to determine the need for appropriate engineering or work-practice controls. In addition to this traditional compliance role, DOE proposes to expand the CBDPP's exposure monitoring element to provide continual feedback on the effectiveness of the program in preventing the occurrence of CBD. Such exposure monitoring results would help the Department to resolve uncertainties regarding the adequacy of the existing beryllium PEL and to refine the requirements of this rule as needed to protect worker health.

Proposed section 850.24(a) would require that exposure monitoring be conducted by individuals with sufficient knowledge in industrial hygiene. The Department believes that the establishment of such minimum personnel qualifications is necessary to ensure the appropriate implementation of the provisions of the proposed rule and ensure that the CBDPP provides protection to all affected workers.

Proposed section 850.24(b) would require that DOE contractors perform initial exposure monitoring for all workers who work in areas that may have airborne concentrations of beryllium as determined through the baseline beryllium inventory and hazard assessment. Such initial exposure

information is necessary to identify workers who must be enrolled in the medical surveillance program, determine the need for engineering and work practice controls, select appropriate personal protective clothing and respiratory protective equipment where needed, and identify the need to establish regulated areas. Because the proposed PELs include an 8-hour TWA PEL and a 15-minute STEL, proposed section 850.24(b)(1) would require that worker exposure be measured by personal breathing zone samples that represent each worker's (i) full-shift exposure (for 8-hour TWA exposure measurements) or (ii) 15-minute exposure at operations where exposures may be above the STEL.

DOE recognizes that many DOE contractors may have performed the required initial monitoring as part of their efforts to implement DOE Notice 440.1. DOE does not intend for DOE contractors to repeat these efforts. Accordingly, proposed section 850.24(b)(2) would allow contractors to use initial monitoring data collected within 12 months before the effective date of this rule to satisfy the rule's initial monitoring requirements.

Proposed section 850.24(c) would require DOE contractors to conduct periodic exposure monitoring to detect any workers who have been exposed to beryllium at or above the action level or above the STEL. DOE believes that such periodic monitoring is necessary to ensure the continued protection of worker health. This requirement would provide contractors the flexibility to determine the monitoring frequency that is needed to characterize worker exposures accurately. DOE believes that such flexibility is warranted due to the wide range of beryllium-related operations within the DOE complex. The Department recognizes that DOE contractors are best positioned to evaluate the potential variability of worker exposures in their operations and to tailor their periodic monitoring approaches as appropriate, based on existing exposure levels and the potential for these exposure levels to change. However, because slight process or procedural changes may go unnoticed over time and because equipment maintenance, aging, or deterioration can affect performance, DOE proposes in proposed section 850.24(c) a minimum exposure monitoring frequency requirement of 3 months (quarterly) for workers who are exposed to airborne concentrations of beryllium at or above the action level or above the STEL. DOE recognizes that the proposed minimum quarterly monitoring of workers exposed at or above the action level or above the STEL is more stringent than most OSHA expanded health standards. However, the Department feels this minimum monitoring frequency is necessary due to the uncertainties regarding the adequacy of the current PEL.

To supplement this periodic monitoring requirement, proposed section 850.24(d) would also require that DOE contractors perform additional exposure monitoring when beryllium-related operations or procedures change. In the case of procedural or operational changes, this additional monitoring is needed to quantify how changes affect worker exposure to airborne beryllium, to ensure the continued effectiveness of existing engineering and work-practice controls, and to identify the need for additional control measures to minimize worker exposure to beryllium.

To obtain accurate exposure monitoring results, proposed section 850.24(e) would require that DOE contractors use monitoring and analytical methods that have an accuracy, at a confidence level of 95 percent, of not less than plus or minus 25 percent for airborne concentrations of beryllium at exposure levels between the 8-hour TWA action level and the PEL. Proposed section 850.24(f) would further ensure the quality of monitoring results by requiring that all laboratory analyses of air sampling data be performed in a laboratory accredited for metals by the American Industrial Hygiene Association. These proposed accuracy and quality requirements would be consistent with similar requirements that appear in many of OSHA's expanded health standards for toxic substances. DOE believes that the quality and accuracy of exposure monitoring data are crucial to protecting workers from airborne toxic substances because monitoring results trigger the implementation of several critical elements of the worker protection program. Accordingly, effective implementation of the CBDPP and ultimately the health of affected beryllium workers would rest on the quality and accuracy of the collected exposure monitoring data.

Proposed section 850.24(g)(1) would establish requirements to notify affected workers of monitoring results. This section would require DOE contractors to make this notification in writing within 10 working days of receipt of the monitoring results. This section would also provide DOE contractors with two alternative methods of worker notification: (1) Provide written notification to each affected worker, or (2) post monitoring results in a location or locations readily accessible to affected workers. When the posting option is selected, DOE contractors would have to post the results in such a way as to protect the privacy of the affected workers.

Proposed section 850.24(g)(2) also contains a provision for cases in which monitoring results indicate that worker exposure levels exceed the action level or STEL. In such cases, the DOE contractor would be required to notify the SOMD of the results within 10 working days of receipt of the results. DOE believes that the SOMD must be informed of such exposures in order to refine, as appropriate, the medical surveillance protocol for affected workers to ensure effective monitoring and early detection of beryllium-related health effects.

Proposed section 850.25 would establish the exposure reduction and minimization provisions of the CBDPP that reflect the Department's goal of achieving aggressive reduction and minimization of worker exposures to airborne beryllium. DOE believes this is a prudent approach to worker protection in light of questions regarding the adequacy of the existing PEL and the relationship between beryllium worker exposure and disease.

Proposed section 850.25(a) would establish the baseline requirement that DOE contractors ensure that no worker is exposed to airborne beryllium at levels above the exposure limits established in proposed section 850.22. The section would further clarify that DOE contractors must apply the hierarchy of industrial hygiene controls as established in DOE Order 440.1A to achieve this minimum exposure control requirement. This hierarchy dictates that DOE contractors must implement feasible engineering controls, followed by administrative controls, in their efforts to reduce exposure levels. If these engineering and administrative controls do not reduce beryllium levels to the exposure limits, DOE contractors must supplement these controls with personal protective clothing and equipment as appropriate to reduce exposure levels to within the exposure limits.

Proposed section 850.25(b) would clarify the requirement to establish exposure reduction and minimization goals by requiring that DOE contractors include in their CBDPP, the rationale to support their exposure reduction and minimization goals. This section further requires that the CBDPP include a plan for meeting these goals as well as performance measures to be used to assess the contractor's status in achieving the goals. DOE considers this level of formality essential to the

establishment and implementation of meaningful goals, and to the use of these goals in achieving the exposure reduction and minimization objectives of the CBDPP. In addition, DOE believes that appropriate documentation of the supporting rationale for these goals is necessary to address concerns among the DOE community regarding overzealous DOE enforcement of the exposure reduction and minimization requirements of this proposed rule and to avoid second-guessing of contractor CBDPP efforts.

Proposed sections 850.25(b)(1) and (2) would establish the Department's minimum expectations for the implementation of exposure reduction and minimization efforts. DOE does not intend for these minimum requirements to stifle contractor innovation but intends for them to serve as a starting point in efforts to implement an effective exposure reduction and minimization program. Specifically, proposed section 850.25(b)(1) would require DOE contractors to include in their CBDPP strategies for the use of the action level to trigger actions to reduce or minimize worker exposures and the potential for exposures. Proposed section 850.25(b)(2) would clarify that CBDPP strategies shall also include use of the conventional hierarchy of industrial hygiene controls as a means of achieving exposure reduction and minimization goals. The intent of these provisions is to encourage contractors to (1) investigate opportunities for exposure reductions when worker exposures reach or could reach the action level (or at lower levels of exposure if appropriate) and (2) implement control measures that are feasible and consistent with sound industrial hygiene principles, the objectives of the CBDPP, and the contractor's own internal exposure reduction and minimization goals.

Proposed section 850.26 would establish the regulated area provisions of the CBDPP. These regulated areas, managed by the contractors, would help minimize the number of workers exposed to airborne beryllium by preventing or minimizing the spread of beryllium to clean work areas. Because most if not all DOE contractors that would be affected by this proposed rule have already implemented varying provisions to control access to areas and operations with a potential for worker exposures to beryllium (as reported in the draft 1996 DOE Beryllium Information Survey Report), DOE believes that the majority of the provisions of this proposed section would pose minimal additional burden on DOE contractors.

Proposed section 850.26(a) would require that DOE contractors establish regulated areas where airborne concentrations of beryllium are in excess of the action level or STEL. DOE selected the action level in lieu of the 8-hour PEL as the trigger for this proposed requirement in keeping with the Department's aggressive beryllium exposure reduction and minimization philosophy. The STEL is included as a trigger for this requirement to address workplace areas where full-shift exposure levels may be below the action level but operations or activities result in exposures above the STEL.

Proposed section 850.26(b) of the proposed section would require that DOE contractors adequately identify regulated areas so that workers are aware of the presence and boundaries of such areas. This requirement would allow contractors the flexibility to determine the most appropriate means of identifying each regulated area based on specific worksite conditions.

Proposed section 850.26(c) would require that DOE contractors limit access to regulated areas to authorized persons only. The contractor would determine which workers should have the authority to enter the work area and how the entry of unauthorized individuals will be prevented. DOE's intention is that only individuals who are essential to the performance of work in the regulated area would be granted entry authority. DOE contractors would have to evaluate the affected operation and determine which personnel (including managers, supervisors, and workers) are necessary for the performance of the work and thus must have entry authority. Methods for preventing unauthorized persons from entering a regulated area may range from, at a minimum, posting a sign indicating that only authorized persons may enter (as would be required by proposed section 850.37) to the use of locked access doors and other security measures on the basis of worksite conditions. DOE believes that contractors are best equipped to determine whether any access control methods are needed in addition to those already specified in proposed section 850.37.

Proposed section 850.26(d) would require that DOE contractors keep a record of all persons who enter regulated areas. The record must include the name of the person who entered, the date of entry, the time in and time out, and the work performed. The function of these records within the framework of the CBDPP is clarified in proposed section 850.38, Recordkeeping. Specifically, DOE believes that these records are necessary to monitor the effectiveness of each contractor's regulated area efforts and to provide valuable information regarding each worker's history of potential exposures. This historical information would assist the contractor's occupational medicine staff in establishing appropriate medical surveillance protocols and would aid in the Department's efforts to establish links between working conditions and potential health outcomes.

Proposed section 850.27 would establish change room provisions for workers in regulated areas. These hygiene provisions are common in OSHA's expanded health standards, specifically in those standards designed to protect workers from exposures to hazardous particulates. Proposed section 850.27(a)(1) would require that change rooms used to remove beryllium-contaminated clothing and protective equipment be maintained under negative pressure or, located in a manner or area that prevents dispersion of beryllium contamination into clean areas. Proposed 850.27(a)(2) would require that separate facilities be provided for workers to change into and store personal clothing and clean protective clothing and equipment. DOE believes that such provisions are necessary to prevent cross-contamination between work and personal clothing and the subsequent spread of beryllium into clean areas of the facility and into workers' private automobiles and homes. These provisions would also address the need to prevent contamination of clean protective clothing and equipment, ensuring that protective clothing and equipment actually protect workers rather than contribute to their exposures.

Consistent with the goal of preventing the spread of contamination into adjacent work areas and into affected workers' homes, proposed section 850.27(b) would require that DOE contractors provide hand-washing and shower facilities for workers assigned to regulated areas. DOE recognizes that the installation of such facilities may take time in some cases. Accordingly, proposed section 850.13(b) would allow contractors 2 years to achieve full compliance with the requirements of the rule.

Proposed section 850.28 would establish the respiratory protection provisions of the CBDPP. Specifically, proposed section 850.28(a) would require that DOE contractors comply with the OSHA Respiratory Protection standard (29 CFR 1910.134). Proposed section 850.28(b) would require that

DOE contractors provide appropriate respiratory protective equipment for all workers exposed to airborne concentrations of beryllium above the PELs established in proposed section 850.22 and ensure that the workers use protective equipment. Proposed section 850.28(c) would require that DOE contractors select and use only National Institute for Occupational Safety and Health (NIOSH)-approved or DOE-accepted respiratory protective equipment as required by DOE Order 440.1A.

None of the provisions of this proposed section are new. For instance, DOE contractors have historically been subject to the OSHA standards, including 29 CFR 1910.134, through the provisions of DOE Order 440.1A and its predecessor orders, which incorporate the OSHA standards. DOE Order 440.1A require DOE contractors to provide, and DOE workers to use, appropriate respiratory protective equipment necessary to protect workers from exposures to hazardous substances, including airborne beryllium, at levels above established OSHA PELs. In addition, the provisions of 29 CFR 1910.134 include a requirement that employers select only NIOSH-approved respirators. In recognition of the unique nature of certain DOE operations, DOE Order 440.1A expanded this NIOSH-approval restriction to allow for the use of DOE-accepted respiratory protection when NIOSH-approved respiratory protection did not exist for a specific DOE task.

Proposed section 850.29 would establish the protective clothing and equipment provisions of the CBDPP. Proposed section 850.29(a) would require that DOE contractors provide workers who are potentially exposed to beryllium at or above the action level or above the STEL with protective clothing and equipment and ensure that the protective clothing and equipment are maintained and used as appropriate. Proposed section 850.29(a)(1) would clarify that appropriate protective clothing for work in areas where beryllium contamination is present includes full-body protective clothing and footwear (work shoes or booties). This section further stipulates that workers must exchange their personal clothing for this protective clothing before beginning work in regulated areas. As would be required under proposed section 850.27(a), this change from personal clothes into protective work clothing must occur in a change room that protects the worker's personal clothes and clean protective clothing from beryllium contamination. DOE believes that the use of full-body protective clothing in lieu of personal clothes in regulated areas is necessary to prevent the spread of beryllium contamination into adjacent work areas and to preclude the possible transport of beryllium into affected workers' private property.

Because direct contact with beryllium can cause contact dermatitis and possibly conjunctivitis, proposed section 850.29(a)(2) would require that DOE contractors provide workers with additional protective gear where skin or eye contact with powdered or liquid forms of beryllium is possible. This additional protective gear could include face shields, goggles, gloves, and gauntlets, depending on the nature of the operation and the related skin and eye exposure hazards involved. DOE recognizes that the potential for the development of contact dermatitis or conjunctivitis is mainly associated with contact with soluble forms of beryllium compounds. Nevertheless, DOE believes that the provisions of proposed section 850.29(a)(2) represent prudent industrial hygiene measures for work with all forms of beryllium, particularly in light of the fact that both soluble and insoluble forms of beryllium have been shown to cause chronic ulcerations if introduced into or below the skin via cuts or abrasions.

As clarified in the definition of beryllium in proposed section 850.3, soluble beryllium compounds would not be covered by the proposed rule. DOE omitted soluble beryllium compounds from the definition of beryllium based on information provided by the DOE field offices indicating that soluble beryllium compounds were not used within the DOE complex.

The Department's objective is to prevent the spread of beryllium contamination, thereby reducing the number of workers exposed and the opportunities for potential exposures. In keeping with this objective, proposed sections 850.29(b) through (e) would establish provisions to control the handling, maintenance, cleaning, and disposal of beryllium-contaminated protective clothing and equipment. Specifically, proposed section 850.29(b) would require DOE contractors to ensure that workers do not take contaminated clothing or equipment from the change room or worksite unless specifically authorized to do so for the purposes of cleaning, maintenance, or disposal. Where workers are authorized to remove contaminated clothing and equipment from the change-room or worksite, proposed sections 850.29(b)(1) and (b)(2) stipulate that such materials must be placed in sealed impermeable containers that bear warning labels to clearly identify the contents and appropriate handling precautions. Such warning labels would help ensure appropriate subsequent handling of beryllium-contaminated materials and in preventing inadvertent exposures that could result if laundry, maintenance, or disposal personnel are not aware of the presence of beryllium contamination.

Proposed section 850.29(c) would require that DOE contractors clean, launder, repair, and replace protective clothing and equipment as needed to ensure its continued effectiveness in protecting workers. This section would allow contractors some flexibility in determining the required frequency for laundering protective clothing based on specific work conditions and the potential for contamination. Because DOE believes that certain minimal laundering frequencies must be maintained to ensure that the protective clothing does not contribute to worker exposures, the proposed paragraph stipulates a minimal laundering frequency of at least once a week.

To reduce and minimize the potential for exposures to beryllium during laundering operations, proposed section 850.29(d) would require that DOE contractors launder contaminated clothing using methods that would prevent the release of airborne beryllium in excess of the action level or STEL. DOE would provide DOE contractors the flexibility to determine the most appropriate means to launder contaminated clothes based on their own specific worksite conditions. DOE has, however, included in this section one specific requirement designed to prevent the dispersion of beryllium particles into the workplace atmosphere: proposed section 850.29(e) would prohibit the use of blowing, shaking, or any other means of cleaning that could disperse beryllium particles into the air. This is a well-recognized and accepted industrial hygiene control employed to minimize exposures to airborne particulates.

Proposed section 850.30 would establish the housekeeping provisions of the CBDPP. Good housekeeping practices are necessary in areas where beryllium is used or handled to prevent the accumulation of beryllium-containing dusts on surfaces throughout the workplace. Such accumulations, if not controlled, may lead to reentrainment of beryllium particles into the atmosphere. This potential for beryllium accumulations to become reentrained into the atmosphere increases potential beryllium exposure hazards in locations where beryllium

dusts were originally generated and introduces the potential for such exposures in other work areas. In addition, the uninhibited accumulation of beryllium-containing dust on equipment in the workplace increases the potential for worker exposure to beryllium during the performance of equipment maintenance, handling, and disposal tasks. Accordingly, the housekeeping program focuses on the prevention of accumulation of beryllium-containing dust in the workplace. Because the performance of housekeeping tasks can, in and of itself, lead to worker exposures to beryllium-contaminated dust, the provisions of this housekeeping section also focus on preventing the reentrainment of dust during the performance of housekeeping activities.

Proposed section 850.30(a) would require that DOE contractors conduct routine surface sampling to ensure the effectiveness of housekeeping efforts. Surface sampling has become an accepted method for providing qualitative information on chemical contamination of work surfaces. Unfortunately, surface sampling procedures have not reached the stage of development that would allow an industrial hygienist to predict a personal exposure or a potential airborne concentration of reentrained contaminants. Such sampling, however, can identify the presence of beryllium contamination and thus can provide an indication of the effectiveness of housekeeping efforts. Accordingly, this proposed requirement is intended only as a housekeeping performance measure and should not be interpreted as a proposed mechanism for measuring, predicting, or controlling airborne concentrations of beryllium. In addition, this proposed requirement would only apply to removable or loose surface contamination which could become reentrained into the workplace atmosphere.

Affected sites throughout the Department have already established beryllium surface contamination levels to ensure the effectiveness of their housekeeping procedures. According to representatives from these sites, existing surface contamination limits employed throughout the DOE complex range from 1 to 5 μg/100 cm^2, with the majority of the sites using approximately 3 μg/100 cm^2 (e.g., Pantex, Lawrence Berkeley National Laboratory, Y–12, Rocky Flats). Accordingly, DOE has adopted the 3 μg/100 cm^2 level in the proposed rule.

The use of diverse sampling methods (differences include type of sample media, type of solvent (if any) on the sample media, area sampled, etc.) may easily lead to the reporting of inconsistent or incorrect results. To reduce the variability in reported surface contamination across the DOE complex, DOE recommends the use of a single sampling method: NIOSH method 9100 (NIOSH Manual of Analytical Methods (NMAM), 4th Edition, August 15, 1994, Lead in Surface Wipe Samples). This method may have to be modified for surfaces smaller than 100 cm^2 using a procedure such as that described in Appendix D of 10 CFR part 835.

Proposed sections 850.30(b) and (c) would establish provisions for the use of housekeeping methods that will prevent or minimize the reentrainment of beryllium particulates into the workplace atmosphere. Specifically, proposed section 850.30(b) would require the use of wet methods or vacuuming for the cleaning of beryllium-contaminated floors and other surfaces, and prohibit the use of compressed-air or dry methods for such activities. Proposed 850.30(c) would require the use of HEPA filters in all vacuuming operations for contaminated or potentially contaminated surfaces and would further require filter replacement as needed to maintain the capture efficiency of the vacuum. The use of wet methods for reducing or minimizing the dispersal of dust during general housekeeping tasks such as sweeping is a common industrial hygiene practice, as is the use of HEPA filters, which prevent the spread of dust by effectively collecting the dust as it is vacuumed or brought into a hood.

As discussed in earlier sections of this analysis, the movement of contaminated or potentially contaminated equipment from a regulated area to a nonregulated area may result in the spread of beryllium contamination. To prevent this potential spread of contamination in the performance of housekeeping activities that would be required under this rule, proposed section 850.30(d) would require that cleaning equipment used in areas where surfaces are contaminated or potentially contaminated with beryllium be labeled, controlled, and not used in other clean areas of the facility. These procedures are similar to those required under OSHA's Asbestos standard for any equipment used during cleanup or removal of asbestos from buildings.

Proposed section 850.31 would establish the waste disposal provisions of the CBDPP. Like many of the regulated area, protective clothing and equipment, and housekeeping provisions of the proposed rule, the waste disposal provisions of this section focus on minimizing the spread of beryllium contamination throughout the facility. As mentioned throughout this NOPR, such contamination control measures are necessary to achieve the Department's objectives of reducing the number of workers exposed to beryllium and minimizing the opportunities for beryllium exposures.

DOE believes that the most effective way to control the spread of contamination resulting from waste disposal activities is to first prevent or minimize the generation of beryllium waste. Accordingly, proposed section 850.31(a) would require that DOE contractors control the generation and disposal of beryllium waste through good housekeeping practices, the performance of appropriate hazard analyses for operations with the potential to generate waste, and the application of waste minimization principles. Good housekeeping practices aid in this effort by continually removing beryllium dust accumulations from work surfaces, thereby reducing the potential for, and significance of, contamination of workplace equipment. The performance of hazard analyses on operations with the potential to generate wastes can help DOE contractors identify potential sources of wastes and evaluate possible controls that could be implemented to prevent or reduce waste generation. Other waste minimization practices, such as minimizing the equipment and material that is exposed to beryllium contamination, will also assist in reducing the amount of material that must be disposed of as beryllium or beryllium-contaminated waste, thus reducing the potential beryllium exposure hazards associated with waste disposal activities.

Proposed section 850.31(b) would require that DOE contractors dispose of all waste, scrap, debris, bags, containers, small equipment, and clothing contaminated with beryllium in sealed impermeable bags or other closed impermeable containers that are labeled in accordance with section 850.37. DOE believes these waste disposal provisions are necessary to prevent the reentrainment of beryllium contamination into the workplace atmosphere. Warning labels are necessary to ensure that workers are aware that containers or bags contain beryllium contamination so that they can take appropriate precautions.

Proposed section 850.32 would establish the beryllium-related emergency provisions of the CBDPP. Such provisions are particularly important in light of suggestions made by several participants in the public forums that a single, high-level beryllium exposure may have been the

cause of CBD occurring among several workers thought to have no exposure or only incidental, low-level exposures to beryllium.

Proposed section 850.32(a) would require that DOE contractors develop and implement procedures to address potential beryllium emergency situations for each facility engaged in beryllium operations. The Department's intent is for DOE contractors to evaluate their respective beryllium-related operations to determine possible emergency scenarios. Then, based on these facility- and operation-specific scenarios, the contractors would fashion procedures to specifically address the types of emergencies that could be encountered at the facility. DOE believes that this tailored approach would provide workers the best opportunity to be prepared in the event of an emergency, enabling them to respond in an appropriate and safe manner and to remedy site conditions with minimal potential for additional exposures to themselves or other personnel in the facility.

Proposed section 850.32(a)(1) would require that DOE contractors establish procedures to alert workers in the event of a beryllium emergency. By ensuring that workers are continually aware of how they are expected to respond in the event of an emergency and by ensuring that they receive prompt notification or warning when an emergency situation has developed, DOE contractors would enable workers to quickly implement the actions needed for protection while bringing an emergency situation under control.

Proposed section 850.32(a)(2) would require DOE contractors to ensure that workers engaged in the cleanup of emergency spills of beryllium, or in handling other emergency situations involving beryllium contamination, are provided with and wear protective clothing and equipment as specified in this proposed rule. DOE believes that such protective equipment is necessary to adequately protect workers from exposures to beryllium. DOE feels that this protection is even more critical when responding to uncontrolled situations where airborne levels of beryllium may not be adequately characterized and may exceed the PEL.

Because even the best emergency response procedures will be ineffective if personnel required to implement the procedures are not aware of them, DOE has included in proposed section 850.32(b) a requirement that contractors train affected workers on required emergency procedures.

Proposed section 850.33 would establish the medical surveillance provisions of the CBDPP. Proposed sections 850.33(a) and (b) propose that DOE contractors and Field Organizations designate a SOMD to be responsible for administering the respective contractor and federal medical surveillance programs required by this rule. Proposed section 850.33(c) would also require that the written medical surveillance program that is required for inclusion in the CBDPP be submitted and reviewed by the DOE Office of Environment, Safety and Health and approved by the head of the cognizant DOE Field Organization. DOE review and approval authority is necessary to ensure that contractor medical surveillance requirements are consistent with the intent of the CBDPP and that these programs are applied uniformly across the DOE complex.

Proposed section 850.33(d) would require DOE contractors to establish and implement a medical surveillance program for all beryllium workers exposed at or above the action level or above the STEL. Under this program, DOE would offer medical evaluations to affected beryllium workers. Once an employee is enrolled in the program, he or she would remain enrolled for the duration of employment at that site. The program would have two purposes: (1) Ensure the prompt identification and proper treatment of workers who become sensitized to beryllium or develop CBD, and (2) evaluate and ensure the effectiveness of the CBDPP in preventing CBD by determining the incidence of CBD in the workforce and by identifying risk factors associated with the development of CBD and beryllium sensitization.

Proposed section 850.33(e) would require that DOE contractors provide the SOMD with the information needed to administer the medical surveillance program. This information would include, but may not be limited to, the baseline beryllium inventory, hazard assessment, and exposure monitoring data, as well as information regarding the identity and nature of activities or operations on the site that are covered under the CBDPP, the related duties of beryllium workers, and the types of personal protective equipment employed in the performance of these duties.

Proposed section 850.33(f) would require the SOMD to establish and maintain a list of beryllium workers in the medical surveillance program based on records and other information regarding the identity of beryllium workers. Current employees who are at risk for CBD because of past beryllium operations would not be included on this list or covered under this proposed rule. Rather, they would be identified and offered medical surveillance under a separate, directly funded program.

The Department views medical surveillance as a primary tool for determining the extent of CBD risk in an employee population. The list developed under section 850.33(f)(1) would establish the population of beryllium workers who may be eligible for medical surveillance. The Department's expectation is that SOMDs will use inclusive criteria for identifying beryllium workers to be covered under medical surveillance. In addition, proposed section 850.33(f)(2) clarifies DOE's intention that SOMDs refine the list of beryllium workers based on subsequent analyses of medical surveillance results required under proposed section 850.33(k). For example, the results of Be-LPTs would be used to determine risk factors that appear to be associated with CBD. Based on the apparent risk factors, the SOMD would adjust the surveillance program to better identify workers at risk of developing CBD.

Proposed section 850.33(g) would require the SOMD to provide the examining physician with (1) a copy of this rule, (2) a description of the workers' relevant duties as they pertain to beryllium exposure, (3) records of the workers' beryllium exposure, (4) a description of personal protective and respiratory protective equipment in current or anticipated use, and (5) any relevant information from previous medical examinations of the workers that is not otherwise available to the examining physician. The Department believes that this information is necessary to ensure that the physician can make informed decisions regarding the required content of the medical evaluation and the subsequent development of recommendations related to each beryllium worker's work.

Proposed section 850.33(h)(1) would clarify that DOE contractors must provide required medical examinations and procedures to beryllium workers and accepted applicants at no cost to the workers and accepted applicants at a time and place convenient to them. In addition to minimizing the financial burden on affected workers, DOE believes that this provision will encourage DOE contractors to minimize the levels of beryllium exposures in the workplace and the number of workers exposed or potentially exposed to beryllium. DOE also believes that this provision will help ensure that workers obtain proper medical evaluations.

Proposed section 850.33(h)(2) would specify that DOE contractors must provide baseline medical evaluations to

beryllium workers who qualify for medical surveillance. DOE believes that such baseline medical evaluations are necessary to ensure that beryllium workers can safely perform assigned duties in areas that may present the potential for exposure to beryllium. In addition, DOE believes that the proper evaluation and documentation of each worker's health status is essential for determining whether future health problems may be related to occupational exposure to beryllium.

Proposed section 850.33(h)(3) would supplement the baseline medical evaluation requirement of proposed section 850.33(h)(2) by requiring that DOE contractors offer annual medical evaluations to beryllium workers who qualify for medical surveillance. Such annual evaluations shall be offered as long as the beryllium workers work in areas where beryllium is present at levels at or above the action level or above the STEL. DOE believes that such periodic medical evaluations would be critical to ensuring the early identification and treatment of beryllium sensitization and CBD. This proposed section further clarifies that in cases where beryllium workers no longer work in areas where beryllium is present at levels at or above the action level or above the STEL, the requirement for annual medical evaluations may be reduced to once every 3 years. DOE believes that this continued surveillance is warranted due to the extended latency period associated with the development of CBD.

Both proposed sections 850.33(h)(2) and (h)(3) would also establish the minimum required content of the baseline and periodic medical evaluations, respectively. Among these minimum requirements for both types of evaluations is the need to conduct a Be-LPT. The Be-LPT is the only available laboratory test for determining individual immune response to beryllium *in vitro*. Its use in a surveillance program would permit detection of beryllium-related health effects at a preclinical stage. A positive Be-LPT would indicate the need for further evaluation to determine the presence of CBD. The use of the Be-LPT as an evaluation tool would not only allow the earliest opportunity for diagnosis and treatment of CBD, but would also assist in identifying unhealthy working conditions or operations and deficiencies in the CBDPP.

In addition to the Be-LPT, some medical experts recommend that a chest radiograph (X-ray) and spirometry be obtained prior to exposure to beryllium to establish a baseline for possible comparison with future test results. Spirometry involves measuring the amount of air entering and leaving the lungs. Accordingly, proposed section 850.33(h)(2) would further specify that baseline evaluations also include a chest radiograph (X-ray) and spirometry. However, because neither chest radiography nor spirometry has proven to be any more predictive in identifying the presence of CBD than symptom questionnaires, these additional tests would not be mandated as a part of the periodic evaluation required under proposed section 850.33(h)(3). Instead, the need for these tests would be left to the discretion of the examining physician. DOE believes that the examining physician is in the best position to determine the need for such additional tests based on the unique circumstances associated with each worker's exposure scenarios and health status.

Proposed section 850.33(h) would not establish a requirement for termination evaluations. DOE believes termination evaluations for beryllium workers who are reassigned to non-beryllium work would not be needed because periodic evaluations will continue for as long as the worker is employed by the DOE contractor. Termination evaluations for beryllium workers who resign or retire from employment with DOE contractors would also not be necessary because the Department intends to establish a separate, directly funded program that offers medical examinations to former employees at risk for developing CBD. DOE recognizes that many sites already have an internal requirement to provide termination medical evaluations to workers upon their separation from employment. Nothing in this proposed rule would preclude the SOMD from continuing this practice.

Proposed section 850.33(h)(4) would require that DOE contractors ensure that all medical evaluations and procedures be performed by or under the supervision of a licensed physician who is familiar with the health effects of beryllium. Conducting a medical surveillance program for beryllium workers requires specialized medical knowledge and crucial clinical decision-making. DOE believes that a licensed physician with specialized knowledge of the health effects of beryllium is the most appropriate medical professional to provide medical evaluations. A physician is also needed to answer health-related questions and to discuss and interpret abnormal clinical findings with the affected worker.

Proposed section 850.33(i) would establish requirements for referrals for additional diagnostic evaluation. Specifically, beryllium workers who have two or more positive Be-LPTs or other signs and symptoms of CBD, would be referred by the examining physician for diagnostic evaluation. Such an evaluation would be performed by a pulmonary medicine, occupational medicine, or other clinic with the specialized equipment and examination protocols required to definitively differentiate between CBD and other lung disease. DOE believes that this proposed referrals provision is warranted due to the unusual nature of CBD and the fact that not all physicians are familiar with the evaluation of beryllium-exposed patients.

Proposed section 850.33(j) would establish requirements for physicians' written reports and recommendations. Proposed section 850.33(j)(1) would ensure that employees and accepted applicants are informed of the results of their medical evaluations and tests within 15 days of completion of the evaluations. In addition, proposed section 850.33(j)(2) would specify that within this same 15 day time period, the DOE contractor obtain a copy of a limited version of the physician's report. This limited version must include any recommendations for restricting the employee from working with beryllium, or for wearing protective equipment.

Proposed section 850.33(k) would establish the requirement for a routine and systematic analysis of medical, job, and exposure data. The purpose of this requirement is to establish a program that would follow the public health model for disease surveillance programs. Information would be collected and analyzed so that the prevalence of disease could be accurately described and conclusions could be reached on causes or risk factors for the disease. This data analysis would provide an effective performance measurement mechanism for use in correction and improvement of the CBDPP. Proposed section 850.33(k)(1) would require that the results of these analyses be used by the SOMD to determine which workers should be offered medical surveillance and the need for additional exposure controls. In addition, proposed section 850.33(k)(2) would require that the SOMD provide copies of the data analyses to the contractor for performance feedback information.

Proposed section 850.34 would establish medical removal requirements. Specifically, this section would require that upon recommendation of the SOMD, DOE contractors shall give workers with two positive Be-LPTs or a

diagnosis of CBD the option of: (1) placement in another position without occupational exposure to beryllium, or (2) continued employment in the current position with actual or potential exposure to beryllium.

Proposed section 850.34(a) would require that, with the written consent of the worker, DOE contractors remove a beryllium worker from exposure to beryllium or postpone an accepted applicant's start of active duty as a beryllium worker if the SOMD recommends such actions due to confirmed CBD, two or more positive Be-LPTs results, or while other signs or symptoms are being evaluated for their relation to CBD. Proposed section 850.34(a)(1) would further require that DOE contractors provide the affected beryllium worker a follow-up medical examination to determine whether the worker may be returned to his or her beryllium work or whether the worker should be permanently removed from working in beryllium areas.

Proposed section 850.34(a)(2) would provide affected beryllium workers and accepted applicants with the option to decline the medical removal or restriction by signing an informed consent waiver. DOE notes that prudent medical practice suggests that workers with two or more positive Be-LPTs or diagnosis of CBD should avoid additional exposure to beryllium however, since no medical evidence exists to suggest that removal from exposure will alter the course of disease, DOE believes that it is ultimately the affected worker's decision whether to remain in a job with potential or actual beryllium exposure.

For beryllium workers or accepted applicants who choose to accept restriction from continued work with beryllium, proposed section 850.34(a)(3) would require DOE contractors to make reasonable efforts to find and offer alternative employment. This section clarifies that the contractor is not required to displace an existing worker in order to create a vacancy, nor is the contractor required to promote the affected worker or accepted applicant or pay for job placement training costs in excess of $6,000.00. The contractor is also not required to provide training that takes longer than 6 months to complete.

Proposed section 850.34(b) would establish the requirement for medical removal protection benefits for beryllium workers who choose to accept a physician's recommendation to be removed from working with beryllium. Specifically, proposed section 850.34(b) would establish a requirement to protect an employee's base pay, benefits, and seniority should that worker accept restriction from working with beryllium. The Department's intent with this provision is that DOE contractors would offer sensitized employees and employees with CBD placement in a job that does not involve exposure to beryllium and that provides base pay and benefits comparable to their current job. Under this provision, if no such job exists within the contractor's organization, DOE contractors may offer the affected workers out-placement assistance to find suitable alternative employment.

Proposed section 850.34(b) would further clarify that DOE contractors would be required to protect the pay and benefits of affected workers for a two-year period. DOE believes that the establishment of a two-year period of protected pay and benefits is fair and would provide sufficient incentive for DOE contractors to put forth the level of job placement effort necessary to find suitable alternative employment that would be acceptable to the affected worker.

One of the main goals of the medical surveillance program is to minimize the disability associated with CBD. The Department believes that the establishment of the medical removal protection benefits of proposed section 850.34(b) is critical to achieving this goal for two reasons: (1) removal from exposure and effective job-placement efforts coupled with early diagnosis and treatment would allow affected workers to continue as productive members of the workforce, and (2) providing beryllium workers with a reasonable level of assurance that a finding of sensitization or diagnosis of CBD would not lead to the loss of their employment would further encourage worker participation in the medical surveillance program.

Proposed section 850.35 would establish the medical consent provisions of the proposed rule. Because DOE intends worker participation in medical surveillance to be voluntary, the provisions of this section would be necessary to ensure that beryllium workers receive the information they need to make an informed decision regarding their participation in the program.

Proposed section 850.35(a) would require that DOE contractors provide beryllium workers with information on the benefits and risks of the medical tests and examinations offered as part of medical surveillance. This information must be provided at least one week prior to any examinations or tests. In addition to providing this information, the Department also believes that DOE contractors should take reasonable efforts to ensure that workers understand the material. Accordingly, proposed section 850.35(a) would further clarify that workers shall have the opportunity to ask questions and have their questions answered prior to the performance of a medical evaluation.

Proposed section 850.35(b) would also require that DOE contractors provide beryllium workers and accepted applicants with a summary of the medical surveillance program, information explaining the purpose of the data, the type of data needed to be collected, how the data will be maintained, and the confidentiality of medical records will be protected. This information must also be provided at least one week prior to any examinations or tests.

Proposed section 850.35(c) would require DOE contractors to use the informed consent form approved by the Assistant Secretary for Environment, Safety and Health (EH–1) to obtain the signed consent of a beryllium worker prior to performance of a medical examination. The signature of the beryllium worker is intended to document that he or she consented to being tested. The signature of the examining physician is intended to document the commitments made to the beryllium worker. An example of the consent form can be found in Appendix A to Part 850.

Proposed section 850.35(d) would ensure that a beryllium worker or accepted applicant who develops a beryllium-related health effect, such as beryllium sensitization or CBD, would be given the information by the contractor that he or she needs to make an informed decision whether to accept medical removal. As clarified in this section, this information would include, at a minimum, information on opportunities for alternative placement with the contractor, out-placement benefits if no suitable positions exist within the contractor's organization, and any available long-term medical and disability insurance benefits for which the worker may qualify. The goal of this provision is to provide the worker with detailed information on the risks and benefits of accepting or rejecting medical removal to assist the worker in making the best possible decision.

Proposed section 850.35(e) would clarify that the SOMD must first provide the affected worker or accepted applicant the opportunity to ask questions and have their questions answered prior to obtaining the workers agreement to medical removal or before

having the worker sign a medical removal waiver.

Proposed section 850.36 would establish requirements for training and counseling regarding worker exposure to beryllium and the potential health effects associated with such exposure. DOE believes that such worker training is necessary because the appropriate implementation of the required workplace procedures of the CBDPP would ultimately rest upon the front-line workers who will actually be performing work on, with, or near beryllium or beryllium-contaminated materials. If these workers are not aware of the required procedures or if they do not fully appreciate the significance of these procedures, they cannot be expected to implement the procedures. For this reason, DOE believes that the ultimate success of the proposed CBDPP and the realization of the Department's goal to prevent future occurrences of CBD within the DOE complex depend to a great extent on the training and knowledge of the beryllium workers.

Proposed section 850.36(a) would require contractors to develop and implement a worker training program for all workers who are exposed or potentially exposed to airborne concentrations of beryllium and ensure their participation in the program. DOE recognizes that OSHA's Hazard Communication standard (29 CFR 1910.1200) already requires that DOE contractors provide their workers with similar training regarding the risks associated with all hazardous materials in the workplace. DOE does not intend that contractors would implement two separate and redundant training and information programs to comply with this proposed rule and the Hazard Communication standard. Accordingly, proposed section 850.36(a)(1) would require that DOE contractors' CBDPP training and information programs comply with the Hazard Communication standard as well as address the contents of the CBDPP. Through this provision, DOE intends for its contractors to integrate their CBDPP training and information efforts into their existing Hazard Communication training program, thus minimizing the burden on contractors and providing for a consistent approach to worker training and the communication of workplace hazards.

Proposed section 850.36(a)(2) would require that training be provided to workers prior to initial assignment and at least annually thereafter to ensure that workers are appropriately prepared to recognize the hazards and risks of working with beryllium. The initial training requirement of the paragraph is important to ensure that workers have the information they need to protect themselves before they are actually subject to exposure or potential exposure hazards. Annual training is necessary to reinforce initial training, especially with regard to the protective actions workers must take at their current jobs to reduce their potential for exposure to beryllium. DOE would establish this frequency as a minimum requirement, noting that changes in workplace operations, controls, or procedures, or the availability of new or updated information regarding the health risk associated with exposures to beryllium, may warrant the need for more frequent training.

In addition, proposed section 850.36(a)(3) would require that the training include information regarding beryllium health risk, exposure reduction, safe handling of beryllium and medical surveillance. This proposed section does not limit the contractor from providing training in additional areas.

All training must be conducted in a manner easy to understand so that workers can effectively translate CBDPP training into safe work practices. Training material should be appropriate in content and vocabulary to the education level, literacy, and language background of affected workers. Such targeted training would ensure that all workers, regardless of cultural or educational background, would have the requisite knowledge necessary to reduce and minimize their exposure to beryllium.

To provide additional support to affected workers, proposed section 850.36(b) would establish the requirement for the development and implementation of a worker counseling program that would assist beryllium-sensitized workers and workers diagnosed with CBD. The purpose of the counseling program would be to help communicate to workers the information that they will need to make important health- and work-related decisions and to facilitate the performance of required administrative activities, such as filing workers' compensation claims. Proposed section 850.36(b) would require the communication of information regarding the availability of: the medical surveillance program; medical treatment options; work practices aimed at limiting worker exposure to beryllium; the risk of continued exposure after sensitization; medical benefits; workers' compensation claims; and medical, psychological, and career counseling for workers with CBD or with positive results on Be-LPTs.

Proposed section 850.37 would require DOE contractors to post warning signs and labels to ensure that the presence of and dangers associated with beryllium and beryllium-contaminated materials or areas are communicated to workers.

Proposed section 850.37(a) would require the posting of warning signs at all entranceway locations where regulated areas have been established. This proposed section further requires that these signs bear the following warning:

DANGER
BERYLLIUM CAN CAUSE LUNG DAMAGE
CANCER HAZARD
AUTHORIZED PERSONNEL ONLY

The purpose of these signs would be to minimize the number of persons in a regulated area by warning workers prior to entry. The signs would also alert workers to the fact that they must have the appropriate authorization from their supervisor to enter the regulated area. This is especially important when regulated areas are established on a temporary basis, such as during cleanup operations. In such cases, workers who typically work in or travel through the area may not be aware of the new potential for exposures to beryllium and thus may not be appropriately equipped for or aware of the need to protect themselves from potential exposures. Warning signs would also serve as a constant reminder to those who work in regulated areas that the potential for exposure to beryllium exists in the area and that appropriate controls must be used.

Proposed sections 850.37(b)(1) and (2) would require that DOE contractors label all containers of beryllium, beryllium compounds, or beryllium-contaminated clothing, equipment, waste, scrap, or debris in accordance with OSHA's Hazard Communication standard (29 CFR 1910.1200). Ensuring that the content and format of the warning labels are consistent with those of OSHA's Hazard Communication standard would provide DOE and its contractors with a consistent and comprehensive approach to alerting workers to beryllium's potential to cause serious disease. The use of such warning labels would also ensure that all those who come in contact with labeled containers are aware of the containers' contents and of the need to implement special handling precautions. Because the effectiveness of the warning labels in achieving these objectives is greatly dependent upon the visibility, accuracy, and understandability of the content of the

labels, proposed section 850.37(a)(2) would further specify that labels bear the following information:

DANGER
CONTAMINATED WITH BERYLLIUM
DO NOT REMOVE DUST BY BLOWING OR SHAKING
CANCER AND LUNG DISEASE HAZARD

Proposed section 850.38 would address requirements for the establishment and maintenance of accurate records to demonstrate effective implementation of the program. Proposed section 850.38(a) would require the collection and maintenance of all beryllium inventory information, hazard assessments, exposure measurements, controls, and medical surveillance data. The Department feels that accurate and retrievable records are essential to the assessment of the adequacy of worker protection programs. Proposed section 850.38(b) would require that records required by this part be maintained in an electronic, easily retrievable format that can be easily transmitted to DOE headquarters when requested. This supplemental requirement would be necessary to facilitate timely, efficient, and cost-effective transfer and analysis of exposure monitoring and medical surveillance data.

Although the Department does not at this time mandate any specific methods or types of records system in the proposed rule, DOE contractors are already required to keep records of beryllium inventory information (29 CFR 1910.1200, Hazard Communication) and hazard assessment, exposure measurement, and medical surveillance data (29 CFR 1910.1020, Access to Employee Exposure and Medical Records). DOE contractors would be encouraged to take advantage of existing recordkeeping systems to minimize the implementation burden.

Proposed section 850.38(c) would also require that DOE and contractors create links between data sets on working conditions and health outcomes to serve as a basis for understanding the beryllium health risk. This linkage of data will assist DOE and contractors in identifying unsafe work practices and defining the exposure-response relationship.

The establishment and maintenance of useful, linked, and easily retrievable records would directly support and be an integral part of successful performance feedback, as described in proposed section 850.40. Combining data facilitates analyses that might be impossible to perform in smaller populations. Combined analyses can identify associations between CBD prevalence and risk factors that might otherwise be missed, and can lead to the development of conclusions based on the predictive value of medical tests used earlier in the analysis process.

Proposed section 850.38(d) specifically states that medical information generated by the CBDPP may only be maintained as a part of the site beryllium workers' medical records. This section further states that the medical information must be maintained separately from other personnel records and in conformity with the Americans with Disabilities Act, the Privacy Act and other applicable laws.

Proposed section 850.39(a) would require that DOE contractors develop and maintain a separate electronic beryllium registry that includes all beryllium workers. This beryllium registry would serve as a repository for collecting and maintaining information on workers who are exposed to long term, low and moderate levels of beryllium. The results of beryllium sensitization testing and/or CBD status of exposed workers will be added to the registry as that information becomes available. As information accrues over time, the disease status of workers as it relates to past beryllium exposure would be determined. The goals of the registry would be to provide early guidance as to the effectiveness of exposure control mechanisms and intervention programs and assess the burden of health effects related to beryllium exposure. The beryllium registry would also facilitate the conduct of epidemiologic studies to better understand the development of the disease and better identify those at risk.

Section 850.39(b) would specify the required content of the registry and establish that the registry and subsequent updates be forwarded electronically on a semi-annual basis to the Office of Environment, Safety and Health, Office of Epidemiologic Surveillance. For most sites, the electronic transfer of data would be similar to that used for the existing Epidemiologic Surveillance program. The Office of Epidemiologic Surveillance would be responsible for the administration and policy decisions related to the beryllium registry. This office would also provide technical support to the SOMD as required.

The SOMD would provide demographic data, exposure data, and medical screening results. Personal identifying information would be required to link exposure data to an individual and to eliminate duplicate reports for each worker. This information would be collected pursuant to and contained within DOE Record System 88 ''Epidemiologic and Other Studies, Surveys, and Surveillance.''

Proposed section 850.39(c) would require that information contained in the beryllium registry be disclosed only in a manner consistent with applicable legal requirements, such as the Privacy Act. Use of records under this act is governed by specific routine uses.

DOE believes that the existence of a Department-wide registry of beryllium workers and CBD and sensitization cases would facilitate future research on improved diagnostic tests and treatments for the disease.

Proposed section 850.40 would establish the performance feedback provisions of the CBDPP. Performance feedback mechanisms are essential to ensure that the effectiveness of the CBDPP is evaluated on a continual basis and that the necessary changes are made to ensure the protection of worker health. This section would mandate the use and analysis of the data collected through the reporting requirements in proposed section 850.38 to maintain and improve each element of the CBDPP.

Proposed section 850.40(a) would require that DOE contractors conduct periodic analysis and assessment of monitoring results, hazards identified, medical surveillance results, attainment of exposure reduction and minimization goals, and occurrence reporting data. The Department believes that the analysis of these data would be important to the continuous improvement of the program. In addition, this information would provide insights to better understand and manage program implementation through the use of performance measures developed on a site-by-site basis.

To ensure that all workers have the necessary information to safely perform their assigned tasks, proposed section 850.40(b) would require that results of performance assessments conducted in accordance with this part be provided to line managers, planners, worker protection staff, workers, medical staff, and others. This requirement would improve communication among employees, managers, and others to more effectively evaluate and monitor program implementation and effectiveness.

VII. Procedural Requirements

A. Review Under Executive Order 12866

Today's regulatory action has been determined to be a significant regulatory action under Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (October 4, 1993). Accordingly, today's action was subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA). The assessment of the potential costs and benefits of the rule required by section 6(a)(3) of the Executive Order has been made a part of the rulemaking file and is available for public review as provided in the **ADDRESSES** section of the NOPR.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, requires that an agency prepare an initial regulatory flexibility analysis for any rule for which a general notice of proposed rulemaking is required, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605.

DOE obtained information for 15 potentially affected sites to determine if the proposed rule, if promulgated, would have a significant economic impact on small entities. This information indicates that no small businesses currently would be affected by the proposed rule. A more detailed account of this information appears in the Economic Analysis prepared under the requirements of Executive Order 12866. Furthermore, DOE expects that any potential economic impact of this rule on small businesses would be minimal because businesses at DOE sites perform work under contracts to DOE or the prime contractor at the site. Increased funding may be available under this contractual arrangement to offset much of the impact that the rule would impose. In addition, many of the requirements of this part would apply to prime contractors and not subcontractors. Currently none of the prime contractors at affected DOE sites are small businesses.

For the foregoing reasons, DOE certifies that today's proposed rule, if promulgated, would not have a significant economic impact on a substantial number of small entities. DOE invites public comment and information on this certification.

C. Review Under the Paperwork Reduction Act

The proposed collections of information in this proposed rule have been submitted to the Office of Management and Budget (OMB) for review and approval under section 3507(d) of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number assigned by OMB.

This section describes the collections of information in the proposed rule and provides estimates of the annual burden on respondents. The burden estimates include the total time, effort, and financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for DOE. DOE invites public comment on: (1) Whether the proposed collections are necessary for the performance of DOE's functions, including whether the information will have practical utility; (2) the accuracy of DOE's estimates of the burden of the proposed collections of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collections of information on respondents, including the use of automated collection techniques or other forms of information technology.

Comments should be addressed to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, OMB, 725 17th Street, NW, Washington, DC 20503. Persons submitting comments to OMB also are requested to send a copy to the contact person at the address given in the **ADDRESSES** section of this notice. Requests for a copy of the Department's Paperwork Reduction Act Submission to OMB should be directed to the contact person.

Title: Reporting and recordkeeping requirements for the Chronic Beryllium Disease Prevention Program.

Abstract: The proposed rule would require DOE contractors at sites where beryllium is present to: develop and submit an initial CBDPP to DOE for approval (§ 850.10); periodically revise the CBDPP (§ 850.10); conduct a baseline inventory of beryllium at the site (§ 850.20); notify workers of exposure monitoring results (§ 850.24); develop and maintain a registry of beryllium workers (§ 850.39); require workers to sign a consent form for beryllium work and medical surveillance (§ 850.35); establish and maintain records related to the beryllium inventory and hazard assessment, exposure monitoring, workplace controls and medical surveillance (§ 850.38); and establish a performance feedback process for continually evaluating and improving the CBDPP (§ 850.40). DOE has determined that these collections of information are necessary for implementation of an effective CBDPP.

The burden of compliance with the collections of information in this rule will depend upon the nature of each requirement and the number and type of respondents. DOE estimates that DOE contractors at 15 facilities would be required to develop and submit CBDPPs to DOE for approval and, thereafter, implement the CBDPPs including the collections of information. Approximately 1,057 workers at the 15 facilities may be exposed to beryllium and, therefore, may be subject to certain of the information collection requirements.

DOE estimates the total startup costs at $348,781. Initial CBDPPs were required from all of the affected facilities by DOE Notice 440.1. DOE estimates that 2,549 professional hours and 637 clerical hours were required to prepare and submit the initial CBDPPs, at a total cost of $112,220. DOE estimates that the baseline inventory of beryllium will require 5,026 professional hours and 2,417 clerical hours, for a total cost of $234,631. Development of the beryllium registry is expected to cost $1,930, which represents 168 hours of clerical time.

DOE estimates the total recurring, annual paperwork burden at $318,860. This includes 3,498 professional hours ($142,047) and 15,375 clerical hours ($176,812). Recordkeeping would impose the largest recurring monetary cost (an estimated 10,993 clerical hours). Other recurring paperwork burdens are attributable to submitting performance feedback reports, worker notification of exposure monitoring, obtaining signed medical consent forms from workers, maintenance of the beryllium registry, revising the CBDPP plan on an annual basis, obtaining written reports from physicians regarding the results of medical exams, and performing analyses of medical data.

DOE estimates the total annualized cost of paperwork burdens for the Chronic Beryllium Disease Prevention Program would be $368,518.

D. Review Under the National Environmental Policy Act

DOE is reviewing the promulgation of 10 CFR part 850 under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality regulations for implementing NEPA, and DOE's NEPA implementing

procedures (10 CFR part 1021). DOE has prepared a draft Environmental Assessment (EA) (DOE/EA 1249) to support a decision on whether to issue a finding of no significant impact or to prepare an environmental impact statement for this proposed rule. Requests for copies of the draft EA and any comments on the EA should be submitted to the address indicated in the **ADDRESSES** section of this NOPR. Copies of the draft EA may also be downloaded from the ''Chronic Beryllium Disease Prevention Program'' home page on the Internet. The address is *http://tis.eh.doe.gov/be/* DOE will consider any comments on the draft EA and the proposed rule before completing the NEPA process.

E. Review Under Executive Order 12612

Executive Order 12612, 52 FR 41685 (October 30, 1987), requires that regulations, rules, legislation, any other policy actions be reviewed for any substantial, direct effects on states, on the relationship between the national government and the states, or in the distribution of power and responsibilities among various levels of government. If there are sufficient substantial, direct effects, then the Executive Order requires a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action.

This proposed rule, if promulgated as a final rule, would apply only to DOE facilities. It would not have a substantial direct effect on the institutional interests or traditional functions of the states.

F. Review Under Executive Order 12988

Section 3 of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996), instructs each agency to adhere to certain requirements in promulgating new regulations. Executive agencies are required by section 3(a) to adhere to the following general requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this final rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each federal agency to prepare a written assessment of the effects of any federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million in any one year. It also requires a federal agency to develop an effective process to permit timely input by elected officers of State, local, and tribal governments on a proposed ''significant intergovernmental mandate,'' requires an agency to develop a plan for giving notice and opportunity to timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. The proposed rule published today does not contain any federal mandate. Thus, these requirements do not apply.

VIII. Public Comment Procedures

A. Written Comments

Interested individuals are invited to participate in this proceeding by submitting data, views, or arguments with respect to this proposed rule. To help the Department review the submitted comments, commentors are requested to reference the paragraph(s) (e.g., 850.3[a]) to which they refer where possible.

Ten copies of written comments should be submitted to the address indicated in the **ADDRESSES** section of this notice. Comments should be identified on the outside of the envelope and on the documents themselves with the designation ''Beryllium Rule, Docket No. EH–RM–98–BRYLM.'' Should anyone wishing to provide written comments be unable to provide ten copies, alternative arrangements can be made in advance with the Department.

All submitted comments will be available for public inspection as part of the administrative record on file for this rulemaking, which is in the DOE Freedom of Information Office Reading Room at the address indicated in the **ADDRESSES** section of this NOPR.

Pursuant to the provisions of 10 CFR 1004.11, anyone submitting information or data he or she believes to be confidential and exempt by law from public disclosure should submit one complete copy of the document, as well as two copies, if possible, from which the information has been deleted. The Department will make its own determination as to the confidentiality of the information and treat it accordingly.

B. Public Hearings

Public hearings will be held at the times, dates, and places indicated in the **DATES** and **ADDRESSES** sections of this NOPR. Any person who is interested in making an oral presentation should, by 4:30 p.m. on the date specified, make a phone request to the number in the **DATES** section of this NOPR. The person should provide a daytime phone number where he or she may be reached. Persons requesting an opportunity to speak will be notified as to the approximate time they will be speaking. Each presentation is limited to 10 minutes. Persons making oral presentations should bring ten copies of their statements to the hearing and submit them at the registration desk.

DOE reserves the right to select the persons who will speak. In the event that requests exceed the time allowed, DOE also reserves the right to schedule speakers' presentations and to establish the procedures for conducting the hearing. A DOE official will be designated to preside at each hearing, which will not be judicial or evidentiary. Only those conducting the hearing may ask questions. Any further procedural rules needed to conduct the hearing properly will be announced by the DOE presiding official.

A transcript of each hearing will be made available to the public. DOE will retain the record of the full hearing, including the transcript, and make it available for inspection in the DOE Freedom of Information Office, at the address provided in the **ADDRESSES** section of this NOPR. Transcripts may be purchased from the court reporter.

If DOE must cancel the hearings, it will make every effort to give advance notice.

Appendix—References

1. Green DM et al. ''Agency for Toxic Substances and Disease Registry (ASTDR)

Case Studies in Environmental Medicine, No. 19.'' U.S. Department of Health and Human Services. 1992.

2. Hardy HL, Tabershaw IR. ''Delayed Chemical Pneumonitis Occurring in Workers Exposed to Beryllium Compounds.'' Journal of Industrial Hygiene Toxicology, Volume 28:197 (1946).

3. Powers MB. ''History of Beryllium.'' In Beryllium Biomedical and Environmental Aspects. Rossman MD, Preuss OP, and Powers MB, eds. Baltimore: Williams and Wilkins, 1991.

4. Eisenbud M et al. ''Non-occupational Berylliosis.'' Journal of Industrial Hygiene Toxicology, Volume 31:282–294 (1949).

5. Eisenbud M, Lisson J. ''Epidemiologic Aspects of Beryllium-Induced Nonmalignant Lung Disease: A 30-Year Update.'' Journal of Occupational Medicine, Volume 25:196–202 (1983).

6. Sterner JH, Eisenbud M. ''Epidemiology of Beryllium Intoxication.'' Archives of Industrial Hygiene and Occupational Medicine, Volume 4:123–157 (1951).

7. Newman LS, Kreiss K. ''Nonoccupational Beryllium Disease Masquerading as Sarcoidosis: Identification by Blood Lymphocyte Proliferative Response to Beryllium.'' American Review of Respiratory Disease, Volume 145:1212–1214 (1992).

8. Tepper LB. ''Introduction.'' In: Beryllium Biomedical and Environmental Aspects. Rossman MD, Preuss OP, and Powers MB, eds. Baltimore: Williams and Wilkins, 1991.

9. Sprince NL, Kazemi H. ''Beryllium Disease.'' In: Environmental and Occupational Medicine, 2nd ed. Room W, ed. Boston: Little, Brown, 1992.

10. Newman LS et al. ''Pathologic and Immunologic Alterations in Early Stages of Beryllium Disease. Reexamination of Disease Definition and Natural History.'' American Review of Respiratory Disease, Volume 139:1479–11486, (1989).

11. Kreiss K, Newman LS, Mroz MM, Campbell, PA. ''Screening Blood Test Identifies Subclinical Beryllium Disease.'' Journal of Occupational Medicine, Volume 31:603–608 (1989).

12. Rossman MD, Kern JA, Elias JA et al. ''Proliferative Response of Bronchoalveolar Lymphocytes to Beryllium: A Test For Chronic Beryllium Disease.'' Annals of Internal Medicine, Volume 108:687–693 (1988).

13. Saltini C, Winestock K, Kirby M et al. ''Maintenance of Alveolitis in Patients with Chronic Beryllium Disease by Beryllium Specific Helper T-Cells.'' New England Journal of Medicine, Volume 320:103–1109 (1989).

14. Cullen MR et al. ''Chronic Beryllium Disease in a Metal Refinery. Clinical Epidemiologic and Immunologic Evidence for Continuing Risk from Exposure to Low Level Beryllium Fume.'' American Review of Respiratory Disease, Volume 135(1):201–208 (1987).

15. Kreiss K, Mroz MM, Zhen B et al. ''Epidemiology of Beryllium Sensitization and Disease in Nuclear Workers.'' American Review of Respiratory Disease, Volume 148:985–991 (1993).

16. Kreiss K et al. ''Beryllium Disease Screening in the Ceramics Industry.'' Journal of Occupational Medicine, Volume 35:267–274 (1993).

17. Health Assessment Document for Beryllium [Publication No. EPA/600/8–84/026F] U.S. Environmental Protection Agency. (1987).

18. Stange AW et al. ''Possible Health Risks from Low Level Exposure to Beryllium.'' Toxicology, Volume 111:213–224 (1996).

19. Barnard AE, et al. ''Retrospective Beryllium Exposure Assessment at the Rocky Flats Environmental Technology Site.'' American Industrial Hygiene Association Journal, Volume 57:804–808 (1996).

20. Kreiss K et al. ''Machining Risk of Beryllium Disease and Sensitization with Median Exposures Below 2 μg/m^3,'' American Journal of Industrial Medicine, Volume 30:16–25 (1996).

21. Cohen BS. ''Air Sampling.'' In: Beryllium Biomedical and Environmental Aspects. Rossman MD, Preuss OP, and Powers MB, eds. Baltimore: Williams and Wilkins, 1991.

22. Finch GL. ''In Vitro Dissolution Characteristics of Beryllium Oxide and Beryllium Metal Aerosols.'' Journal of Aerosols Science, Volume 19:333–342 (1988).

23. Newman LS. ''To Be^{2+} or Not to Be^{2+}: Immunogenetics and Occupational Exposure.'' Science, Volume 262:197–198 (8 October 1993).

24. Haley PJ. ''Mechanisms of Granulomatous Lung Disease from Inhaled Beryllium: The Role of Antigenicity in Granuloma Formation.'' Toxicologic Pathology, Volume 19:514–525 (1991).

25. Finch GL. ''Clearance, Translocation, and Excretion of Beryllium Following Inhalation of Beryllium Oxide by Beagle Dogs.'' Fundamentals of Applied Toxicology, Volume 15:231–241 (1990).

26. Richeldi L et al. ''HLA-DPB1 Glutamate 69: A Genetic Marker of Beryllium Disease.'' Science, Volume 262:242–244 (8 October 1993).

27. Eisenbud M. ''The Standard for Control of Chronic Beryllium Disease.'' Applied Occupational Environmental Hygiene, Volume 13(1):25–31 (January1998).

28. Pappas GP et al. ''Early Pulmonary Physiologic Abnormalities in Beryllium Disease.'' American Review of Respiratory Disease, Volume 148:661–666 (1993).

29. Hawkins NC, Norwood SK, and Rock JC, eds. A Strategy for Occupational Exposure Assessment. Virginia: American Industrial Hygiene Association (1991).

List of Subjects in 10 CFR Part 850

Hazardous waste, Occupational safety and health, Reporting and recordkeeping requirements, Safety.

Issued in Washington, DC on October 30, 1998.

Bill Richardson,

Secretary of Energy.

For the reasons set forth in the preamble, Title 10, Chapter III of the Code of Federal Regulations is proposed to be amended by adding Part 850 to read as set forth below.

PART 850—CHRONIC BERYLLIUM DISEASE PREVENTION PROGRAM

Subpart A—General Provisions

Subpart B—Administrative Requirements

Subpart C—Specific Program Requirements

Authority: 42 U.S.C. 2201.

Subpart A—General Provisions

§ 850.1 Scope.

This part establishes a chronic beryllium disease prevention program (CBDPP) that supplements and is integrated into existing worker protection programs that are established for Department of Energy (DOE) employees and DOE contractor employees.

§ 850.2 Applicability.

(a) This part applies to:

(1) DOE offices responsible for DOE beryllium activities and DOE employees exposed or potentially exposed to beryllium at DOE-owned or -leased facilities; and

(2) DOE contractors and contractor employees with operations or activities involving exposure or the potential for

exposure of employees to beryllium at DOE-owned or -leased facilities.

(b) This part does not apply to:

(1) Beryllium articles; and

(2) DOE laboratory operations involving beryllium that are subject to the requirements of 29 CFR 1910.1450, Occupational Exposure to Hazardous Chemicals in Laboratories.

§ 850.3 Definitions.

(a) As used in this part:

Accepted applicant means a person who has accepted an offer of employment in beryllium work at a DOE facility but who has not begun performing beryllium work.

Action level means the level of airborne concentration of beryllium established pursuant to § 850.23 of this part that, if exceeded, requires the implementation of worker protection provisions specified in that section.

Authorized person means any person required by work duties to be in a regulated area.

Beryllium means elemental beryllium and any insoluble beryllium compound or alloy containing 0.1 percent beryllium or greater that may be released as an airborne particulate.

Beryllium article means a manufactured item that is formed to a specific shape or design during manufacture that has end-use functions that depend in whole or in part on its shape or design during end use and that does not release beryllium or otherwise result in exposure to airborne concentrations of beryllium under normal conditions of use.

Beryllium emergency means any occurrence such as, but not limited to, equipment failure, container rupture, or failure of control equipment or operations that results in an unexpected and significant release of beryllium at a DOE facility.

Beryllium-induced lymphocyte proliferation test (Be-LPT) is an in vitro measure of the beryllium antigen-specific, cell-mediated immune response.

Beryllium worker means a current worker who is exposed or potentially exposed to airborne concentrations of beryllium at or above the action level or above the STEL or who is currently receiving medical removal protection benefits.

Breathing zone is defined as a hemisphere forward of the shoulders, centered on the mouth and nose, with a radius of 6 to 9 inches.

DOE means the U.S. Department of Energy.

DOE beryllium activity means an activity taken for, or by, DOE that can expose workers to beryllium, including but not limited to design, construction, operation, or decommissioning. The activity may involve one DOE facility or operation or a combination of facilities and operations.

DOE contractor means any entity under contract (or its subcontractor) with DOE with responsibility to perform beryllium activities at DOE facilities.

DOE facility means any facility operated by or for DOE.

High-efficiency particulate air (HEPA) filter means a filter capable of trapping and retaining at least 99.97 percent of 0.3 micrometer monodispersed particles.

Immune response refers to the series of cellular events by which the immune system reacts to challenge by an antigen.

Medical removal protection benefits are employment rights established by § 850.34 of this part for beryllium workers who are removed temporarily from work in regulated areas or who voluntarily accept permanent medical removal from regulated areas following tests that confirm beryllium sensitivity or CBD.

Regulated area means an area or physical location demarcated by the contractor in which the airborne concentration of beryllium exceeds, or can reasonably be expected to exceed, the action level or the STEL.

Short term exposure limit (STEL) means the short term exposure limit established pursuant to § 850.22(b) of this part.

Site occupational medicine director (SOMD) means the physician responsible for the overall direction and operation of the site occupational medicine program.

Surface contamination is the presence of beryllium on work surfaces, which may cause skin irritation by direct contact with damaged skin or which may present an airborne hazard when reentrained into the workplace air.

Worker means a person who performs work for or on behalf of DOE, including a DOE employee, an independent contractor, a DOE contractor employee, or any other person who performs work at a DOE facility.

Worker exposure means the exposure to airborne beryllium that would occur if the worker were not using respiratory protective equipment.

Terms used in this part that are undefined but that are defined in the Atomic Energy Act shall have the same meaning as under the Atomic Energy Act.

§ 850.4 Enforcement.

DOE may take appropriate steps under its contracts with DOE contractors to ensure compliance with this part, including contract termination or reduction in fee.

§ 850.5 Dispute resolution.

Disputes arising under this part that are brought by beryllium workers and accepted applicants shall be resolved through applicable grievance-arbitration processes or, where such processes are not available, through referral to the Department's Office of Hearings and Appeals. The procedures in 10 CFR part 1003, subpart G, shall apply to resolution of disputes by the Office of Hearing and Appeals.

Subpart B—Administrative Requirements

§ 850.10 Development and approval of the CBDPP.

(a) Preparation and Submission of Initial CBDPP to DOE. (1) DOE contractors responsible for DOE beryllium activities at DOE facilities shall ensure that a CBDPP is prepared for their respective facility and submitted to the appropriate DOE Field Organization before beginning beryllium activities, but no later than [90 days after the effective date of the final rule] of this part.

(2) Where there are separate sections addressing the activities of particular contractors at the facility, the DOE contractor designated by the DOE Field Organization shall review and approve those sections so that a single consolidated CBDPP for the facility is submitted to the DOE Field Organization for review and approval.

(b) DOE Review and Approval. Heads of DOE Field Organizations shall review and approve the CBDPPs.

(1) The initial CBDPP and any updates shall be considered approved 90 days after submission if not approved or rejected by DOE earlier.

(2) DOE contractors shall furnish a copy of the approved CBDPP, upon request, to the DOE Assistant Secretary for Environment, Safety and Health or designee, DOE program offices, and affected workers or their designated representatives.

(c) Update. DOE contractors shall submit an update of the CBDPP to the appropriate DOE Field Organization for review and approval whenever a significant change or significant addition to the CBDPP is made or a change in contractor or subcontractor occurs. CBDPPs shall be reviewed at least annually and updated as necessary.

(d) Labor Organizations. If a DOE contractor employs beryllium workers who are represented for collective bargaining agreements by labor

organizations, the contractor must give those organizations timely notice of the development and implementation of the CBDPP and any updates thereto and must, upon timely request, bargain concerning implementation of this part, consistent with the National Labor Relations Act.

§ 850.11 General CBDPP requirements.

(a) The CBDPP shall specify the existing and planned operational tasks that are within the scope of the CBDPP. The CBDPP shall augment and be integrated, to the extent feasible, into the existing worker protection programs that cover activities at the facility.

(b) The detail, scope, and content of the CBDPP for DOE beryllium activities shall be commensurate with the hazard of the activities performed, but in all cases the CBDPP shall:

(1) Include formal plans and measures for maintaining exposures to beryllium at or below the permissible exposure levels (PELs);

(2) Satisfy each requirement in subpart C of this part;

(3) Contain provisions for:

(i) Minimizing the number of current workers exposed and potentially exposed to beryllium;

(ii) Minimizing the number of opportunities for workers to be exposed to beryllium; and

(iii) Setting specific exposure reduction and minimization goals that are appropriate for the DOE activities covered by the CBDPP to further reduce exposure below the exposure limits prescribed in section 850.22.

§ 850.12 Implementation.

(a) DOE contractors shall manage and control beryllium exposures in all DOE beryllium activities consistent with the approved CBDPP.

(b) No DOE worker or DOE contractor worker shall take or cause any action inconsistent with the requirements of:

(1) This part,

(2) An approved CBDPP or any other program, plan, schedule, or other process established by this part,

(3) Any other Federal statute or regulation concerning the exposure of workers to beryllium at DOE facilities.

(c) No task involving potential beryllium exposure that is outside the scope of the existing CBDPP shall be initiated until an update of the CBDPP is approved by the DOE Field Organization, except in the event of an unexpected situation and, then, only upon approval of the DOE Field Organization.

(d) Nothing in this part shall be construed as precluding a DOE contractor from taking any additional protective action that it determines to be necessary to protect the health and safety of workers.

§ 850.13 Compliance.

(a) DOE contractors shall conduct activities in compliance with their respective CBDPP, as approved by the DOE Field Organization.

(b) DOE contractors shall achieve compliance with all elements of their respective CBDPP no later than [2 years from the effective date of the final rule].

(c) With respect to a particular DOE beryllium activity, the person in charge of the activity shall be responsible for complying with this part. If no contractor is responsible for a DOE beryllium activity, DOE shall ensure implementation of and compliance with this part.

Subpart C—Specific Program Requirements

§ 850.20 Baseline beryllium inventory.

(a) DOE contractors shall develop a baseline inventory of beryllium operations and other locations of potential beryllium contamination, and identify the workers exposed or potentially exposed to beryllium at those locations.

(b) In conducting the baseline inventory, DOE contractors shall:

(1) Review employee records;

(2) Interview employees;

(3) Document the presence and locations of beryllium at the facility; and

(4) Conduct sampling to identify the presence of beryllium.

(c) DOE contractors shall ensure that the individuals assigned to this task have sufficient industrial hygiene knowledge to perform such activities properly.

§ 850.21 Hazard assessment.

(a) If the baseline inventory establishes the presence of beryllium, DOE contractors shall conduct a beryllium hazard assessment that includes an analysis of existing conditions, exposure data, medical surveillance trends, and the exposure potential of planned activities.

(b) DOE contractors shall ensure that the individuals assigned to this task have sufficient industrial hygiene knowledge to perform such activities properly.

§ 850.22 Exposure limits.

(a) Eight-Hour Time-Weighted Average (TWA) Permissible Exposure Limit (PEL). DOE contractors shall not expose any worker to an airborne concentration of beryllium over 2 μg/m^3, calculated as an 8-hour TWA exposure, as measured in the worker's breathing zone by personal monitoring, or a more stringent TWA PEL that may be promulgated by the Occupational Safety and Health Administration as a health standard.

(b) Short-Term Exposure Limit (STEL). DOE contractors shall not expose any worker to an airborne concentration of beryllium over 10 μg/m^3, averaged over a sampling period of 15 minutes, as measured in the worker's breathing zone by personal monitoring. Exposures above the PEL-TWA up to the STEL must not be longer than 15 minutes and must not occur more than four times in a day. If such exposures occur more than once a day, there must be at least 60 minutes between successive exposures in this range.

§ 850.23 Action level.

(a) DOE contractors shall include in their CBDPP an action level that, if met or exceeded, shall require the implementation of §§ 850.24(c) (periodic monitoring), 850.26 (regulated areas), 850.27 (change rooms), 850.29 (protective clothing and equipment), and 850.33 (medical surveillance).

(b) The provision enumerated in paragraph (a) of this section shall also be implemented if the STEL is exceeded.

(c) The action level established under paragraph (a) of this section shall not exceed 0.5 μg/m^3, calculated as an 8-hour TWA exposure, as measured in the worker's breathing zone by personal monitoring.

§ 850.24 Exposure monitoring.

(a) General. DOE contractors shall ensure that the individuals assigned to the monitoring tasks of this section have sufficient industrial hygiene knowledge to perform such activities properly.

(b) Initial Monitoring. DOE contractors shall perform initial monitoring for all workers in areas that may have airborne concentrations of beryllium, as shown by the baseline inventory and hazard assessment.

(1) DOE contractors shall determine each worker's exposure by conducting personal breathing zone sampling:

(i) To determine the 8-hour TWA exposure level.

(ii) To determine if exposure is above the STEL.

(2) Exposure monitoring results obtained within the 12 months preceding the effective date of this part may be used to satisfy this requirement if the measurements were made as provided in paragraph (b)(1) of this section.

(c) Periodic Exposure Monitoring. DOE contractors shall conduct periodic

monitoring of all workers who work in areas where airborne concentrations of beryllium are at or above the action level or above the STEL. The monitoring shall be conducted in a manner and at a frequency necessary to represent worker exposures as specified in their respective CBDPP, but in no case shall sampling be conducted at intervals greater than every 3 months (quarterly).

(d) Additional Exposure Monitoring. DOE contractors shall perform additional monitoring if operations or procedures change.

(e) Accuracy of Monitoring. DOE contractors shall use a monitoring method that has an accuracy (to a confidence level of 95 percent) of not less than plus or minus 25 percent or better for airborne concentrations of beryllium at the action level.

(f) Analysis. DOE contractors shall have all samples collected to satisfy the monitoring requirements of this part analyzed in a laboratory accredited for metals by the American Industrial Hygiene Association.

(g) Notification of Monitoring Results. (1) DOE contractors shall, within 10 working days after receipt of any monitoring results, notify the affected workers, and any labor organizations representing such workers, of monitoring results in writing. This notification shall be made personally to the affected workers or representatives, or in a posted form in location(s) that are readily accessible to affected workers, but in a manner that does not identify individual workers.

(2) If the monitoring results indicate that worker exposure is at or above the action level or STEL, DOE contractors shall also notify the SOMD of these results within 10 working days after receipt.

§ 850.25 Exposure reduction and minimization.

(a) DOE contractors shall ensure that no worker is exposed above the exposure limits prescribed in § 850.22, using the conventional hierarchy of industrial hygiene controls (i.e., engineering and administrative controls, and personal protective equipment).

(b) DOE contractors shall include in the CBDPP the rationale for reduction and minimization goals, strategies for achieving those goals, and the specific measures that will be used to assess the attainment of those goals. Strategies for achieving the exposure reduction and minimization goals shall include, but are not limited to:

(1) Using the action level to initiate actions to reduce or minimize worker exposure, and the potential for exposure, to beryllium; and

(2) Implementing work and contamination control strategies to reduce exposure to CBDPP goal levels using the conventional hierarchy of industrial hygiene controls.

§ 850.26 Regulated areas.

(a) If airborne concentrations of beryllium in areas in DOE facilities are at or above the action level or above the STEL, DOE contractors shall establish regulated areas for those particular areas.

(b) Regulated areas shall be demarcated from the rest of the workplace in a manner that adequately alerts workers to the boundaries of such areas.

(c) DOE contractors shall limit access to regulated areas to authorized persons.

(d) DOE contractors shall keep records of all individuals who enter regulated areas. These records shall include the name, date, time in and time out, and work activity.

§ 850.27 Change rooms.

(a) DOE contractors shall provide change rooms for workers who work in regulated areas.

(1) The change rooms that are used to remove beryllium-contaminated clothing and protective equipment shall be maintained under negative pressure or located so as to minimize dispersion of beryllium into clean areas; and

(2) Separate facilities shall be provided for workers to change into, and store, personal clothing, and clean protective clothing and equipment.

(b) DOE contractors shall provide handwashing and shower facilities for workers who work in regulated areas.

§ 850.28 Respiratory protection.

(a) DOE contractors shall comply with the respiratory protection requirements of 29 CFR 1910.134, Respiratory Protection.

(b) DOE contractors shall provide respirators to, and ensure that they are used by, all workers who are exposed to an airborne concentration of beryllium at or above the PEL.

(c) DOE contractors shall select for use by beryllium workers respirators approved by the National Institute for Occupational Safety and Health (NIOSH) or those DOE has accepted for use for DOE employees.

§ 850.29 Protective clothing and equipment.

(a) Where exposure monitoring has established airborne concentrations of beryllium at or above the action level or above the STEL, DOE contractors shall provide protective clothing and equipment to their beryllium workers and ensure its appropriate use and maintenance.

(1) DOE contractors shall ensure that beryllium workers exchange their personal clothing for full-body protective clothing and footwear before they begin work in regulated areas.

(2) DOE contractors shall provide beryllium workers with, and ensure the use of, additional protective equipment, such as face shields, goggles, gloves, and gauntlets, where skin or eye contact is possible from powdered or liquid forms of beryllium.

(b) DOE contractors shall ensure that no worker takes beryllium-contaminated protective clothing and equipment from the site, except for workers authorized to launder, clean, maintain, or dispose of the clothing and equipment.

(1) DOE contractors shall ensure that contaminated protective clothing and equipment, when removed for laundering, cleaning, maintenance, or disposal, is stored in sealed, impermeable containers or other closed, impermeable containers that are designed to prevent the dispersion of beryllium dust.

(2) DOE contractors shall ensure that the bags or containers of contaminated protective clothing and equipment that are to be removed from the change room areas or the site for laundering, cleaning, maintenance, or disposal shall bear labels according to section 850.37 of this part.

(c) DOE contractors shall ensure that protective clothing and equipment is cleaned, laundered, repaired, or replaced as needed to maintain effectiveness.

(d) DOE contractors shall inform any individual who launders or cleans beryllium-contaminated protective clothing or equipment that exposure to beryllium is potentially harmful, and that clothing and equipment should be laundered or cleaned in a manner prescribed by the contractor to prevent the release of airborne beryllium at or above the action level or above the STEL.

(e) DOE contractors shall prohibit the removal of beryllium from protective clothing and equipment by blowing, shaking, or other means that may disperse beryllium into the air.

§ 850.30 Housekeeping.

(a) Where beryllium is present at DOE facilities, DOE contractors shall conduct routine surface sampling to determine housekeeping conditions. Surfaces contaminated with beryllium dusts and waste shall not exceed a removable surface contamination level of 3 μg/100 cm^2.

(b) Where beryllium is present at DOE facilities, DOE contractors shall clean beryllium-contaminated floors and surfaces using a wet method or vacuuming. Compressed-air or dry methods shall not be used for such cleaning.

(c) DOE contractors shall equip the portable or mobile vacuum units that are used to clean beryllium-contaminated areas with HEPA filters, and change filters as often as necessary to maintain their capture efficiency.

(d) DOE contractors shall ensure that the cleaning equipment that is used to clean beryllium-contaminated surfaces is labeled, controlled, and used in no other areas.

§ 850.31 Waste disposal.

(a) DOE contractors shall control the generation and disposal of waste that contains beryllium through good housekeeping, hazard analysis, and the application of waste minimization principles.

(b) Beryllium-contaminated waste, containers, small equipment, and clothing shall be disposed of in sealed, impermeable bags or containers. The bags and containers that are used to dispose of beryllium-contaminated waste or articles shall be labeled according to § 850.37.

§ 850.32 Beryllium emergencies.

(a) DOE contractors shall develop and implement procedures for handling beryllium emergencies at DOE facilities engaged in beryllium operations.

(1) DOE contractors shall establish procedures to alert and protect workers in the event of an emergency.

(2) DOE contractors shall ensure that workers who are engaged in cleanup related to a beryllium emergency are provided with, and wear, protective equipment and clothing.

(b) DOE contractors shall provide beryllium emergency procedure training to workers who are assigned to handle beryllium emergencies.

§ 850.33 Medical surveillance.

(a) General. DOE contractors shall designate a SOMD who shall be responsible for administering a medical surveillance program for contractor beryllium workers.

(b) Heads of DOE Field Organizations shall designate a SOMD who shall be responsible for administering a medical surveillance program for federal employees who are beryllium workers.

(c) The written medical surveillance program shall be reviewed by the Office of Environment, Safety and Health and approved by Heads of DOE Field Organizations.

(d) DOE contractors shall establish and implement a medical surveillance program under the direction of the SOMD for all beryllium workers exposed at or above the action level or above the STEL.

(e) DOE contractors shall provide the SOMD with the information needed to operate and administer the medical surveillance program, including the baseline inventory, hazard assessment and exposure monitoring data, identity and nature of activities or operations on the site that are covered under the CBDPP, related duties of beryllium workers, and type of personal protective equipment used.

(f) The SOMD shall establish and maintain a list of beryllium workers that is based on records and other information regarding the identity of beryllium workers.

(1) The list shall establish the population of beryllium workers who may be eligible for protective measures under this part.

(2) The list shall be adjusted on the basis of periodic evaluations of beryllium workers performed under paragraph (h)(3) of this section.

(g) Information provided to the examining physician. The SOMD shall provide the following information to the examining physician:

(1) A copy of this rule;

(2) A description of the beryllium worker's duties as they pertain to beryllium exposure;

(3) Records of the beryllium worker's beryllium exposure;

(4) A description of the personal protective and respiratory protective equipment in past, present, or anticipated use; and

(5) Relevant information from the beryllium worker's previous medical examinations that is not otherwise available to the examining physician.

(h) Medical evaluations. (1) DOE contractors shall provide medical examinations and procedures to beryllium workers and accepted applicants at no cost and at a time and place that is reasonable and convenient to them.

(2) DOE contractors shall offer a baseline medical evaluation to beryllium workers who qualify for medical surveillance. This evaluation shall include:

(i) A medical and work history;

(ii) A physical examination with special emphasis on the respiratory system;

(iii) A chest radiograph (posterior-anterior, 14 × 17 inches) interpreted by a National Institute for Occupational Safety and Health (NIOSH) B-reader or a board-certified radiologist (unless a baseline chest radiograph is already on file);

(iv) Spirometry;

(v) A Be-LPT; and

(vi) Any other tests deemed appropriate by the examining physician for evaluating beryllium-related health effects.

(3) Periodic evaluations. DOE contractors shall offer beryllium workers who qualify for medical surveillance under this section annual medical evaluations for as long as the beryllium worker performs beryllium work at a DOE site. DOE contractors shall offer beryllium workers who have been reassigned to non beryllium DOE work an evaluation every three years. Such periodic evaluations shall include:

(i) A respiratory symptoms questionnaire;

(ii) A physical examination;

(iii) A Be-LPT; and

(iv) Any other medical evaluations deemed appropriate by the examining physician for evaluating beryllium-related health effects.

(4) The SOMD shall ensure that all medical evaluations and procedures that are required by this section are performed by, or under the supervision of, a licensed physician who is familiar with the health effects of beryllium.

(i) Referrals. Beryllium workers who have two or more positive Be-LPTs, or other signs and symptoms of CBD, shall be referred by the examining physician for further diagnostic evaluation.

(j) Physician's written report and recommendation. (1) DOE contractors shall ensure that each beryllium worker or accepted applicant receives, within 15 calendar days after the completion of a medical evaluation performed under this section, a physician's written report containing the results of all medical tests or procedures, an explanation of any abnormal findings, and any recommendations that the worker be referred for additional testing for evidence of CBD.

(2) DOE contractors shall, within 15 calendar days after the completion of a medical evaluation performed under this section, obtain a copy of the physician's written report, that is limited to the following information: any recommendations that the beryllium worker's exposure to beryllium be precluded or that the accepted applicant's start of beryllium work be postponed, either temporarily or permanently, and any recommendation on the use of respiratory or other protective equipment.

(k) Data analysis. The SOMD shall routinely and systematically analyze medical, job, and exposure data with the

aim of identifying individuals or groups of individuals potentially at risk for CBD and working conditions that are unduly contributing to that risk.

(1) Results of these analyses shall be used by the SOMD in determining which workers should be offered medical surveillance, and the need for additional exposure controls.

(2) The SOMD shall provide copies of the data analyses to the DOE contractor for the performance feedback required in section 850.40.

§ 850.34 Medical removal.

(a) Medical removal plan. With the express written consent of the beryllium worker or accepted applicant, as indicated on the consent form, DOE contractors shall remove a beryllium worker from exposure to beryllium, or postpone an accepted applicant's start of beryllium work, if the SOMD recommends that the beryllium worker or accepted applicant do so due to two or more positive Be-LPT results, confirmation of CBD, or the detection of other signs or symptoms that require evaluation for their relationship to CBD.

(1) DOE contractors shall offer a beryllium worker removed from beryllium work a follow-up medical examination that the examining physician shall use to decide whether the beryllium worker may return to beryllium work.

(2) Beryllium workers and accepted applicants with two or more positive Be-LPTs or confirmed CBD shall have the option at any time after testing, diagnosis, or the appearance of CBD-related symptoms to decline the medical removal or restriction and, after signing an informed consent waiver, resume working in a beryllium area.

(3) DOE contractors shall make reasonable efforts to offer alternative employment to beryllium workers and accepted applicants who test positive on two or more Be-LPTs, or who are confirmed with CBD. The reasonable efforts to offer alternative employment required under this section shall not require the contractor: to displace any other worker in order to create a vacancy for the beryllium worker or accepted applicant; to promote the beryllium worker or accepted applicant; or to provide the beryllium worker or accepted applicant with training that costs in excess of $6,000.00, or requires longer than 6 months to complete.

(b) Medical removal protection benefits. DOE contractors shall provide beryllium workers who are removed from beryllium work and placed in other jobs with the contractor employing them, protection against a reduction in base pay, seniority, or other benefits for a total period of two years after removal.

§ 850.35 Medical consent.

(a) DOE contractors shall provide beryllium workers and accepted applicants with information on the benefits and risks of the medical tests and examinations available to them at least one week prior to any such examination or test. The examining physician shall provide beryllium workers and accepted applicants an opportunity to have their questions answered and shall obtain their signed consent before performing medical evaluations.

(b) DOE contractors shall also provide beryllium workers and accepted applicants with a summary of the medical surveillance program, the type of data that will be collected, how the data will be collected and maintained, the purpose for which the data will be used, and how confidential data will be protected. This information shall be provided at least one week prior to the first medical examination or test, or at any time requested by the beryllium worker or accepted applicant.

(c) DOE contractors shall use the form approved by the Assistant Secretary for Environment, Safety and Health to obtain the signed consent of a beryllium worker before performing a medical examination.

(d) DOE contractors shall provide beryllium workers or accepted applicants information that will facilitate informed decisions on whether to accept medical removal offered by the SOMD. This information shall include information on opportunities for alternative placement within their organization, available out-placement benefits, and long-term medical and disability insurance benefits for which they may qualify.

(e) The SOMD shall provide a beryllium worker or an accepted applicant with an opportunity to have his or her questions answered before obtaining the worker's agreement to medical removal or a signed waiver of an offer of medical removal protection.

§ 850.36 Training and counseling.

(a) DOE contractors shall develop and implement a beryllium training program for workers who may be exposed to beryllium, and ensure their participation.

(1) The information and training provided shall be in accordance with 29 CFR 1910.1200, Hazard Communication.

(2) Training shall be provided before or at the time of initial assignment and at least annually thereafter.

(3) Training shall include, but not be limited to, beryllium health risk, exposure reduction, safe handling of beryllium, and medical surveillance.

(b) DOE contractors shall develop and implement a beryllium worker counseling program to assist workers who are diagnosed by the SOMD to be sensitized to beryllium or to have CBD. This program shall include communicating with beryllium workers concerning the availability of: the medical surveillance program; medical treatment options; medical, psychological, and career counseling for workers with positive Be-LPT results or confirmed CBD; medical benefits; worker compensation claims; work practice procedures limiting worker exposure to beryllium; and the risk of continued exposure after sensitization.

§ 850.37 Warning signs and labels.

(a) Warning signs. DOE contractors shall post warning signs at all entranceways to regulated areas with the following information:

DANGER
BERYLLIUM CAN CAUSE LUNG DAMAGE
CANCER HAZARD
AUTHORIZED PERSONNEL ONLY

(b) Warning labels. (1) DOE contractors shall affix warning labels to all containers of beryllium, beryllium compounds, or beryllium-contaminated clothing, equipment, waste, scrap, or debris.

(2) Labels shall be in accordance with 29 CFR 1910.1200, Hazard Communication, and shall contain the following information:

DANGER
CONTAMINATED WITH BERYLLIUM
DO NOT REMOVE DUST BY BLOWING OR SHAKING
CANCER AND LUNG DISEASE HAZARD

§ 850.38 Recordkeeping and use of information.

(a) DOE contractors shall establish and maintain accurate records of all beryllium inventory information, hazard assessments, exposure measurements, controls, and medical surveillance.

(b) DOE contractors shall maintain all records required by this part in an electronic, easily retrievable form for transmittal to DOE Headquarters on request.

(c) DOE contractors shall link data sets on working conditions and health outcomes to serve as a basis for understanding the beryllium health risk.

(d) Medical information generated by the CBDPP shall be maintained by the contractor as part of the beryllium worker's site medical records. Such medical information shall be maintained separately from other

personnel records. This information must be kept confidential and used or disclosed by the contractor only in conformance with any applicable requirements imposed by the Americans with Disabilities Act, the Privacy Act of 1974, and any other requirements under applicable law.

§ 850.39 Beryllium registry.

(a) DOE contractors shall establish and maintain a separate electronic beryllium registry that includes the name, social security number (SSN), date of birth, gender, site, job history, medical screening test results, and results of referrals for specialized medical evaluation. This data shall be submitted for all beryllium workers employed by them and all accepted applicants, subject to the requirements of § 850.38.

(b) DOE contractors shall transmit the beryllium registry information electronically to the Office of Environment, Safety and Health, Office of Epidemiologic Surveillance, semi-annually.

(c) Information in the beryllium registry maintained by DOE under paragraph (a) of this section may be disclosed only in a manner consistent with the Privacy Act of 1974 and any other applicable legal requirements.

§ 850.40 Performance feedback.

(a) DOE contractors shall conduct periodic analyses and assessments of monitoring efforts, hazards, medical surveillance, exposure reduction and minimization, and occurrence reporting data.

(b) To ensure that information is available to maintain and improve all elements of the CBDPP continuously, results of periodic analyses and assessments shall be given to the line managers, planners, worker protection staff, workers, medical staff, and labor organizations representing beryllium workers who request such information.

Appendix A to Part 850—Chronic Beryllium Disease Prevention Program Informed Consent Form

I have carefully read and understand the attached information about the Be-LPT and other medical tests. I have had the opportunity to ask any questions that I may have had concerning these tests.

I understand that I am free to withdraw at any time from all or any part of the medical surveillance program. I understand that if the results of any test suggest a health problem, the examining physician will discuss the matter with me, whether or not the result is related to my work with beryllium.

I understand that the results of my tests and examinations may be published in reports or presented at meetings, but that I will not be identified.

I understand that the results of my medical tests for beryllium will be included in the Beryllium Registry maintained by DOE. The confidentiality of identified information maintained by DOE is protected under the Privacy Act of 1974. Personal identifiers will not be published in any reports generated from the DOE Beryllium Registry. All medical information relative to the tests performed on me retained by my employer will be maintained in segregated medical files separate from my personnel files, treated as confidential medical records, and used or disclosed only as provided by the Americans with Disability Act, the Privacy Act of 1974, or as required by a court order or DOE directive.

I consent to having the following medical evaluations:

☐ Physical examination concentrating on my lungs and breathing
☐ Chest X-ray
☐ Spirometry (a breathing test)
☐ Blood test called the beryllium-induced lymphocyte proliferation test or Be-LPT
☐ Other test(s). Specify:_____

I understand that, if the results of one or more of these tests indicate that I have a health problem that is related to beryllium, additional examinations will be recommended. If additional tests indicate I do have a beryllium sensitization or CBD, I may be advised to stop working with beryllium. Every effort will be made to offer me a job of equivalent grade and base pay for which I am qualified. I also may continue working in the job with beryllium exposure if I so choose. I understand that continuing to work with beryllium may increase the chance that I will develop chronic beryllium disease (CBD).

☐ I decline to participate in any part of the medical surveillance program at this time. If I change my mind, I may participate in the program by contacting my supervisor.

Name of Participant:
SSN:
Signature of Participant:
Date:

I have explained and discussed any questions that the above employee expressed concerning the Be-LPT, physical examination, and other medical testing as well as the implications of those tests.

Name of Examining Physician:
Signature of Examining Physician:
Date:

Appendix B to Part 850—Questions and Answers Concerning the Beryllium-Induced Lymphocyte Proliferation Test (Be-LPT), Medical Records, and the DOE Beryllium Registry

What is the Be-LPT blood test?

In the Be-LPTs, disease-fighting blood cells that are normally found in the body, called lymphocytes, are examined in the laboratory and separated from your blood. Beryllium and other test agents are then added to small groups of these lymphocytes. If these lymphocytes react to beryllium in a specific way, the test results are ''positive.'' If they do not react with beryllium, the test is ''negative.''

Experts believe that the Be-LPT shows positive results in individuals who have become sensitive or allergic to beryllium. It is unclear what this sensitivity means. Studies have shown it to be an early sign of chronic beryllium disease (CBD) in many individuals. In others, sensitivity might simply mean that the person was exposed to beryllium and that his or her body has reacted. It might mean that an individual is more likely than others to get CBD. You are being offered the Be-LPT because doctors believe it is useful in detecting cases of CBD early or cases that might otherwise be missed or diagnosed as another type of lung problem. Once CBD is identified, doctors can determine the treatment that is needed to minimize the lung damage CBD causes.

As in any other medical test, the Be-LPT sometimes fails or provides unclear results. The laboratory calls these results ''uninterpretable.'' Even when the test appears successful, it may appear positive when it is not. This is called a ''false positive'' result. It is also possible that the test will show ''negative'' results when a person is actually ''sensitized'' to beryllium. This is a ''false negative'' result. If you have a ''uninterpretable'' blood Be-LPT result, you will be asked to provide another blood sample so the test can be repeated. If you have ''positive'' results, you will be offered further medical tests to confirm or rule out CBD. Remember, you may refuse further tests at this point or at any point during your medical evaluations.

It is important for you to know that if the physical examination or the results from other tests you are receiving suggest that you have CBD, you may be offered further medical tests. These medical tests may be offered even if your Be-LPT is ''negative.''

Some individuals with confirmed ''positive'' Be-LPTs but no other signs of CBD have developed the disease. The likelihood of this happening will only be known after large groups of potentially exposed individuals have had their blood tested, have had further medical tests, and are studied for many years.

What will happen if I decide to have the Be-LPT blood test?

A small amount of your blood will be drawn from a vein in your arm and sent to a laboratory. There is little physical risk in drawing blood. Slight pain and bruising may occur in a few individuals. Rarely, the needle puncture will become infected. Other routine medical evaluation tests may be offered when you have the Be-LPTs including a physical examination, a chest X-ray, and breathing tests that help find signs of CBD, if they exist.

Other diseases may resemble CBD. Different medical tests can help a physician decide if a person has CBD or another disease. If the examining physician suspects that you have CBD, he or she will recommend additional medical tests to help confirm a diagnosis. Separate information regarding these additional medical tests will be given to you if they are recommended. Your consent will be requested when the extra tests are given. You can always refuse

additional tests, if you so choose. All tests will be paid for by your employer.

When will I receive the results of my Be-LPT blood test?

It could take 2 to 4 weeks for you to receive a letter informing you of your test results. The test itself usually takes 8 days to perform. The testing laboratory reports results to the physician who examined you and he or she will notify you.

Could a positive Be-LPT blood test affect my job assignment?

Yes, but only if you elect to accept a change in your job assignment. If you have a positive Be-LPT or have been diagnosed with CBD, it may be advisable for you to stop working with beryllium. If you are working with beryllium at this time, every effort will be made to offer you another job that you are qualified to perform with your employer. This job will be of comparable responsibilities, base pay and benefits, and will not expose you to beryllium. If a comparable position cannot be found with your employer, you will be offered the choice of continuing to work for your employer with beryllium or assistance for a period of 2 years in finding employment with another employer, but in that case there can be no promise of continued base pay and benefits. If you become physically unable to continue working, you may be eligible for workers' compensation and other benefits.

Will I lose any pay or any other benefits by having the examination during normally scheduled working hours?

No. Your examination will be scheduled during normal work hours. You will not be required to take leave to have the examination, nor will you lose pay or any other benefits.

What will happen to the records of the medical examination results?

The results of your tests and examinations will be available to the physicians and nurses in this clinic, and possibly to scientists conducting health studies. The test results will be entered in your medical records, which will be kept in specially secured files under the supervision of physicians and nurses in the clinic, separate from other personnel records. Your test results will be medically confidential data and will not be released to anyone other than those listed in the following, unless you provide written permission. The following groups will have direct access to this information:

1. Clinic staff members
2. Medical specialists who will provide or arrange for additional medical treatment or tests, if necessary.
3. U.S. Department of Energy Beryllium Registry staff.
4. The Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health officials may require direct access to records that identify you by name for health studies.

If information about you is used in reports or a published health study, your identity will be disguised. You will not be identified in any published report or presentation. The results of your Be-LPT and other screening tests will be made available to you and, upon your request, to your physician. The information also will become part of your medical record, which the clinic keeps.

What is the DOE beryllium registry?

Your health and the health of all workers is a major concern to the Department. There is a need to learn more about chronic beryllium disease and what causes some individuals to react more strongly than others. A DOE beryllium registry has been established to collect and maintain information on workers who are exposed to long term, low and moderate levels of beryllium. This registry is a tool which will be used in health studies to better understand the nature of the disease. With it we can measure the burden of health effects related to beryllium exposure. The registry will also be used to evaluate the effectiveness of exposure control programs.

In addition to information about your beryllium related exposures, the results of beryllium sensitization testing and/or CBD status collected by your employer will be added to the registry. Your employer must treat this information as confidential medical information and can only use or disclose of this information in conformance with the Privacy Act of 1974, the Americans with Disabilities Act, or any other applicable law. Personal identifying information (such as your name and social security number) is required to link exposure data to the results of the medical testing and to eliminate duplicate reports for each worker. At no time will your name or other personal identifying information be published in any report. The confidentiality of identified information in DOE records is protected under the Privacy Act of 1974.

What laws protect me if I consent to participating in the screening program?

State medical and nursing licensing boards enforce codes of ethics that require doctors and nurses to keep medical information confidential. The Privacy Act prevents unauthorized access to your DOE records without your permission. The information in records kept by your employer must be handled in accordance with the Americans with Disabilities Act and the Privacy Act of 1974. The consent form you sign also provides additional protection.

Can my privacy and the confidentiality of my medical records be guaranteed?

No. Access to or release of records could be required under court order, or DOE directive, but it is unlikely. If you apply for another job or for insurance, you may be requested to release the records to a future employer or an insurance company. If, for medical reasons, it is recommended that you transfer to an area where you will not contact beryllium, and you elect to do so, the personnel department and your supervisor will be notified. They will not be told the specific results of your tests but, because of the restrictions, they may assume that your Be-LPT results were positive.

Do I have to have the Be-LPT done?

No. Your participation in the medical surveillance program is strictly voluntary. You may refuse any of the tests offered to you including the Be-LPT. If you change your mind, you are free to participate in the program at any time. Talking with your family, your doctor, or other people you trust may help you decide. The physicians in the clinic that provide the tests can also help answer any questions that you might have.

[FR Doc. 98–30277 Filed 12–2–98; 8:45 am]

BILLING CODE 6450–01–P

Reader Aids

Federal Register

Vol. 63, No. 232

Thursday, December 3, 1998

CUSTOMER SERVICE AND INFORMATION

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications:

http://www.access.gpo.gov/nara

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access:

http://www.nara.gov/fedreg

E-mail

PENS (Public Law Electronic Notification Service) is an E-mail service that delivers information about recently enacted Public Laws. To subscribe, send E-mail to

listproc@lucky.fed.gov

with the text message:

subscribe publaws-l <firstname> <lastname>

Use listproc@lucky.fed.gov only to subscribe or unsubscribe to PENS. We cannot respond to specific inquiries at that address.

Reference questions. Send questions and comments about the Federal Register system to:

info@fedreg.nara.gov

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATES, DECEMBER

CFR PARTS AFFECTED DURING DECEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT DECEMBER 3, 1998

INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species:
Virginia sneezeweed; published 11-3-98

NUCLEAR REGULATORY COMMISSION
Domestic licensing and related regulatory functions; environmental protection regulations:
License transfers approval; streamlined hearing process; published 12-3-98

PERSONNEL MANAGEMENT OFFICE
Excepted service:
Promotion and internal placement; published 12-3-98

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Class D airspace; published 7-28-98
Class D and Class E airspace; published 8-26-98
Class E airspace; published 7-23-98
Colored Federal airways; published 10-5-98
Federal airways and jet routes; published 10-2-98
IFR altitudes; published 10-29-98
Restricted areas; published 10-5-98
VOR Federal airways; published 9-15-98

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Celery grown in—
Florida; comments due by 12-8-98; published 10-9-98

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Interstate transportation of animals and animal products (quarantine):
Brucellosis in cattle and bison—
State and area classifications; comments due by 12-7-98; published 10-7-98
Brucellosis in swine—
State and area classifications; comments due by 12-7-98; published 10-7-98
Plant-related quarantine, domestic:
Mediterranean fruit fly; comments due by 12-7-98; published 10-8-98

AGRICULTURE DEPARTMENT
Farm Service Agency
Farm marketing quotas, acreage allotments, and production adjustments:
Peanuts; comments due by 12-8-98; published 11-25-98
Program regulations:
Manufactured housing thermal requirements; comments due by 12-7-98; published 10-6-98

AGRICULTURE DEPARTMENT
Food Safety and Inspection Service
Meat and poultry inspection:
Consumer protection standards—
Washing and chilling processes; retained water in raw meat and poultry products; poultry chilling performance standards; comments due by 12-10-98; published 9-11-98
Washing and chilling processes; retained water in raw meat and poultry products; poultry chilling performance standards; correction; comments due by 12-10-98; published 10-26-98

AGRICULTURE DEPARTMENT
Grain Inspection, Packers and Stockyards Administration
Packers and Stockyards Act:
Non-reporting of price as condition of purchase or sale of livestock; prohibition; comments due by 12-9-98; published 9-10-98

AGRICULTURE DEPARTMENT
Rural Business-Cooperative Service
Program regulations:
Manufactured housing thermal requirements; comments due by 12-7-98; published 10-6-98

AGRICULTURE DEPARTMENT
Rural Housing Service
Program regulations:
Manufactured housing thermal requirements; comments due by 12-7-98; published 10-6-98

AGRICULTURE DEPARTMENT
Rural Utilities Service
Electric and telephone loans:
Fidelity and insurance requirements; comments due by 12-8-98; published 10-9-98
Program regulations:
Manufactured housing thermal requirements; comments due by 12-7-98; published 10-6-98

AGRICULTURE DEPARTMENT
Nondiscrimination in federally conducted programs and activities; comments due by 12-10-98; published 11-10-98

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Atka mackerel; comments due by 12-9-98; published 11-9-98
Atlantic swordfish; comments due by 12-7-98; published 10-13-98
Northeastern United States fisheries—
Atlantic surf clam and ocean quahog; comments due by 12-7-98; published 11-13-98
Marine Mammals:
Endangered fish or wildlife—
Sea turtles; shrimp trawling requirements; comments due by 12-7-98; published 11-10-98

ENERGY DEPARTMENT
Acquisition regulations:
Performance guarantees; comments due by 12-9-98; published 11-9-98

ENERGY DEPARTMENT
Federal Energy Regulatory Commission
Natural gas companies (Natural Gas Act):
Energy facility applications; collaborative procedures; comments due by 12-7-98; published 10-7-98

ENVIRONMENTAL PROTECTION AGENCY
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
Oklahoma; comments due by 12-7-98; published 11-6-98
Air quality implementation plans; approval and promulgation; various States:
California; comments due by 12-7-98; published 11-6-98
Maryland; comments due by 12-7-98; published 11-5-98
Pennsylvania; comments due by 12-7-98; published 11-6-98
Air quality planning purposes; designation of areas:
Arizona; comments due by 12-7-98; published 11-20-98
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Avermectin; comments due by 12-7-98; published 10-7-98
Bifenthrin; comments due by 12-7-98; published 10-7-98
Cyproconazole; comments due by 12-7-98; published 10-7-98
Fludioxonil; comments due by 12-7-98; published 10-7-98
Glyphosate; comments due by 12-7-98; published 10-8-98
Imidacloprid; comments due by 12-7-98; published 10-7-98
Pyridate; comments due by 12-7-98; published 10-7-98
Sethoxydim; comments due by 12-7-98; published 10-8-98

FARM CREDIT ADMINISTRATION
Farm credit system:
Leasing activities; comments due by 12-7-98; published 10-23-98

FEDERAL COMMUNICATIONS COMMISSION
Radio frequency devices:
Equipment in 24.05-24.25 GHz band at field strengths up to 2500 mV/m; certification; comments due by 12-7-98; published 9-21-98

LIST OF PUBLIC LAWS

Note: The list of Public Laws for the second session of the 105th Congress has been completed and will resume when bills are enacted into law during the first session of the 106th Congress, which convenes on January 6, 1999.

A cumulative list of Public Laws for the second session of the 105th Congress was published in the **Federal Register** on November 30, 1998.